

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**COLLIN LAURENCE DRAKE and
JANET A. DRAKE,
Debtors.**

**Chapter 13 Case
Case #04-10636**

ORDER DENYING MOTION TO AVOID JUDICIAL LIEN

WHEREAS the Debtors filed a Motion to Avoid Judicial Lien (doc. #4) on or about May 6, 2004; and the Debtors noticed said Motion under the Court's default procedure, see Vt. LBR 9013-1(f); and

WHEREAS, according to the Debtors' accompanying Certificate of Service, in addition to serving the case trustee, and the United States Trustee, creditor Citibank was served with Debtor's Motion to Avoid Lien by first class mail, postage prepaid. Specifically, Debtors made service of their Motion to Avoid Lien to:

Citibank
c/o Timothy Wells, Esq.
PO Box 735
White River Junction, VT 05001

UPON CONSIDERATION of Debtors' Motion to Avoid Lien and the accompanying papers, the Bankruptcy Code and Rules,

THE COURT FINDS Debtors' Motion to Avoid Lien is a motion under 11 U.S.C. § 522(f). The Court further finds that § 522 of the Code cross-references, *inter alia*, Fed. R. Bankr. P. 4003. In turn, the Court finds that, pursuant to Rule 4003(d), "A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion *in accordance with Rule 9014*." Rule 4003(d) (emphasis added). According to Rule 9014, motions are to be served "in the manner provided for service of a summons and complaint by Rule 7004." Under the dictates of Rule 7004(h), regarding service of process on an insured depository institution, service on such institutions shall be made by certified mail addressed to an officer of the institution, unless certain exceptions are met. (which are not applicable here).


In this instance, having examined the Debtors' papers (and specifically their Certificate of Service), the Court: (1) takes judicial notice that creditor Citibank is an insured depository institution; (2) finds the Debtors have not served creditor Citibank by certified mail; and (3) finds there is no evidence that Attorney Wells is authorized to receive service of the Debtors' Motion on behalf of Citibank.

Therefore,

IT IS HEREBY ORDERED that the Debtors' Motion to Avoid Lien is denied without prejudice to reserve its Motion on creditor Citibank in accordance with the Bankruptcy Rules.

SO ORDERED.

June 15, 2004
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Court