UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

TAMBRA A. CHEMAN
f/k/a BROOKS

Case No. 01-17818 K

Debtor

As argued by the creditor, the Order of May 29, 2002, must be vacated as a matter of law because the March 22, 2002 Affidavit of Jamie A. Day, attesting to service by mail of the motion upon Chrysler Financial (Doc. #10) is clear that said service was not "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law," as required by Rule 7004(b)(3), Fed.R.Bankr.P., and as incorporated into motion practice by Rule 9014, Fed.R.Bankr.P.

The Order is hereby vacated.

As to the merits of the matter, both sides' submissions are deficient. The Debtor's attorney represents that "when filling out the information requested by the Bankruptcy Court, the address that the debtor obtained the Lease from was the only address that the debtor had, and the only point of contact the debtor had left." This representation by counsel - - not benefitted with an affidavit of the Debtor - - manages to avoid the real question that is met head-on, but left unsubstantiated by evidence, by the creditor's brief. ". . . DCSNA's correct address . . . was readily ascertainable to [the Debtor] had she reviewed her billing statements." (Doc. #27)

No evidence has been presented to the Court to prove either that the Debtor had or had not been receiving statements reflecting the Wisconsin or Michigan address. The copies presented to the Court are post-petition billings, not pre-petition.

The Court notes that the lease commenced in December of 1999 and the bankruptcy was filed two years later. No cancelled checks have been introduced, no copies of pre-petition billings, etc. Thus, what is a matter of simple, dispositive fact has been avoided or evaded by both sides.

It is clear to the Court that if the Debtor regularly dealt only with South Transit Chrysler Plymouth Jeep regarding her lease payments, then she was justified in listing only that address. But if she regularly sent payments elsewhere, then the fact that she didn't have that address readily at hand and chose to schedule the dealership's address instead was a "convenience" that she relied upon at her own peril.

Totally apart from what she scheduled, the decision by her counsel to fail to put Chrysler's collection attorney on the matrix is unforgivably discourteous and unprofessional. Debtor's counsel's argument that the attorneys "should have notified [their client] of the impending filing" [emphasis added] cannot possibly support the Debtor's position here. Notice that a bankruptcy filing is contemplated or even imminent is usually cause to step-up collection efforts; not an admonition to refrain from them.

The re-opened motion is restored to the calendar at **10:00 a.m. on September 4, 2002,** for the sole purpose of scheduling a subsequent evidentiary hearing on the matter of pre-petition contacts between the Debtor and Creditor, as regards whether the Debtor even knew that the lease had been assigned, knew that DCSNA was not the Dealership, and knew DCSNA's

mailing address.

SO ORDERED.

Dated: Buffalo, New York
August 22, 2002

/s/ Michael J. Kaplan
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U.S.B.J.