

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET

4/1/04

IN RE: : CASE NO. ~~03-65045~~ 03-65405
: :
KENNETH L. GRIFFIN and : :
LISA A GRIFFIN, : :
: : CHAPTER 13
Debtors. : : JUDGE MASSEY
: :
SYSTEMS AND SERVICES : :
TECHNOLOGIES, INC., : :
: :
Movant, : :
: :
v. : : CONTESTED MATTER
: :
KENNETH L. GRIFFIN, LISA A. GRIFFIN : :
NANCY J. WHALEY, as Trustee, : :
: :
Respondents. : :
: :

ORDER DENYING MOTION FOR STAY RELIEF

Movant filed a motion for relief from stay (document no. 36) on December 24, 2003, which included a notice of hearing for January 21, 2004 but no certificate of service. On January 5, 2004, Movant filed a new notice of hearing for the same date and time to which there was no certificate of service attached. The Debtors did not appear at the call of the calendar on January 21, 2004. Shortly thereafter, the courtroom deputy clerk in a routine check of such motions discovered that the certificate of service was missing. She telephoned Movant's counsel and asked that Movant's counsel file a certificate of service and submit an order.

On March 16, 2004, almost two months after the hearing, Movant's counsel filed a one page document labeled as a certificate of service (document no. 41), which did not have a style as required by Bankruptcy Local Rule 5005-1(g). The document states in part "I served a true copy and correct of the above notice was mailed (sic) postage prepaid on the following." The document showed no notice "above" and did not refer to service of the motion. The attorney who filed the certificate of service correctly linked it to the motion in the process of filing the notice electronically. The existence of the link in the docket text is not a substitute for stating precisely what was served, and in any event the certificate of service does not certify the document served was the document to which the certificate is linked.

The attempt at stating that the notice was "mailed postage prepaid" failed for a reason other than grammar: the described means of service is insufficient to show that it was proper. A certificate or affidavit of service is sufficient if the facts certified as true satisfy the procedural requirements necessary to give the party served due process. But a certification stating only that a document was "mailed postage prepaid" would be true even if the envelope containing the document had been posted in Tonga with fifth class postage adequate to insure delivery by ocean-going canoe. Rule 7004(b) of the Federal Rules of Bankruptcy Procedure requires more. It permits service by mail, but only "within the United States" and only if sent "first class."

Finally, even if the defects described above did not exist, service on Lisa Griffin still would have been defective. The certificate included in the list of persons served the following:

"DEBTOR(S):
KENNETH L. GRIFFIN
LISA A. GRIFFIN
150 Carole Drive
Oxford, GA 30054"

That the Debtors were not listed separately implies that Movant's counsel mailed only one envelope containing one copy of the "above notice" to the Debtors addressed as shown on the certificate.

There is a presumption in the law that an addressee of properly addressed first class mail received that mail. If mail is addressed to more than one person, however, the problem arises that the person receiving it may not share it with the other addressee. The Court can discern no sound reason to presume that Lisa Griffin received mail addressed to Kenneth Griffin, since her name appeared after his on the envelope. There is also the problem that the envelope presumably contained only one copy of the document being served. If so, there could have been only one service, because Rule 7004 has no provision permitting service of one copy only of a pleading on spouses by addressing the one copy to them jointly. A joint case involves two debtors with two estates under one case number. Each joint debtor is entitled to his or her own notice, to which they would be entitled if they had filed separately.

This criticism may sound like quibbling, but it is at the heart of the constitutional right of due process. Movant must begin anew.

For these reasons, it is

ORDERED that Movant's motion for stay relief is DENIED.

This 29th day of March 2004.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE