

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

IN RE)
) **Case No. 13-00015-TLM**
JEFFREY TODD HESS,)
) **Chapter 7**
Debtor.)
_____)

SUMMARY ORDER

On November 5, 2014, the then chapter 12 debtor, Jeffrey Todd Hess (“Debtor”) filed a motion to avoid judicial liens and a certificate of service. Doc. No. 226 (“Motion”).¹ The notice of this Motion was addressed to the “Judgment Creditors Described Herein and Parties in Interest,” but the Motion did not specifically name any judgment creditors. Instead it alleged that “[t]he creditors shown on the attached judgments, gleaned from the title report on the property, impair Debtor's homestead exemption[.]” *Id.* at 2.

Debtor attached copies of a judgment and a covenant not to execute regarding Capital One Bank indicating James Edmunds was state court counsel for Capital One Bank. Debtor also attached a judgment in favor of Dorn Enterprises, Inc., that indicates David Auxier was state court counsel for Dorn Enterprises, Inc.

_____ ¹ Debtor filed a motion to convert to chapter 7 eight days later. *See* Doc. No. 236, filed November 13, 2014. The case was converted on November 18. *See* Doc. No. 241.

The certificate of service attached to the Motion stated, “I [counsel] have caused to be served a true and correct copy of the foregoing *by the method indicated below*, and addressed to the following:”

Capital One Bank USA (N.A.)
100 East Shore Drive
Glen Allen, VA 23059

James L. Edmunds
Patenaude & Felix
522 SW 5th Avenue, Suite 1210
Portland, OR 97204

Bill Dorn
Dorn Enterprises
453 Palos Verdes Drive West
Palos Verdes Estates, CA 90274

David Auxier
Yturri Rose
PO Box “S”
Ontario, OR 97914

Doc. No. 226 at 3 (emphasis added). But no “method of service” was indicated.

On November 26, 2014, Debtor filed a statement of no objection. *See* Doc. No. 245.² In such statement, Debtor represents that his counsel had phone conversations with state court counsel, but no objections had been received.

Notwithstanding the lack of objection, the Court will not grant the relief requested and will instead deny Debtor’s Motion.

In *In re Parker*, 08.4 I.B.C.R. 161, 162, 2008 WL 4545208, at *2 (Bankr. D. Idaho 2008), this Court articulated “the basic and fundamental pleading requirements for a motion to avoid a lien under § 522(f).” Such a motion must establish that a specific creditor has a judicial lien that may be avoided under

² A statement of no objection can trigger the Court’s review and possible entry of an order without hearing pursuant to LBR 2002.2(d).

§ 522(f)(1) and establish to what extent that lien impairs an exemption under

§ 522(f)(2). In order to accomplish those requirements, § 522(f) motions should:

- specify and adequately identify the property (generally real property³) that is involved, and specify the exemption (generally a homestead exemption) that is claimed;
- assert such property’s fair market value as of the petition date;
- identify the existence and amount of any consensual secured creditors with unavoidable interests in such property;
- calculate and assert the remaining value in the property which is subject to the properly claimed exemption after such consensual creditors’ claims are considered;
- present the statutory analysis, required under § 522(f)(1) and specified in § 522(f)(2), establishing that the contested liens in fact “impair” the claimed exemption and, importantly, the “extent” to which the various liens impair the exemption and are sought to be avoided.

Id. See also LBR 4003.2. Here, Debtor’s Motion fails to even specifically identify the creditors, let alone provide the type of information necessary to establish a right to relief under § 522(f)(1)(A) and to allow the Court to evaluate the same.⁴

In addition to the substantive shortcomings, the service of the motion was not shown to be adequate. The service requirements of Federal Rule of

³ Section 522(f)(1)(A) allows for judicial lien avoidance regarding real property, and § 522(f)(1)(B) allows for avoidance of certain security interests in personal property. The former is more common.

⁴ When there are multiple creditors, as alleged here, a competent § 522(f) motion must also articulate the lien avoidance standards in the appropriate order to establish impairment of an exemption. *In re Marcovitz*, 2011 WL 5041507, at *6 (Bankr. D. Idaho Oct. 24, 2011).

Bankruptcy Procedure 7004 apply to motions to avoid liens. *See In re Christman*, 04.4 IBCR 165, 2004 WL 2757926 (Bankr. D. Idaho 2004), *In re Lancaster*, 03.1 I.B.C.R. 31, 2003 WL 109205 (Bankr. D. Idaho 2003).

Debtor's service on Capital One was not shown to be accomplished through certified mail, nor shown to have been addressed to an officer of the institution.

See Fed. R. Bankr. P. 7004(h). Debtor's service on Dorn Enterprises was addressed to Bill Dorn, however, the certificate of service does not specify that Mr.

Dorn was "an officer, a managing or general agent or . . . any other agent authorized by appointment or by law to receive service of process." Fed. R.

Bankr. P. 7004(b)(3). While it may be reasonable to assume that he occupies one of those positions, the Court is not free to make assumptions, and it was Debtor's burden to provide and demonstrate adequate service. Finally, Debtor's alleged service on state court counsel does not remedy the inadequate notice. *See*

Beneficial California Inc., v. Villar (In re Villar), 317 B.R. 88, 93-94 (9th Cir. BAP 2004); *Christman*, 04.4 I.B.C.R. at 166; *Lancaster*, 03.1 I.B.C.R. at 32.

Thus, Debtor's certificate of service does not reflect compliance with Rule 7004.

Based on insufficient pleading and inadequate service,

IT IS HEREBY ORDERED that Debtor's Motion to avoid judicial liens, Doc. No. 226, is DENIED.

DATED: December 8, 2014



A handwritten signature in black ink, reading "Terry L. Myers". The signature is written in a cursive style with a large, prominent initial "T".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE