

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

IN RE)
)
MARTIN ROMERO MENDOZA) **Case No. 10-03486-TLM**
and JEANETH A MENDOZA,)
) **Chapter 7**
Debtors.)
_____)

SUMMARY ORDER

On January 6, 2011, Martin and Jeaneth Mendoza (“Debtors”) filed a motion to avoid the lien of Wells Fargo Bank, NA under § 522(f). *See* Doc. No. 21 (“Motion”). Debtors filed a separate notice, Doc. No. 22,¹ and certificate of service, Doc. No. 23. Their certificate of service demonstrated service of the

Motion and notice by mail on:

Wells Fargo Bank Northwest
Registered Agent
Corporation Service Co.
12550 W Explorer Dr. Ste 100
Boise, ID 83713

Doc. No. 23. The Court denied Debtors’ Motion with a text order noting that Debtors’ service of Wells Fargo was inadequate under Federal Rule of Bankruptcy

¹ This method of notice is inconsistent with LBR 2002.2(d) which requires a box with specific notice language to be provided in the motion itself, immediately below the caption of the motion to avoid lien.

Procedure 7004(h) which is made applicable to Debtors' Motion through Federal Rules of Bankruptcy Procedure 4003(d) and 9014. *See* Doc. No. 29; *see also In re Christman*, 04.4 I.B.C.R. 165, 2004 WL 2757926 (Bankr. D. Idaho 2004); *In re Lancaster*, 03.1 I.B.C.R. 31, 2003 WL 109205 (Bankr. D. Idaho 2003).

On February 22, 2011, Debtors again filed a motion to avoid Wells Fargo's lien under § 522(f). *See* Doc. No. 34 ("Second Motion"). Debtors again filed a separate notice and certificate of service. *See* Doc. Nos. 35, 36. The certificate of service asserts Debtors served their Second Motion and notice by mail addressed to:

Wells Fargo Bank N.A.
John Stumpf, CEO
420 Montgomery St.
San Francisco, CA 94104.

Doc. No. 36. Federal Rule of Bankruptcy Procedure 7004(h) requires, with limited exceptions, that service on an insured depository institution be made "by *certified* mail, addressed to an officer of the institution." (emphasis added). While Debtors served an officer of the institution, they did not demonstrate their service was accomplished through certified mail. The certificate of service does not specify if Debtors used first class mail or certified mail; it notes only that the Second Motion and notice were mailed to Wells Fargo. It is Debtors' burden to demonstrate adequate service. As Debtors' certificate of service does not

demonstrate Rule 7004(h) compliant service,

IT IS HEREBY ORDERED that Debtors' Second Motion is also DENIED.

DATED: March 17, 2011



A handwritten signature in black ink that reads "Terry L. Myers".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE