

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF IDAHO**

**IN RE** )  
 ) **Case No. 10-01100-TLM**  
**MID VALLEY CONSTRUCTION,** )  
**INC.,** )  
 ) **Chapter 11**  
**Debtor in Possession.** )  
\_\_\_\_\_ )

**SUMMARY ORDER DENYING MOTIONS FOR STAY RELIEF**

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This is a chapter 11 case, commenced by petition filed April 20, 2010.

There is no trustee, and the above named debtor serves as Debtor in Possession.

On May 7, 2010, creditors Deere Credit, Inc. and John Deere Construction & Forestry Company (“Deere”) filed a motion for relief from the automatic stay of § 362(a) as it relates to Deere and to ten separately identified items of equipment. Doc. No. 17 (“Deere Motion”). On May 19, 2010, creditor Wells Fargo Equipment Finance (“Wells Fargo”) filed a motion for relief from the automatic stay of § 362(a) as it relates Wells Fargo and nineteen separately identified items of equipment and vehicles. Doc. No. 20 (“Wells Fargo Motion”).

An uncontested motion for stay relief may be granted by the Court if no objection and notice of hearing is filed within seventeen days of the filing of the

motion. LBR 4001.2(c).<sup>1</sup> No objection was filed, timely or otherwise, as to either Motion.

However, as this is a chapter 11 case, a motion for stay relief must be served not just on the Debtor in Possession and its counsel, and on the United States Trustee. Under Rule 4001, a stay relief motion

*shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.*

Fed. R. Bankr. P. 4001(a)(1) (emphasis added).

The list filed under Rule 1007(d) requires identification of Debtor's 20 largest unsecured creditors.<sup>2</sup> Those creditors must be served with all stay relief motions in a chapter 11 case, unless a committee of unsecured creditors has been formed, in which case the committee's representative and counsel must be served.

Fed. R. Bankr. P. 4001(a)(1). This District's local rule reinforces that requirement of service. *See* LBR 4001.2(d)(1).

Neither the Deere Motion nor the Wells Fargo Motion was served on the 20 largest unsecured creditors as required by the Rule and Local Rule. *See* Doc. No.

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<sup>1</sup> An additional three days is added to the seventeen days by virtue of Fed. R. Bankr. P. 9006(f). More than twenty days has elapsed since the May 7 service of the Deere Motion and the May 17 service of the Wells Fargo Motion, and no objections were filed.

<sup>2</sup> Such a list was filed by the Debtor in Possession here. *See* Doc. No. 3.

17 at 6; Doc. No. 20 at 8. Both Motions are thus incapable of being granted, even though neither the Debtor in Possession nor the United States Trustee raised any objection within the requisite LBR 4001.2(c) period. Also, because of the flaw in service, neither Motion can result in automatic relief under § 362(e).

Upon the record as noted, the Court being adequately advised:

IT IS HEREBY ORDERED, and this does Order, that the Deere Motion, Doc. No. 17, and the Wells Fargo Motion, Doc. No. 20, are DENIED. Such denial is without prejudice to the filing of subsequent motions, with payment of appropriate fees, and consideration of such subsequent motions under the Code, Rules and Local Rules, if the same are properly and adequately served.

DATED: June 11, 2010



A handwritten signature in black ink, appearing to read "Terry L. Myers".

TERRY L. MYERS  
CHIEF U. S. BANKRUPTCY JUDGE