

UNITED STATE BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STANDING ORDER NO. 6 REGARDING LIEN STRIPPING IN CHAPTER 13

A. Entry of Order on Motion in Chapter 13 to Strip of Creditor who has Appeared or Filed Claim

If a secured creditor appears in the case or files its claim, lien stripping may be accomplished by motion as a contested matter rather than by summons and adversary proceeding. *See In re Brisco* 486 B.R. 422, 435 (Bankr. N.D. Ill. 2013). If the creditor does not respond to the motion, there is a fillable form order approved by all bankruptcy judges in this District for entry of an order stripping the lien.

B. Entry of Judgment Order through an Adversary Proceeding

Where a secured creditor does not appear in the case or file claim, this chamber has held that lien stripping may only be accomplished by an adversary proceeding. *See In re Forrest*, 424 B.R. 831, 835 (Bankr. N.D. Ill 2009). If the creditor does not file Answer, otherwise plead or appear in the adversary proceeding, it may then be proper to move for a default judgment, as follows:

1. There must be proper service of summons shown by certificate of said service filed with the Clerk in the Adversary Proceeding.
2. The Plaintiff must file and serve a motion for default with proper notice.
3. There must be a default order entered under Rule 55(a), F.R.C.P., (Rule 7055 F.R. Bankr. P.) finding that summons was proper, that the creditor did not file an appearance, answer, or otherwise plead, and is in default, and therefore that all allegations in the complaint are taken as confessed as against it. This saves the Plaintiff from having to offer a prove up of the facts and imposes a higher burden on defendants seeking leave to appear and plead afterwards. 10 Moore's Federal Practice – Civil § 55.70[4] citing *United States v. Di Mucci*, 879 F.2d 1488, 1495 (7th Cir. 1989).
4. The Plaintiff must submit proposed Findings of Fact and Conclusions of Law so the facts may be reviewed to determine whether they are sufficient to grant relief. The Findings of Fact may usually recite the facts as alleged in the complaint, since all

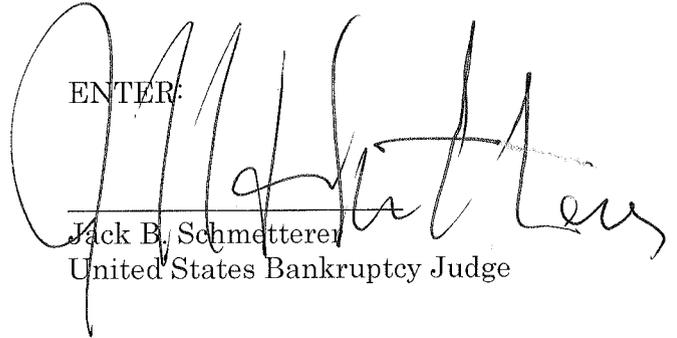
allegations are taken as confessed. The Conclusions of Law should cite to legal authority allowing the lien to be stripped.

5. The Plaintiff must submit a Default Judgment Valuing Claim, conforming to the Court's fillable judgment form approved by all the bankruptcy judges in this District. The Judgment must be separate from the Findings and Conclusions. Rule 58(a) F.R.C.P.

C. Settling an Adversary Proceeding Stripping a Lien

Once an adversary proceeding has been commenced, it must be disposed of by a judgment or dismissal because an adversary proceeding is equivalent to a standalone lawsuit. *Fifth Third Bank, Indiana v. Edgar County Bank & Trust*, 482 F.3d 904 (7th Cir. 2007). The judgment must be set out in a separate document pursuant to Rule 58, F.R.C.P., (as made applicable by Rule 7058, F.R. Bankr. P.); *See* 10 Moore's Federal Practice – Civil § 54.03[2]. A judgment should “produce a distinct indication that the case is at an end, coupled with a precise statement of the terms on which it has ended.” *Otis v. City of Chicago*, 29 F.3d 1159, 1163 (7th Cir. 1994) (en banc). Thus, the form of judgment should contain adjudicatory language, so that there is no ambiguity that a judgment has been entered. If the parties only enter into some form of stipulations and the plaintiff does not also seek judgment, the adversary proceeding will be dismissed for want of prosecution and plaintiff will not have an enforceable judgment.

Dated this 3rd day of March, 2014

ENTER:


Jack B. Schmetterer
United States Bankruptcy Judge