

In the United States Bankruptcy Court

for the Northern District of Iowa

RODNEY L. WRIGHT
Debtor.

Bankruptcy No. L91-01588C
Chapter 7
Contested No. 2254

ORDER RE: MOTION TO AVOID LIENS

The matter before the court is a letter request by National Bank of Waterloo for entry of an order granting debtor's motion to avoid various judgment liens on his homestead. Telephonic hearing on the motion was held February 15, 1994. Attorney Steven D. Moore appeared for the bank.

Debtor filed his Motion to Avoid Judgment Liens on Exempt Homestead on September 2, 1992 (docket no. 157). Debtor had previously claimed as exempt his homestead described as "Unit IV, Belden Court, a Condominium, Linn County, Iowa." He had listed the condominium in his schedules as having a value of \$200,000.00. Debtor's schedules also revealed that three banks had mortgages against the property. The scheduled debt exceeded the estimated value of the condominium. No one filed objection to the claim of exemption.

Debtor's lien avoidance motion listed 13 creditors which had obtained judgments against Wright's corporation--Hawkeye Refrigerated Services Corp. Debtor believed that although they were not judgments against him, they clouded his title to the real estate. Among the judgments was one obtained by Compo-Arts Printing Company located in Cedar Rapids. The motion listed five other creditors who had obtained personal judgments against Wright. These included Firststar Bank Cedar Rapids, N.A.; William D. Fullen; LaSalle National Bank; and Toy National Bank. Debtor asked that the lien arising from these judgments be avoided under the provisions of 11 U.S.C. 522(f).

The certificate of service attached to the motion was executed by Wright's then-attorney, Joseph Peiffer. He certified that he served the motion pursuant to the Rules of Procedure on counsel of record and other parties-in-interest. Service on Compo-Arts Printing Company was made at 285 - 33rd Avenue, Cedar Rapids, Iowa 52404, the same address listed for the creditor in the schedules. Service on Toy National Bank was made by service upon Wythe Willey, Esq., Skywalk Level, The Center, Cedar Rapids, Iowa 52401. Service of the notice of the motion was made to these creditors in the same manner.

Toy National Bank's address as listed in the service matrix supplied in the case was merely "Sioux City, Iowa." At the meeting of creditors held in Cedar Rapids on September 30, 1991, Wythe Willey, an attorney, appeared for Toy National Bank (docket no. 19).

The deadline for creditors to object to the motion was September 22, 1992. No one objected. Before the deadline, Joseph Peiffer moved for permission to withdraw as Wright's attorney. The motion to withdraw was granted on November 25, 1992. Neither Peiffer nor Wright submitted a proposed order to the court granting the motion to avoid liens. Local Rule 25(3)(a) requires such submission and absent it, the court does not rule on the motion to avoid. Thus no order was ever entered granting the debtor's motion.

On January 25, 1994, Steven D. Moore, attorney for the National Bank of Waterloo, contacted the court by letter asking that it enter the order. A telephonic hearing on the request was held February 15, 1994. Efforts to join the debtor in the call at the number he had previously provided to the court were unsuccessful.

At the hearing, Moore explained that one of the mortgagees of the homestead had obtained a foreclosure judgment and

had proceeded with a sheriff's sale. The home was purchased by National Bank of Waterloo, a junior mortgagee. The foreclosing mortgagor had failed to join Compo-Arts Printing Company and Toy National Bank in the foreclosure action. National Bank of Waterloo purchased at the foreclosure sale without knowledge of these omissions.

National Bank of Waterloo subsequently sold the property at private sale, and the buyer's attorney has raised title objections relating to abstract entries showing the liens of Compo-Arts and Toy Bank. Buyer's attorney points out the failure to join the two creditors in the foreclosure action and his inability to determine if any order was entered in the bankruptcy court avoiding their liens. It is also noted that Compo-Arts obtained its judgment after the filing of the bankruptcy.

The National Bank of Waterloo seeks to cure the title objections by asking this court to grant debtor's motion seeking avoidance of the two liens. Presumably, the liens of other creditors listed in the avoidance motion are no longer a problem because of the foreclosure.

Discussion

From an examination of the schedules of creditors, the mailing matrix, and the proof of service, it appears that Compo-Arts Printing Company was served at its business address with the notice and motion to avoid lien. The court lacked only a submitted proposed order to bring to its consideration the avoidance of Compo-Art's judgment lien.

The more difficult issue for the bank is whether Toy National Bank (TNB) was properly served so as to give the court personal jurisdiction. Avoiding liens on exempt property is accomplished by motion. Fed.R.Bankr.P. 9014 requires service of such a motion upon the party against whom relief is sought and provides that service is made according to Fed.R.Bankr.P. 7004. Rule 7004(b)(3) provides that service upon corporations is to be made by mailing a copy of the process and pleading "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." Fed.R.Bankr.P. 7004(b)(3).

In this case, it does not appear that debtor served an officer or managing or general agent of TNB with his motion. Nor has bank pointed to any statutory appointment of attorney Wythe Willey for the purpose of his receiving service of process for TNB.

The question is whether Willey's appearance for TNB at the meeting of creditors at the outset of the case constituted appointment of Willey by TNB. "An agent's authority to accept process on a corporation's behalf may be implicit or explicit. The phrase 'agent authorized by appointment' means an agent that is either expressly or implicitly appointed by the corporation to accept service on its behalf." Reisman v. First New York Bank for Business (In re Reisman), 139 B.R. 797, 800 (Bankr. S.D. N.Y. 1992).

There is no evidence that TNB expressly designated Willey as its agent for service of process. Nor does Willey's appearance for TNB at the meeting of creditors constitute an express appointment by TNB. See Reisman, 139 B.R. at 800 (formal written appearance for a party in a bankruptcy case does not constitute an express appointment by the party).

In Reisman, the court concluded that an attorney had implicitly been appointed by a party to receive service for it because the attorney had filed a formal written appearance for the party and the attorney had taken a vigorous role in representing the party in the bankruptcy case. The formal appearance had requested that papers and pleadings be served upon the attorney. Id. at 801.

No such facts are present here. Willey filed no formal appearance for the Toy National Bank. He merely attended the meeting of creditors and signed the appearance sheet. Willey never filed an appearance pursuant to Fed.R.Bankr.P. 9010 or a request that notices to TNB also be sent to him pursuant to Fed.R.Bankr.P. 2002(g). There is no evidence that Willey took an active, much less vigorous, role for TNB in the case.

The attendance by an attorney for a creditor at a meeting of creditors does not constitute the creditor's implied

appointment of the attorney for the purpose of receiving process. Therefore, service by debtor on Toy National Bank was insufficient to confer jurisdiction of the court over the bank. National Bank of Waterloo has not shown, and the court cannot conclude under Iowa law, that service on Willey would have been sufficient to provide jurisdiction over Toy National Bank.

Despite the fact that it is National Bank of Waterloo and not the debtor that is asking that judgment enter, judgment will be entered in accordance with the findings and conclusions herein.

ORDER

IT IS ORDERED that the motion to avoid lien filed by Rodney L. Wright is granted in part and denied in part. As to Compo-Arts Printing Company, the motion is granted. The judgment lien of Compo-Arts Printing Company is avoided. As to Toy National Bank, the motion is denied. Judgment shall enter accordingly.

SO ORDERED ON THIS 23rd DAY OF FEBRUARY, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: