



SO ORDERED.

SIGNED this 06 day of January, 2006.

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**

A handwritten signature in black ink, appearing to read "R. Stair Jr.", written over a horizontal line.

**Richard Stair Jr.
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 05-36159

DAVID IRVING MUNOZ
REBECCA FAITH MUNOZ
a/k/a REBECCA FAITH PARSLEY

Debtors

MEMORANDUM AND ORDER

This contested matter is before the court upon the Motion of Knoxville TVA Employees Credit Union to Modify Automatic Stay and for Abandonment (Motion) filed on November 30, 2005, the Notice of Objection to the Motion of Knoxville TVA Employees Credit Union to Modify the Automatic Stay and for Abandonment (Notice of Objection) filed by the Debtors on December 15, 2005, and the Trustee's Objection to Motion of Knoxville TVA Employees Credit Union to Modify Automatic Stay and for Abandonment (Objection) filed on January 3, 2006. In open court at the hearing on the Motion held on January 5, 2006, Knoxville TVA Employees Credit Union (Credit Union) raised an issue as to the timeliness of the Trustee's Objection.

The Debtors filed the Voluntary Petition commencing their Chapter 7 bankruptcy case on October 7, 2005. The Credit Union is a secured creditor, holding a lien on two automobiles, a 2001 Ford Focus and a 1998 Isuzu Trooper. On November 30, 2005, the Credit Union filed its Motion, asking the court to enter an order directing the Trustee to abandon his interest in the vehicles and grant it relief from the automatic stay to allow it to obtain possession and dispose of the vehicles. The Motion was filed utilizing the passive notice legend authorized by E.D. Tenn. LBR 9013-1(h), advising parties in interest that any objection to the relief sought must be filed with the court within the prescribed fifteen days following the filing of the Motion and any failure to object within that time would result in the court's consideration of the Motion without further notice or hearing. *See* E.D. Tenn. LBR 9013-1(h)(2), (3). The Certificate of Service accompanying the Motion certifies that a copy of the Motion and proposed order granting the relief sought were served on the Debtors and the Trustee via either United States Mail or electronically via ECF.

The Debtors filed their Notice of Objection on December 15, 2005, and pursuant to E.D. Tenn. LBR 9013-1(4), on December 19, 2005, the clerk served a Notice of Hearing, scheduling the January 5, 2006 hearing. On January 3, 2006, the Trustee filed his Objection to the Motion stating that he was not served with the Motion and its attachments by mail, that he first learned of the Motion when he received the Notice of Hearing from the court on December 20, 2005, and that he opposes the relief sought in the Motion. The Debtors thereafter filed a Notice of Amended Objection on January 4, 2006.

Pursuant to the Local Rules, the objection time for "motions for relief from the automatic stay or to compel abandonment (or both) in chapter 7 cases . . . must be 15 days[.]" E.D. Tenn. LBR

9013-1(h)(3)(i). Because the Motion for Relief was filed on November 30, 2005, all objections thereto were to be filed with the court no later than December 15, 2005. Accordingly, the Trustee's Objection is untimely.

The Trustee's argument that the Credit Union was required to serve him with the Motion via United States Mail and electronically via ECF is without merit. E.D. Tenn. LBR 4001-1(a) governs the filing of motions for relief from the automatic stay in Chapter 7 cases, detailing the required contents, attachments, filing procedure, and service of process. In particular, E.D. Tenn. LBR 4001-1(a)(5), relied upon by the Trustee in his argument, states as follows: "[e]ach motion must contain a certificate evidencing service of the motion, actual copies of the attachments or their pertinent excerpts, and the proposed order (along with a Notice of Hearing if hearing is set) on the debtor, debtor's attorney, and trustee." E.D. Tenn. LBR 4001-1(a)(5). This subsection does not mention the appropriate forms of service, and the court cannot agree with the Trustee's reading of that rule to require service of motions for relief via both United States Mail and electronically.

Furthermore, Section IV. of the Administrative Procedures for Electronic Case Filing, effective on May 17, 2005, provides, in material part:

B. Service on Registered Users.

1. *Method of Notice.* Upon the electronic filing of a document, the ECF system will generate a Notice of Electronic Filing that will be automatically transmitted to the filing party and all other parties in the case who are Registered Users. This electronic transmission by the ECF system of the Notice of Electronic Filing constitutes notice or service of the filed document to the Registered Users in the case, equivalent to service by first class mail, postage prepaid, subject to the provisions of Fed. R. Bankr. P. 7004 and 9014(b).

2. *Contents of Notice.* The Notice of Electronic Filing indicates the time of filing, the name of the party and the participant filing the document, the type of

document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice of Electronic Filing by email to access the document automatically.

The Trustee, a registered user of the ECF system, was served with the Motion on November 30, 2005. Moreover, the Trustee acknowledged receipt of the Notice of Hearing on December 20, 2005, and although that date was beyond the fifteen days objection time, he did not file his Objection for another fourteen days.

For the reasons set forth above, the court finds that the Trustee's Objection to Motion of Knoxville TVA Employees Credit Union to Modify Automatic Stay and for Abandonment was not timely filed and is therefore OVERRULED.

The hearing on the Motion and Debtor's Notice of Objection, as amended, is continued to January 26, 2006, at 9:00 a.m., in Bankruptcy Courtroom 1-C, First Floor, Howard H. Baker, Jr. United States Courthouse, Knoxville, Tennessee, for final disposition.

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