



ORDERED in the Southern District of Florida on December 5, 2014.

**Robert A. Mark, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

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In re:)	CASE NO.	07-14000-RAM
)	CHAPTER	7
PYARALI R. CHARANIA,)		
)		
Debtor.)		
)		
)		

**ORDER DEEMING OBJECTION TO
EXEMPTION TIMELY AND SETTING FURTHER HEARING**

The Court held a hearing on November 25, 2014 on the Debtor's Motion to Avoid Lien Impairing Exempt Property [DE #37] (the "Motion to Avoid Lien") and Creditor J&D Financial Corporation's (J&D) Motion for Order Tolling Time to Object to Exemptions and Granting J&D Leave to File Objections Out of Time

[DE #45] (the "Motion to Toll Deadline"). At issue before the Court is whether the Debtor properly provided notice to J&D of the reopening of the case and his intent to not only schedule previously undisclosed property, but also to avoid J&D's properly perfected judgment lien on that property, by claiming a homestead exemption.

This case was originally filed May 25, 2007 and closed on November 21, 2007 after the Trustee filed a Report of No Distribution [DE #19] and after the Debtor received his discharge [DE #20]. Nearly 7 years later, on August 21, 2014, the Debtor filed a motion to reopen the case [DE #25] (the "Motion to Reopen"). The Motion to Reopen describes the Debtor's intent to add J&D as a creditor, amend the debtor's schedules to claim a homestead exemption on the Debtor's interest in previously undisclosed property, and avoid J&D's judgment lien which currently attaches to the alleged homestead property.

The Motion to Reopen has a certificate of service attached stating that it was served via CM/ECF and "via First Class U.S. Mail, unless stated otherwise, upon the parties listed on the attached Service List and Mailing Matrix, as applicable." Notwithstanding that statement, no Service List and Mailing Matrix are attached to the Motion to Reopen so there is nothing on the record establishing service of the Motion to Reopen on J&D.

The Motion to Reopen was set for hearing on September 9, 2014 [Notice of Hearing at DE #26]. According to the Debtor's Certificate of Service of the Notice of Hearing, the Debtor served the Notice of Hearing "via CM/ECF upon all parties registered to receive Notice(s) of Electronic Filing (NEF) in this bankruptcy case." Again, no proof of service to J&D is provided. After the September 9, 2014 hearing, the Court entered an order granting the Motion to Reopen [DE #28] (the "Order Reopening"), and the Debtor filed a certificate of service this time stating that he served J&D by regular mail to its registered agent [DE #29]. It is significant that the Order Reopening, unlike the Motion to Reopen, does not describe the substantial relief the Debtor is seeking against J&D, or even reference J&D.

As described earlier, the Motion to Reopen was filed to add J&D as a creditor, to amend the schedules, and to avoid J&D's judgment lien. As such, pursuant to Local Rule 5010-1(F) the Motion to Reopen had to be served in accordance with Bankruptcy Rule 7004. It was not. Subsequent papers were served on J&D, including the Order Reopening, the Debtor's Notice of Compliance with Requirements for Amending Creditor Information (LF-4) [DE #30-1], the Notice of Filing amended Schedule C [DE #32] and the Notice of Filing Amended Schedule C (Corrected Date of Service) [DE #34]. Service of these papers did not cure the defect in service of the Motion to Reopen. None of these filings named J&D or provided

notice to J&D that the Debtor would be seeking to avoid its judicial lien.

Separately, the debtor filed and served an adversary complaint to determine the dischargeability of J&D's debt (the "Complaint"). The Complaint was served by certified mail to J&D's registered agent on September 30, 2014 [DE #36 and DE #1 in Adv. Case No. 14-01679-RAM]. However service of the Complaint was also not sufficient to put J&D on notice to object to the Debtor's newly claimed homestead exemption or on notice of the Debtor's intent, if the exemption was allowed, to avoid J&D's lien.

Finally, on October 14, 2014, the Debtor filed the Motion to Avoid Lien and served it by first class mail on J&D's registered agent in accordance with Bankruptcy Rule 7004. In turn, on October 31, 2014, J&D filed the Motion for Order Tolling Time To Object to Exemptions and Granting J&D Leave to File Objections Out of Time [DE #45] (the "Motion to Toll Deadline"). The Motion to Toll Deadline contains a sworn declaration from Jonathan Carmel, the president of J&D, claiming he never received any notice of the Debtor amending his schedules until October 16, 2014 [DE #45-2]. On November 5, 2014, J&D also filed its Objection to the Motion to Avoid Lien and to Certificate of No Response [DE #49].

The Motion to Toll Deadline, in substance, responds to the Motion to Avoid Lien and argues that, had J&D known, it would have timely objected to the Debtor's new claim of homestead. In addition, attached to the Motion to Toll Deadline as Exhibit C, is

J&D's proposed Objection to Claimed Homestead Exemption [DE #45-3]. Until the Debtor filed the Motion to Avoid lien, the Motion to Reopen was the only document which explained in detail the Debtor's intentions in reopening the case and how J&D's lien rights would be affected. The failure to serve the Motion to Reopen is therefore a fatal flaw which subsequent adequate service of pleadings and documents cannot purge.

The Court, based on the record before it, and due to the Debtor's failure to properly begin this process by properly serving the Motion to Reopen on J&D in accordance to Local Rule 5010-1(F) and Bankruptcy Rule 7004, finds that J&D timely objected to the Debtor's new homestead exemption claim and further finds J&D's objection to the Motion to Avoid Lien is also timely. Therefore, it is-

ORDERED as follows:

1. The Motion to Toll Deadline is granted. J&D shall have until **December 9, 2014** to file the Objection to Claimed Homestead Exemption previously submitted as Exhibit C to the Motion to Toll Deadline.

2. The Court will conduct a further non-evidentiary hearing on the Debtor's Motion to Avoid Lien and J&D's Objection to Claimed Homestead Exemption on **January 22, 2014 at 11:30 a.m.** at the U.S. Bankruptcy Court, C. Clyde Atkins United States Courthouse, 301 North Miami Avenue, Courtroom 4, Miami, FL 33128.

3. The Debtor shall file a response to the Objection to Claimed Homestead Exemption by January 16, 2014.

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