

1-18-05

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

IN THE MATTER OF:	:	CASE NUMBER: R04-43921-PWB
	:	
ALTON JARON FAULKNOR	:	
and SANDRA LEE FAULKNOR	:	
a/k/a SANDRA PARKS,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE
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ALTON JARON FAULKNOR	:	
and SANDRA LEE FAULKNOR,	:	
	:	
Movants	:	CONTESTED MATTER
	:	
v.	:	
	:	
AMTRUST BANK,	:	JUDGE BONAPFEL
	:	
Respondent.	:	

**ORDER DENYING MOTION TO REDEEM VEHICLE WITHOUT PREJUDICE**

Debtors seek to redeem a 2003 Nissan Xterra from the lien of AmTrust Bank for the sum of \$15,075.00 pursuant to 11 U.S.C. § 722. Debtors have served their motion and notice of time to respond upon AmTrust Bank by certified mail as follows: "AmTrust Bank, c/o Ohio Savings Bank, Attn: President, 1801 E. 9<sup>th</sup> Street Suite 200, Cleveland, Ohio 44114."<sup>1</sup>

Rule 9014 of the Federal Rules of Bankruptcy Procedure governs contested matters and provides that in a contested matter a motion "shall be served in the manner provided for service of

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<sup>1</sup>Debtors also served the motion and notice by certified mail upon "Keith D. Weiner & Assoc., Co., L.P.A., Attorneys at Law Representing AmTrust Bank, 75 Public Square, 4<sup>th</sup> Floor, Cleveland, Ohio 44113." Because Keith D. Weiner & Assoc, Co., L.P.A., has not filed an entry of appearance in this case, there is nothing to indicate that service made upon this law firm meets the service requirements of Bankruptcy Rule 7004(h) as set forth herein.

a summons and complaint by Rule 7004." Bankruptcy Rule 7004(h) provides that service of process on an insured depository institution in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless -

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Due process necessitates notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The Court finds that Debtors' service of the motion upon AmTrust Bank by mail addressed, "Attn: President," does not meet the requirements of Bankruptcy Rule 7004(h) and fails to satisfy the constitutional requirements of due process.

In *In re Schoon*, 153 B.R. 48 (Bankr. N.D. Cal. 1993), the bankruptcy court examined whether service of process upon an unnamed officer met the requirements for service upon a corporation under Rule 7004(b)(3). In *Schoon*, the debtors filed a motion to avoid the lien of a creditor and served it as follows: "Homeowners Lumber Co., Inc., Attn: President, 409 Petaluma Blvd. South, Petaluma, CA 94952." When the creditor did not respond to the motion, the debtors sought entry of an order avoiding the lien by default. The *Schoon* court ruled that the service was inadequate because "[b]y addressing the envelope 'Attn: President' the debtors did not serve an

officer, they served an office.” *Schoon*, 153 B.R. at 49. Consequently, the court found that service of an office was not sufficient service on a corporation under Rule 7004(b)(3). *Accord, Addison v. Gibson Equipment Co., Inc. (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453 (Bankr. E.D. Va. 1995) (service of complaint upon “President or Corporate Officer” does not meet requirements of Rule 7004(b)(3) and failed to provide due process). *Contra, Fleet Credit Card Servs., L.P. v. Tudor (In re Tudor)*, 282 B.R. 546 (Bankr. S.D. Ga. 2002) (service of objection to proof of claim on “Managing Agent” is sufficient); *Schwab v. Associates Commercial Corp. (In re C.V.H. Transport, Inc.)*, 254 B.R. 331, 332 (Bankr. M.D. Pa. 2000) (service of summons and complaint on “officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process” for corporation was proper and in literal compliance with Bankruptcy Rule 7004(b)(3)).

Although service in this case is on a bank pursuant to Rule 7004(h), and not a corporation under Rule 7004(b)(3), the issue is the same. Is Debtors’ service of the motion by certified mail upon AmTrust Bank to the attention of “President” adequate service? The Court finds such service is inadequate. The purpose of Rule 7004’s requirement of service upon an officer is to insure that the entity, whether a corporation or a bank, is put on notice that it is subject to suit. As the *Schoon* court observed, the requirement that a movant name a specific individual for service is not burdensome, but “merely requires a little extra effort to determine the name of the president or other officer and make sure the envelope is addressed to him or her, by name. This is a small price to pay to avoid having to effect personal service.” *Schoon*, 153 B.R. at 49.

Based on the foregoing, the Court concludes that the Debtors’ service of the motion to redeem to the attention of an officer, without specifically naming the individual, fails to comply with Rule 7004 and the constitutional requirements of due process. Accordingly, it is

**ORDERED** that Debtors' motion to redeem is denied without prejudice.

The Clerk is directed to serve copies of this Order on the Debtors, counsel for Debtors, and the Respondent.

At Rome, Georgia, this 14 day of January, 2005.

  
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PAUL W. BONAPFEL  
UNITED STATES BANKRUPTCY JUDGE