1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re: LESLIE E. TINGLEY, Debtor.	Case No.: 6:18-bk-16396-WJ CHAPTER 7 **MEMORANDUM OF DECISION REGARDING AVOIDANCE OF THE LIEN OF UNION CREDITORS**

AFFECTED CREDITORS

Board of Trustees of the Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada

Board of Trustees of the Sheet Metal Workers Health Plan of Southern California, Arizona and Nevada

Board of Trustees of the Southern California Sheet Metal Joint Apprenticeship and Training Committee

Board of Trustees of the Sheet Metal Workers' International Association, Local Union No. 105 Union Dues Check-Off and Deferred Savings Fund

Board of Trustees of the Sheet Metal Workers' Local 105 Retiree Health Plan

Board of Trustees of the Southern California Sheet Metal Workers' 401(a) Plan

Board of Trustees of the Southern California Labor Management Corporation Trust

Board of Trustees of the Sheet Metal Industry Fund of Orange Empire

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION.

This matter involves an attempt by the heirs of a deceased judgment debtor, Leslie Tingley, to eliminate a lien securing a $60,000 debt owed to the following union funds (collectively, the "Union Creditors"):

Board of Trustees of the Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada

Board of Trustees of the Sheet Metal Workers Health Plan of Southern California, Arizona and Nevada

Board of Trustees of the Southern California Sheet Metal Joint Apprenticeship and Training Committee

Board of Trustees of the Sheet Metal Workers' International Association, Local Union No. 105 Union Dues Check-Off and Deferred Savings Fund

Board of Trustees of the Sheet Metal Workers' Local 105 Retiree Health Plan

Board of Trustees of the Southern California Sheet Metal Workers' 401(A) Plan

Board of Trustees of the Southern California Labor Management Corporation Trust

Board of Trustees of the Sheet Metal Industry Fund of Orange Empire

For the reasons set forth below, the Court has considerable doubts regarding whether the heirs of Mr. Tingley have the necessary standing or legal right to attack the lien of the Union Creditors especially in light of the failure of Mr. Tingley (and his heirs) to provide notice to the Union Creditors throughout this bankruptcy case. But even assuming, arguendo, such relief is achievable, an adversary proceeding is necessary. Therefore, for the reasons stated below, the Court shall convert the matter to an adversary proceeding and direct the heirs to file a complaint against the Union Creditors and provide appropriate notice to the Union Creditors of this bankruptcy case and of the relief requested.

1 **II. FACTUAL BACKGROUD.**

2 Many years ago, the Union Creditors sued Leslie Tingley in federal district court in the
3 Central District of California in the matter of Board of Trustees of the Sheet Metal Workers
4 Pension Plan of Southern California, Arizona and Nevada, et al. v. L.T. Air Corporation, Leslie
5 Erle Tingley and Carol Sue Dyer, CV 5:14-cv-01829-VAP-SP ("Federal Action"). The Union
6 Creditors prevailed in the Federal Action and obtained a judgment in January of 2016 against
7 Mr. Tingley for over $60,000. The following year, the Union Creditors recorded an abstract of
8 judgment in 2017 in Riverside County as instrument number 2017-0443873 ("Abstract of
9 Judgment"). A copy of the Abstract of Judgment is attached as Exhibit 1 to this memorandum.
10 Upon recording, the Abstract of Judgment created a lien in favor of the Union Creditors against
11 the residence of Mr. Tingley located in Riverside County at 35685 Abelia Street, Murrieta,
12 California 92562 ("Murrieta Property").

13 The next year, Mr. Tingley filed a chapter 7 bankruptcy case on July 30, 2018. About six
14 months later, Mr. Tingley died on February 26, 2019. A couple of months later, the bankruptcy
15 court closed this chapter 7 case on April 15, 2019.

16 It appears that his daughter, Terri Eden, has taken steps to wrap up the affairs of
17 Mr. Tingley. In doing so, Ms. Eden apparently discovered that the Union Creditors have a lien
18 against the Murrieta Property. Rather than address that lien in a probate proceeding, however,
19 Ms. Eden wishes to eliminate the lien by resurrecting this chapter 7 case of her father.

20 Thus, the pending matter before the Court is a motion by Ms. Eden to reopen this
21 bankruptcy case [docket #17] ("Motion to Reopen"). Ms. Eden apparently wants to reopen this
22 bankruptcy case in order to attempt to use bankruptcy powers to avoid the lien of the Union
23 Creditors. It appears that such powers would not be available to Ms. Eden (or any other heirs of
24 Mr. Tingley) outside of bankruptcy court.

25 For the following reasons, there are several procedural and substantive problems with the
26 Motion to Reopen.

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. THE DEBTOR NEVER PROVIDED NOTICE TO THE UNION CREDITORS.

One of the central problems in this case is the lack of notice. Pursuant to section 521(a)(1)(A) of the Bankruptcy Code, a debtor must list all of his creditors when filing a bankruptcy case and provide them with notice of the bankruptcy case. Unfortunately, Mr. Tingley did not do so.

There are eight Union Creditors listed in the Abstract of Judgment and seven of the eight are not listed on any of the schedules or the master mailing list. The Abstract of Judgment specifically provides addresses for all eight Union Creditors but, again, Mr. Tingley did not use those addresses (or any other addresses) for any of the eight Union Creditors. Mr. Tingley omitted seven of the eight Union Creditors.

On Schedule D, Mr. Tingley did list "Bd of T'ees Sheet Metal Workers" as a secured creditor but Mr. Tingley did not provide the full name of the creditor nor did he serve the creditor. Instead, he described this one creditor in a cryptic fashion and used the address for counsel for the creditor when listing the creditor. That is not sufficient. Creditors are entitled to service themselves (not simply their lawyers). Service upon the attorney for the creditor (only) does not satisfy F.R.B.P. 7004. Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004) (holding that service of a section 522(f) motion does not comply with Rule 7004(b)(3) when the debtor failed to serve the creditor but did serve the attorney for the holder who represented the creditor in state court and obtained the judgment and judgment lien against the debtor); see also In re Bolden, 2014 Bankr. LEXIS 699 (Bankr. M.D.N.C. 2014) (holding that service of a 522(f) motion upon a creditor at "Main Street Acquisition Corp., 3715 Davinci Court, Suite 200, Norcross, GA 30092" did not comply with Rule 7004(b)(3) and the additional service upon counsel for the creditor was insufficient).

So, overall, Mr. Tingley failed to provide notice to any of the Union Creditors of this bankruptcy case. Because the Union Creditors were not included on the schedules or the master mailing list, they did not receive the notice of case commencement sent by the clerk of the court [docket #6 & #8] or any other notices in this case. The failure of Mr. Tingley to include the Union Creditors in his bankruptcy case resulted in them not receiving pleadings and notices

regarding the case.

IV. THE ORIGINAL SECTION 522(F) MOTION WAS NOT PROPERLY SERVED.

The lack of proper notice exists with respect to another matter in the case. Prior to his death, Mr. Tingley filed a motion to avoid the Abstract of Judgment pursuant to 11 U.S.C. § 522(f) [docket #12 and #13] ("First 522(f) Motion"). Counsel for Mr. Tingley filed the First 522(f) Motion on November 9, 2018. That matter technically remains pending and the Court hereby denies the First 522(f) Motion for three reasons.

First, Mr. Tingley and counsel abandoned the motion years ago. They filed the motion in November of 2018 but failed to prosecute the matter. They did not set the matter for a hearing nor did they submit a proposed order granting the motion. It was simply abandoned and the bankruptcy case was closed.

Second, at a hearing held on July 14, 2020, counsel for Mr. Tingley addressed the matter an indicated that the "safest" result would be to withdraw the First 522(f) Motion.

Third, the First 522(f) Motion was not served correctly. F.R.B.P. 9014 governs motions in bankruptcy cases and provides (among other things) that motions "shall be served in the manner provided for service of a summons and complaint by Rule 7004 . . . ." F.R.B.P. 9014(b). Likewise, Rule 4003-2(c)(1) of the Local Bankruptcy Rules ("L.B.R.") requires service that complies with F.R.B.P. 7004 which (among other things) requires service upon the creditor. Service upon the attorney for the creditor (only) does not satisfy F.R.B.P. 7004. Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004) (holding that service of a section 522(f) motion does not comply with Rule 7004(b)(3) when the debtor failed to serve the creditor but did serve the attorney for the holder who represented the creditor in state court and obtained the judgment and judgment lien against the debtor); see also In re Bolden, 2014 Bankr. LEXIS 699 (Bankr. M.D.N.C. 2014) (holding that service of a 522(f) motion upon a creditor at "Main Street Acquisition Corp., 3715 Davinci Court, Suite 200, Norcross, GA 30092" did not comply with Rule 7004(b)(3) and the additional service upon counsel for the creditor was insufficient).

In this case, Mr. Tingley did not serve any of the Union Creditors. He did not use any of the addresses for the Union Creditors listed in the Abstract of Judgment. Instead, he served an attorney for one of the Union Creditors. That is not proper service.

For these three reasons, the Court will enter an order denying the First 522(f) Motion.

V. THE MOTION TO REOPEN WAS NOT SERVED ON THE UNION CREDITORS.

The other pending matter – the Motion to Reopen – has the same service problem. Ms. Eden did not serve any of the Union Creditors. She did not use any of the addresses for the Union Creditors listed in the Abstract of Judgment. Instead, she served an attorney but not the Union Creditors themselves. Thus, the problem of lack of notice pervades this case.

VI. MS. EDEN HAS NOT YET DEMONSTRATED STANDING OR ENTITLEMENT TO A COGNIZABLE SUBSTANTIVE LEGAL RIGHT.

In addition to the procedural problems, the Motion to Reopen has substantive problems. Mr. Tingley could not have filed the Motion to Reopen. Unfortunately, he died two years ago.

Instead, his daughter, Ms. Eden has filed the Motion to Reopen. She wants this case reopened and then she wants to file a second 522(f) motion against the Union Creditors.[1] This begs the questions: Can she do so? Does she have standing?

Ms. Eden seeks declaratory relief from this Court. She wants the bankruptcy court to declare that Ms. Eden is the proper representative of the probate estate of Mr. Tingley. However, there is no evidence that any state court has appointed Ms. Eden as the proper representative of the heirs of Mr. Tingley. Likewise, there is insufficient evidence for this Court to so hold. And, indeed, even if there was, the Union Creditors should have an opportunity to appear and oppose any such request. The Union Creditors should have an opportunity to challenge the alleged standing of Ms. Eden and present evidence in opposition. However, again, Ms. Eden has not served the Union Creditors.

---

[1] Ms. Eden states in a declaration that she seeks to "finalize motions to avoid judgment liens on [Mr. Tingley's] residence." See Motion to Reopen, page 11 of 13, line 17.

1 This is not an instance in which the debtor has filed a motion to reopen the case. Rather,
2 the heirs of the debtor want to reopen the case to advance the interests of the heirs. Those are not
3 normally parties in interest in a bankruptcy case. See, e.g., In re Shepherd, 490 B.R. 338, 339
4 (Bankr. N.D. Ind. 2013) ("But, only the debtor, the trustee, or an unsecured creditor may seek to
5 modify a confirmed plan, 11 U.S.C. § 1329(a), and the debtor's heirs are none of these."). Thus,
6 whether or not the Court should declare that Ms. Eden has standing to seek to reopen the case is a
7 disputable question that the Union Creditors should have an opportunity to oppose.

8 For example, F.R.B.P. 1004.1 allows the Court (in appropriate circumstances) to appoint a
9 representative for an infant or an incompetent person. The rule says nothing about a deceased
10 person. And, while it makes sense to appoint a representative to assist a living (but incompetent)
11 person with their bankruptcy case, such relief seems pointless for a deceased person. As stated by
12 the Court in Shepherd, when a debtor dies during a bankruptcy case, "[t]here is no mechanism in
13 either the Bankruptcy Code or the rules of procedure for substituting another entity for the debtor
14 in a bankruptcy case." Shepherd, 490 B.R. at 340. This makes sense because a deceased person
15 has no remaining interests or objectives in a bankruptcy case. Id. at 341 ("A debtor who has died
16 has no need of a fresh start . . . ."). Once death occurs, any remaining disputes are between the
17 heirs of the deceased and the creditors of the deceased and bankruptcy courts are usually the
18 wrong forum for resolving such disputes.

19 This leads to the next question, on the merits, which is: Even if Ms. Eden establishes that
20 she has standing, can she use her father's bankruptcy case for the benefit of her and the heirs of
21 her father to the detriment of creditors? Ms. Eden wants the Court to declare that she not only has
22 standing to reopen this bankruptcy case and litigate against the Union Creditors in the bankruptcy
23 case but that she has the substantive legal right to do so.

24 Ms. Eden cites F.R.B.P. 1016 which states that a chapter 7 case does not abate when a
25 debtor dies during a pending case. But the rule does not provide that heirs of the debtor may use
26 the case to advance their own interests against creditors. One court has found that allowing heirs
27 to substitute would be inappropriate because, under such circumstances, "the substituted party
28 [would be] vindicating its own rights and acts on its own behalf, and not as the representative of

the original party . . . ." Shepherd, 490 B.R. at 342.

The bankruptcy court is not designed as a substitute for a probate court. Indeed, the courts have held that "it is universally held that a probate estate may not be a debtor." Id. As a result, given that "a probate estate cannot file bankruptcy directly, it should not be permitted to do so indirectly by using a mechanism that does not exist. It cannot be substituted for the debtor. Id. at 342-43.

Thus, on the substantive law, the Court has concerns about the stated goal of Ms. Eden to file a second 522(f) motion to avoid a lien. Any such motion would benefit the heirs of Mr. Tingley, not Mr. Tingley. Ms. Eden appears to want the bankruptcy court to declare that she has the right to seek such relief. But any such request is (at a minimum) debatable and the Union Creditors should have a fair opportunity to oppose that request. Again, Ms. Eden has not served the Union Creditors.

Accordingly, the Court shall convert the Motion to Reopen to an adversary proceeding.

VII. AN ADVERSARY PROCEEDING IS NECESSARY.

Ms. Eden seeks the following relief: (a) an order reopening the case, (b) a declaration that she has standing to file the motion to reopen and to litigate in the bankruptcy case, (c) a declaration that she has the legal right to assert another section 522(f) motion against the Union Creditors for the benefit of heirs of Mr. Tingley (as opposed to Mr. Tingley himself) and (d) an order avoiding the lien of the Union Creditors pursuant to section 522(f). The Union Creditors should have a fair opportunity to oppose all this relief. The Union Creditors have not been served with the Motion to Reopen, the First 522(f) Motion or any other pleadings in this case. Therefore, a unified and comprehensive pleading such as a complaint in an adversary proceeding is necessary to remedy the notice problems and ensure the Union Creditors have a full opportunity to respond.

In converting the matter to an adversary proceeding, the Court acknowledges that a motion to reopen a bankruptcy case is normally handled by motion. Likewise, a rule 522(f) motion is normally handled by motion. However, this case also involves (1) strangers to the

1 bankruptcy case (the heirs of Mr. Tingley) and (2) additional declaratory relief. With respect to
2 the latter, F.R.B.P. 7001(9) specifically provides for an adversary proceeding when a party seeks
3 declaratory relief. F.R.B.P. 7001(2) normally requires an adversary proceeding for all attempts to
4 invalidate a lien. And while the reference in Rule 7001(2) to Rule 4003(d) creates an exception
5 for section 522(f) motions, F.R.B.P. 7001(9) states that an adversary proceeding is required for
6 declaratory relief "relating to any of the forgoing." Thus, read together, a need for declaratory
7 relief when attempting to avoid a lien necessitates an adversary proceeding (even if section 522(f)
8 is implicated).

9 An analogous situation appears in F.R.B.P. 3007(b) which provides that when a party
10 seeks to both object to a proof of claim and seeks other relief set forth in Rule 7001 (such as
11 avoiding a lien), both forms of relief should be brought in an adversary proceeding. See, e.g., In re
12 Kressler, 252 B.R. 632, 634 (Bankr. E.D. Pa. 2000) ("Instead, the Rules require that a proceeding
13 to determine the extent, validity or priority of a lien be instituted by complaint. Fed.R.Bankr.P.
14 7001(2). If an objection to claim is filed which includes a request for a determination of the
15 extent, validity or priority of a lien, the Rules provide that the objection to claim proceeding
16 becomes an adversary proceeding. Fed.R.Bankr.P. 3007."); In re Gates, 214 B.R. 467, 470
17 (Bankr. D. Md. 1997) (denying a motion to alter a court order overruling the objection by a
18 chapter 13 debtor to a secured claim and noting that a "contest between debtor and creditor
19 regarding the value of a given secured claim should not be heard in the context of confirmation,
20 but rather in a separate adversary proceeding as governed by Federal Rules of Bankruptcy
21 Procedure 3012 and 7001.").

22 Thus, combining all forms of relief into one adversary complaint best comports with the
23 applicable rules. In addition, this approach satisfies the constitutional requirements of due
24 process of law.

25

26

27

28

VIII. AN ADVERSARY PROCEEDING IS ALSO NECESSARY TO ENSURE CONSTITUTIONAL NOTICE.

An adversary proceeding will provide the heightened degree of notice that is not only just and fair but consistent with the constitutional requirements. Ms. Eden seeks to avoid a lien held by the Union Creditors. There is no contention that the lien is not otherwise valid. Ms. Eden seeks to use certain bankruptcy powers arising in her father's bankruptcy case to avoid the lien of the Union Creditors.

The Due Process Clause of the United States Constitution requires fair and sufficient notice to a party before deprivation of their property rights such as extinguishing a lien. For example, the Third Circuit Court of Appeals concluded in In re Mansaray-Ruffin, 530 F.3d 230 (3rd Cir. 2008) that a chapter 13 debtor must initiate an adversary proceeding if she seeks to invalidate a mortgage on her residence. The Court in Mansaray-Ruffin held that such a result is constitutionally required and stated:

> Before it could be deprived of its property interest in its lien, [the creditor] had the constitutional right to a level of process that was "appropriate to the nature of the case." See Mullane, 339 U.S. at 313, 70 S.Ct. 652. As we emphasized above, our determination regarding the process due in any particular case depends on the context. A crucial piece of the context here is the existence of a binding Federal Rule of Bankruptcy Procedure directly on point that makes clear that a lien may only be invalidated through an adversary proceeding. Just as a procedural prescription in the statute guided us in determining the process due to the creditor in Harbor Tank Storage, 385 F.2d at 114–15, a procedural prescription in the Rules guides us here. In Harbor Tank Storage, we found that a creditor had the due process right "to assume that he w[ould] be sent all the notices to which he [wa]s entitled under the Act" before his claim could be barred. Id. at 115. Similarly, we now conclude that EMC had the due process right to assume that, unless Mansaray–Ruffin commenced the adversary proceeding required by the Rules and served it with a complaint and a summons, its lien could not be invalidated. Whatever actual knowledge EMC may have had regarding the plan's treatment of its lien did not eliminate this right and neither did the provisions of § 1327.

Id. at 242.

Similarly, the court in In re Forrest, 424 B.R. 831 (Bankr. N.D. Ill. 2009) aptly described the issues as follows:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "[D]ue process requires 'notice and the opportunity for hearing appropriate to the nature of the case' prior to deprivation of property rights." Hanson, 397 F.3d at 486–87 (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). "Due process does not always require formal, written notice of court proceedings." In re Pence, 905 F.2d 1107, 1109 (7th Cir.1990). But "'where the Bankruptcy Code and Bankruptcy Rules require a heightened degree of notice, due process entitles a party to receive such notice before an order binding the party will be afforded preclusive effect.'" Hanson, 397 F.3d at 486 (quoting In re Banks, 299 F.3d 296, 302 (4th Cir.2002)) (student loan debt not discharged when Chapter 13 debtor did not file an adversary proceeding because creditor was entitled to heightened notice under 11 U.S.C. § 523(a)(8) and Fed. R. Bankr.P. 7001(6)). Contra, Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1203–05 (9th Cir.2008) (notice to a student loan creditor of the bankruptcy case itself satisfied due process because the creditor was on constructive or inquiry notice of the contents of the Chapter 13 plan).
>
> . . .
>
> In this Circuit, therefore, where the Bankruptcy Code and Bankruptcy Rules require the debtor to prosecute an adversary proceeding, the debtor cannot instead proceed by a provision in the Chapter 13 Plan and expect it to bind the creditor. See Hanson, 397 F.3d at 486.
>
> . . .
>
> Under the Bankruptcy Rules, the Bankruptcy Code, and the Constitution, Forrest may not strip off Litton Loan Servicing's wholly unsecured junior mortgage on her home through her Chapter 13 Plan. The Code forbids modification of the lien through a plan, the Bankruptcy Rules require an adversary proceeding for such relief, and Constitutional Due Process entitles Litton Loan Servicing to heightened notice through a complaint and service of summons in an adversary proceeding.
>
> Id. at 834-36.

1 Likewise, the court in In re Smith, 514 B.R. 331, 338-39 (Bankr. S.D. Ga. 2014) provided
2 the following articulate thoughts about constitutional notice and the need for an adversary
3 proceeding:
4

> Therefore, based on precedent of the Supreme Court of Georgia, deeds to secure debt survive bankruptcy intact and are therefore presumptively "valid" absent a contrary determination authorized by the Bankruptcy Code. The avenue to contest "validity" is created in Rule 7001(2) and appears nowhere else. While § 506(d) declares certain liens "void," it does not dictate the procedural method required to obtain a judicial adjudication of that fact.
>
> Only Rule 7001 provides that mechanism, and I hold that the procedural safeguards inherent in that rule should not be disregarded based on narrow definitions of "validity" adopted by many courts. The Due Process Clause of the Fifth Amendment forbids the deprivation of a property right without due process of law and the adoption of a Rule of Procedure by the judiciary constitutes the template for assessing due process.
>
> I do not choose to narrowly parse the term "validity" in the face of Georgia law which makes these instruments presumptively valid. Because the deed to secure debt retains in rem viability under Georgia law, displacement of those rights must be viewed as a "validity" challenge. Rule 7001 is clear; it does not state that one type of validity challenge is covered by the Rule while others are not. Rather, any challenge to the viability of a lien must be considered within the confines of an adversary proceeding under the Rules and as a matter of due process. See In re Forrest, 424 B.R. 831, 833 (Bankr. N.D. Ill. 2009) ("Valuations may be appropriate for adequate protection, impairment, or similar purposes, but when the existence of the lien itself is at issue, then the "validity" and "extent" of the lien are certainly at issue, so an adversary proceeding is necessary."); see also In re Enriquez, 244 B.R. 156, 158 (Bankr. S.D. Cal. 2000) (requiring an adversary), abrogated on other grounds by Zimmer, 313 F.3d 1220; In re Crestwood Co., 127 B.R. 213, 215 n.1 (Bankr. E.D. Ark. 1991) (same).
>
> I recognize the end game to the litigation may be the same, but we live in a legal system which is constrained both by substantive law and procedural protections. One cannot ignore the latter in adjudicating this issue, even if the outcome is not changed, anymore than one can bypass the Fourth or Sixth Amendments in the name of efficiency.
>
> And in fact, there is no way to know if the result would be the same. This Plan provision was unopposed by the creditor. Did it agree that Debtor was legally entitled to this outcome, or did it not pay sufficient attention to the Plan provisions? Perhaps it should have done so, but part of the purpose of Rule 7001 must certainly be to ensure that when the issue is the enforceability of a state created lien, the defendant is entitled to the most infallible degree of notice of the

5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

> nature and serious consequences of the proceeding brought against it. The procedural safeguards of adversary proceedings, including the Rules of Pleading of Bankruptcy Rule 7008 which require a specific "demand for relief sought," are calculated to achieve this purpose.

Id., 514 B.R. at 338-39 (emphasis added).

IX. CONCLUSION.

In closing, the Court faces a bit of a quagmire in this case. Many things have gone wrong in this bankruptcy case. The pervasive failure to provide notice to the Union Creditors is a significant cloud over the case. Likewise, the attempt by heirs of Mr. Tingley to use the bankruptcy case for their own ends appears to fall outside the design and purposes of the bankruptcy system.

Accordingly, for all these reasons, the relief sought by Ms. Eden appears unachievable. However, the Court makes no ruling on the substantive issues at this time. Instead, the Court simply converts the matter to an adversary proceeding. Procedural fairness and the Federal Rules of Bankruptcy Procedure require an adversary proceeding to provide clear notice to the adverse party.

The Court directs Ms. Eden to file the adversary complaint within thirty days and that complaint must be thorough. It must clearly contain all the relief sought by Ms. Eden.

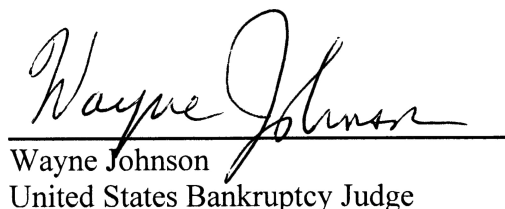
Specifically, the complaint needs to clearly assert that Ms. Eden seeks the following relief: (1) an order reopening the bankruptcy case, (2) a declaration that Ms. Eden has standing to file the motion to reopen, (3) a declaration that Ms. Eden is the proper representative of the probate estate of Mr. Tingley, (4) a declaration that Ms. Eden shall be substituted in place of Mr. Tingley, (5) a declaration that Ms. Eden has the right to assert claims under section 522(f) for the benefit of the heirs of Mr. Tingley (as opposed to Mr. Tingley), (6) an order pursuant to section 522(f) avoiding and extinguishing the lien of the Union Creditors and (7) any other relief desired by Ms. Eden. The complaint needs to assert this relief clearly and starkly along with all the other normal provisions in a complaint including jurisdiction allegations, party information and a full recitation of relevant factual allegations. In order to provide sufficient notice, the complaint should have

(among other things) a caption on the first page with a document title as follows (or comparable language): "Complaint To Reopen Case, Avoid Lien of Union Creditors and Related Declaratory Relief". Ms. Eden shall attach a copy of this memorandum of decision and the accompanying order as Exhibits 1 and 2 to the complaint. Ms. Eden should attach as Exhibit 3 a recorded copy of the instrument that Ms. Eden seeks to avoid. Given that Union Creditors have never been served in this case, Ms. Eden should also attach as exhibits to the complaint the petition, the schedules, the statement of financial affairs, all other case initiation documents and any amended schedules. Ms. Eden should also attach any other appropriate exhibits to the complaint.

Again, in making this ruling, the Court is not suggesting that Ms. Eden can achieve her goals by adversary procedure (or any other procedure). To the contrary, as stated above, the Court has considerable doubts. However, if any path exists to the relief sought, an adversary proceeding is required to get there. Only an adversary proceeding will provide sufficient notice of the unusual relief sought by Ms. Eden at this very late stage.

IT IS SO ORDERED.

Date: February 25, 2021



Wayne Johnson
United States Bankruptcy Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

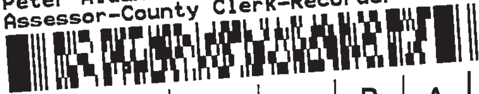
EXHIBIT 1

2017-0443873

10/25/2017 01:18 PM Fee: $ 44.00

Page 1 of 3

Recorded in Official Records
County of Riverside
Peter Aldana
Assessor-County Clerk-Recorder



PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

SHEET METAL WORKERS TRUST
FUNDS

AND WHEN RECORDED MAIL TO:

LAURIE A. TRAKTMAN
GILBERT & SACKMAN
699 WILSHIRE BLVD., SUITE 1200
LOS ANGELES, CA 90010-2732

					R	A	Exam:		
Page	DA	PCOR	Misc	Long	RFD	1st Pg	Adtl Pg	Cert	CC
SIZE	NCOR	SMF	NCHG	T:					

411

Space above this line for recorder's use only

ABSTRACT OF JUDGMENT

Title of Document

TRA: ________________

DTT: ________________

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
($3.00 Additional Recording Fee Applies)

ACR 238 (Rev. 05/2015) Available in Alternate Formats

Description: Riverside,CA Document - Year.DocID 2017.443873 Page: 1 of 3
Order: dhc Comment:

WHEN RECORDED MAIL TO:

LAURIE A. TRAKTMAN
GILBERT & SACKMAN, A LAW CORPORATION
3699 WILSHIRE BLVD., STE. 1200
LOS ANGELES, CA 90010-2732
Tel: (323) 938-3000
Email: lat@gslaw.org

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Board of Trustees of the Sheet Metal Workers' Pension Plan of Southern California, Arizona and Nevada, et al. PLAINTIFF(S), v.	CASE NUMBER: CV 5:14-cv-01829-VAP-SP
L.T. AIR CORPORATION; LESLIE ERLE TINGLEY; and CAROL SUE DYER, Individuals, DEFENDANT(S).	**ABSTRACT OF JUDGMENT/ORDER**

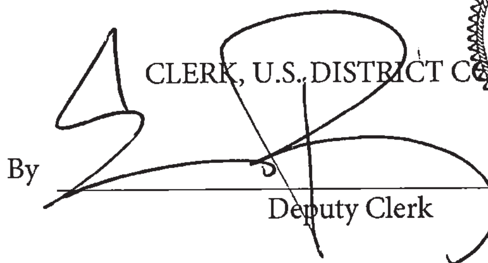
I certify that in the above-entitled action and Court, Judgment/Order was entered on January 21, 2016
in favor of See Attachment
whose address is See Attachment
and against L.T. Air Corporation; Leslie Erle Tingley; individual, joint and severally
whose last known address is 248 Glider Circle, Corona, CA 92880
for $ 45.386.04 Principal, $ 3,782.17 Interest, $ 0.00 Costs,
and $ 12,500.00 Attorney Fees.

ATTESTED this 4th day of OCTOBER, 2017.
Judgment debtor's driver's license no. and state; ________ (last 4 digits) ☑ Unknown.
Judgment debtor's Social Security number; ________ (last 4 digits) ☑ Unknown.
☑ No stay of enforcement ordered by Court
☐ Stay of enforcement ordered by Court, stay date ends ________

Judgment debtor's attorney's name and address and/or address at which summons was served:

L.T. Air Corporation and Leslie Erle Tingley
248 Glider Circle
Corona, CA 92880

CLERK, U.S. DISTRICT COURT



By ________
Deputy Clerk

NOTE: JUDGMENTS REGISTERED UNDER 28 U.S.C. §1963 BEAR THE RATE OF INTEREST OF THE DISTRICT OF ORIGIN AND CALCULATED AS OF THE DATE OF ENTRY IN THAT DISTRICT.

Description: Riverside,CA Document - Year.DocID 2017.443873 Page: 2 of 3
Order: dhc Comment:

ATTACHMENT

Plaintiffs/Judgment Creditors to which Judgment was entered on January 21, 2016, in favor of:

BOARD OF TRUSTEES OF THE SHEET METAL WORKERS PENSION PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA; and BOARD OF TRUSTEES OF THE SHEET METAL WORKERS HEALTH PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA whose address is 111 North Sepulveda Boulevard, Suite 100, Manhattan Beach, CA 90266;

BOARD OF TRUSTEES OF THE SOUTHERN CALIFORNIA SHEET METAL JOINT APPRENTICESHIP AND TRAINING COMMITTEE; and BOARD OF TRUSTEES OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 105 UNION DUES CHECK-OFF AND DEFERRED SAVINGS FUND whose address is 2120 Auto Centre Drive, Suite 105, Glendora, CA 91740;

BOARD OF TRUSTEES OF THE SHEET METAL WORKERS' LOCAL 105 RETIREE HEALTH PLAN; and BOARD OF TRUSTEES OF THE SOUTHERN CALIFORNIA SHEET METAL WORKERS' 401(A) PLAN whose address is 10 Almaden Blvd #540, San Jose, CA 95113;

BOARD OF TRUSTEES OF THE SOUTHERN CALIFORNIA LABOR MANAGEMENT COOPERATION TRUST; and BOARD OF TRUSTEES OF THE SHEET METAL INDUSTRY FUND OF ORANGE EMPIRE, whose address is 12070 Telegraph Road, Suite 350, Santa Fe Springs, CA 90670.