In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

WILLIAM O. SANOW and LINDA J- SANOW	Bankruptcy No. 92-51890XS
Debtor(s).	Chapter 7

ORDER RE: MOTION FOR TURNOVER

The matter before the court is a motion by debtor William Sanow seeking a turnover of garnished wages being held by the Iowa District Court for Plymouth County. The wages were garnished from Sanow's employer at the request of Accent Services, Inc. (ACCENT), a judgment creditor of Sanow. Sanow served the motion on the Plymouth County District Court Clerk and on Denis Eckert, the attorney who represented Accent in obtaining the judgment against Sanow. Neither the Clerk nor Accent responded to the motion, so Debtor asks for an order directing the state court to turn the money over to him.

Hearing on the request was held on January 26, 1993. At the hearing, the court expressed the concern that service upon Accent's legal counsel was not sufficient to give the court jurisdiction over Accent. Such jurisdiction is important because although the literal request of the motion is to obtain possession of the garnished wages from the Plymouth County District Court Clerk, the essence of the motion is to avoid Accent's judicial lien against the wages under 11 U.S.C. § 522(f) (1).

Debtors' attorney cites two cases in support of the contention that service of notice on the judgment creditor's attorney is sufficient to give the court jurisdiction over the creditor for purposes of deciding a lien avoidance dispute. Both cases stand for the proposition that a creditor has adequate notice of the bankruptcy filing so as to protect its claim from discharge if the debtor provides notice of the filing to the attorney then representing the creditor in the collection of the claim. Lompa v. Price (In re Price), 871 F.2d 97, 99 (9th Cir. 1989); Slaiby v. Rassman (In reSlaiby), 50 B.R. 245, 249 (Bankr. D. N.H. 1985) aff'd. 57 B.R. 770 (D. N.H. 1985).

The court should also consider, however, case authority interpreting Rule 4(d) (3) of the Federal Rules of Civil Procedure. The Rule permits service upon a corporation by serving an "agent authorized by appointment or by law to receive service of process . . . " Cases interpreting Rule 4 have held that service on an attorney representing a party in separate litigation does not constitute sufficient service on the creditor in subsequent litigation unless there is evidence of the appointment of the attorney for the purpose of accepting service of process. Ransom v. Brennan, 437 F.2d 513, 518-19 (5th Cir.), *cert. denied* 403 U.S. 904 (1971); Schultz v. Schultz, 436 F.2d 635, 639 (7th Cir. 1971); Bennett v. Circus U.S.A., 108 F.R.D. 142, 147 (N.D. Ind. 1985).

The court concludes that the latter line of cases is applicable in this case. The cases cited by Sanow deal with providing notice of the filing of the bankruptcy in time to permit the creditor to protect its claim. These cases involve the application of 11 U.S.C. § 523(a) (3). Although the notice provided to the creditor under such section may affect the dischargeability of the creditor's debt, the notice does not confer jurisdiction over the creditor. Our case on the other hand, involves a contested matter proceeding to avoid the judicial lien of Accents; jurisdiction over Accents is necessary to affect the creditor's property rights. Fed. R.Bankr. P. 9014 incorporates Fed. R.Bankr. P. 7004 in prescribing the manner of service for motions. The above-cited cases which interpret Rule 4 of the Federal Rules of civil Procedure hold that service on the attorney who represents a party in another case is not sufficient to give the court jurisdiction over the party in subsequent litigation. That holding is applicable here. Unless the debtor can show that Attorney Eckert was appointed by Accent to receive service in contested matters in this bankruptcy case, the court cannot grant the relief requested. The court will treat the debtor's request for judgment as a motion for default. It will be denied for insufficiency of process.

One final observation is necessary. The motion is couched in terms of a request for turnover from the state court clerk. The court doubts that the debtor has a standing to file turnover motions in a chapter 7 case. Turnover motions may be filed by the trustee under 11 U.S.C. § § 542 or 543. One option for the debtor, pursuant to 11 U.S.C. § 522(h), is to file an adversary proceeding seeking avoidance of the attachment of the judicial lien under one of the trustee's avoiding powers. If the transfer is avoided, the debtor could recover the garnished funds under § 522(i). His other option is use 11 U.S.C. § 522(f (1) to avoid the judicial lien arising from the garnishment. Once the judicial lien is avoided, continued possession of the money by the state would be unnecessary, and the county clerk might well surrender the funds without the necessity of further judicial intervention. The court has examined the debtor's motion in this case and tried to determine its intent. It appears that although it is couched in terms of merely requiring the state court clerk to turn over the funds, its true intent is to avoid the judicial lien. Absent the lien's avoidance, the debtor would have no right to the funds as against the secured creditor. This is so even though a trustee might have a statutory right to the money notwithstanding the attachment of the lien. For the foregoing reasons, the court has treated the turnover motion as a lien avoidance motion.

IT IS ORDERED that the debtor's motion for default judgment on his motion for turnover is DENIED. The debtor shall have 14 days to serve the secured creditor with his motion and make return of service or the motion will be dismissed.

So ORDERED ON THIS 29th DAY OF JANUARY, 1993.

William L. Edmonds
Chief Bankruptcy Judge