



IT IS ORDERED as set forth below:

Date: June 06, 2008

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 08-63576

Mark Robert Brancheau,

CHAPTER 7

Debtor.

JUDGE MASSEY

Mark Robert Brancheau,

Movant,

v.

CONTESTED MATTER

Ford Motor Credit Corporation,

Respondent.

ORDER ON MOTION TO REDEEM

Debtor moves for an order permitting him to redeem a Ford F150 truck for a specified price. The motion instituted a contested matter, which is an undefined term in the Bankruptcy Rules. A contested matter includes a motion filed in the main bankruptcy case seeking relief that might adversely affect the rights or interests of the respondent that are peculiar to that particular

respondent. Where a movant seeks to alter the rights of the particular respondent, the matter is a contested matter for purposes of the Bankruptcy Rules, even if there is never an actual dispute presented to the Court by the movant or the respondent. It is enough that there could be a dispute.

Here, Debtor as Movant alleges in the motion to redeem that the truck's value is \$17,142.00. This is clearly a contested matter, because Movant seeks to alter the right of Ford Motor Credit Corporation to be paid in full as a condition of releasing its lien on the truck. In Schedule D, Debtor stated that he owed Respondent \$32,000.

If in fact the value of the truck is greater than \$17,142, Respondent might or might not contest the valuation. If, for example, Ford Motor Creditor Corporation thought the truck is worth \$17,250, it might not oppose the motion because the cost of doing so would exceed the difference of \$108 in the valuations. If, however, it thought the truck was worth \$25,000, it might oppose the motion. If it failed to do so, the Court could grant the motion regardless of the true value of the truck, but only if Plaintiff had properly served Ford Motor Creditor Corporation with the motion and notice of the requirement that it file a response to the motion if it opposes it.

Ford Motor Credit Corporation has not filed a response to the motion. The question presented is whether Movant properly served the motion and the notice of a requirement to file a response. Because, as explained below, the motion and notice were not properly served so as to give the Court jurisdiction over Ford Motor Credit Corporation, the Court lacks the authority to order Respondent to satisfy its lien in exchange for \$17,142.00.

Bankruptcy Rule 9014 provides in part:

(a) Motion. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded

the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

(b) Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

...

Thus, Movant should have served the motion as if it were a summons and complaint.

Because Respondent is a corporation, proper service by mail would be made in accordance with Bankruptcy Rule 7004(b)(3), which provides:

(b) Service by first class mail

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)--(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

According to the certificate of service attached to the motion to redeem, Movant has not served the motion to redeem on Respondent. The certificate refers to a "motion to avoid lien." Assuming that the identification of the type of motion was an error and that counsel served the motion to redeem in the manner described in the certificate of service, he served Ford Motor Creditor Corporation, P. O. Box 542000, Omaha, NE 68154-8000. That service is not effective under Bankruptcy Rules 7004(b)(3) and 9014 because it was not directed to a registered agent or officer of Ford Motor Credit Corporation. Further, Respondent had appeared in this case for

purposes of filing a motion to for stay relief, which is to be heard on June 10, 2008. Movant did not serve Respondent's counsel with the motion to redeem, according to the certificate of service.

Accordingly, the Court will deny Debtor's motion to redeem unless it is promptly (not later than June 13, 2008) served properly on Respondent or on Respondent's counsel on the motion for stay relief if that counsel is authorized to accept such service.

END OF ORDER