

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2296 - (Website: www.akb.uscourts.gov)
4 Clerk's Office 907-271-2655 (1-800-859-8059 In-State) - Judge's Fax 907-271-2692

5
6 **Filed On**
7 **5/15/07**

8
9
10
11 In re

12 KATHRYN LEANNE HERMAN and
13 ROGER DEAN HERMAN,

14 Debtor(s)

Case No. A07-00138-HAR
In Chapter 7

15
16 **MEMORANDUM DENYING UNOPPOSED**
17 **MOTION FOR SANCTIONS FOR**
18 **VIOLATION OF AUTOMATIC STAY**

19 Debtors filed a motion on April 26, 2007, for sanctions under 11 USC § 362(h) for
20 violations of the automatic stay against creditor Affordable Loan Company (Dkt 24). The motion
21 alleges six harassing phone calls, demanding payment and threatening arrest. Debtors also filed a
22 *Notice of Motion for Sanctions* (Dkt 25), stating Affordable Loan had until May 11, 2007, to
23 respond to the motion. The notice has a notation: "was faxed to Affordable Loans at 563-7329."

24 No response has been docketed for Affordable Loan to date. The debtors have not lodged a
25 proposed order¹ although they prematurely requested a hearing when they filed their motion.
26 Nonetheless, upon the court's review of the notice and motion, it has determined that it should be
27 denied for several reasons, even though it has not been opposed.
28

¹ Alaska LBR 9021-1(a).

1 IMPROPER METHOD AND MANNER OF SERVICE- The first reason is lack of proper
2 method of service. The notice indicates it was served by fax on Affordable Loan. The motion
3 contains no notation of service, but perhaps it too was served by fax with the notice. No
4 particular person or officer at Affordable Loan was designated to receive the service. This manner
5 of service is not sufficient to effect service.

6 A motion seeking sanctions is a contested matter governed by Rule 9014 of the Federal
7 Rules of Bankruptcy Procedure (the FRBPs). FRBP 9014 requires the initial service to be done in
8 the same manner as a summons and complaint.² FRBP 7004 is the bankruptcy rule describing
9 how to serve a summons and complaint. Among the methods is service by mail,³ but not service
10 by fax.

11 Secondly, the service of the motion and a proper notice on a corporation or partnership
12 (assuming Affordable Loan is one of those) by first class must be specifically directed to “to the
13 attention of an officer, a managing or general agent, or to any other agent authorized by
14 appointment or by law to receive service of process and, if the agent is one authorized by statute
15 to receive service and the statute so requires, by also mailing a copy to the defendant.”⁴ That was
16 not done by the debtors.

17 FORM OF NOTICE WAS NOT SUFFICIENT- Debtors used a cursory form of notice (Dkt
18 25), which did not comply with Local Bankruptcy Form 11. Our local bankruptcy rules require
19 respondents to receive a form of notice in an approved form.⁵ A copy of LBF 11 is appended for
20 the benefit of debtors.

22 ² FRBP 9014(b) provides: “The motion shall be served in the manner provided for service of a
23 summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner
provided by Rule 5(b) F.R.Civ.P.”

24 ³ FRBP 7004(b).

25 ⁴ FRBP 7004(b)(3), *compare*, In re Villar, 317 BR 88, 92-3 (9th Cir BAP 2004).

26 ⁵ Alaska LBR 9009-1(1).

1 A PRO SE DEBTOR MUST COMPLY WITH THE RULES- While the debtors may feel the
2 court should cut them a break, unrepresented debtors must comply with the bankruptcy rules,
3 too,⁶ even though they may be complicated. The debtors allude to what may be an egregious
4 violation of the automatic stay, but Affordable Loan is nonetheless entitled to due process.

5 DATED: May 15, 2007

6
7
8 /s/ Herb Ross
9 HERB ROSS
U.S. Bankruptcy Judge

10 Serve:
11 Debtors, *pro se*
12 Affordable Loan Co., 750 East Fireweed Lane, Anchorage, AK 99503
13 Kenneth Battley, Trustee
14 US Trustee

15 05/15/07

16 D6264

17
18
19
20
21
22
23
24
25
26

⁶ Warrick v Birdsell, 278 BR 182, 187 (9th Cir BAP 2002).

1 (Name of Attorney)
2 (Name of Firm)
3 (Address)
4 (Telephone)
5 (Fax)
6 (Attorney for _____)

7 **UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ALASKA**

9 In re _____) Case No. _____
10 (Name of Debtor(s))) Chapter: _____
11 Debtor(s).)
12 _____)

13 **NOTICE OF APPLICATION**
14 **FOR ORDER**

15 NOTICE is hereby given that the undersigned has filed an application with the court for an ORDER
16 _____
17 _____
18 (summarize contents of order)

19 The application or motion is based upon the following: _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____
(summarize grounds for motion)

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy. (If you do not have an attorney, you may wish to consult one.)

FURTHER TAKE NOTICE THAT if you OBJECT to the entry of the above described ORDER you must object in writing on or before (*) _____, 199____. Your objection is to be filed in the Office of the Clerk of the above entitled Court at 605 West Fourth Avenue, Suite 138, Anchorage, Alaska 99501-2296 and a copy served on the undersigned on or before said date.

The application or motion above referred to may be inspected at the Office of the Clerk of the Bankruptcy Court at the Old Federal Building, 605 West Fourth Avenue, Suite 138, Anchorage, Alaska, or at the office of the undersigned.

SHOULD YOU FAIL TO SO OBJECT OR HAVING OBJECTED FAIL TO TIMELY REQUEST A HEARING, PLEASE BE ADVISED THAT THE COURT MAY ENTER THE ABOVE DESCRIBED ORDER WITHOUT FURTHER NOTICE TO YOU.

DATED:

(Name of Attorney Firm)

By _____
Attorneys for _____

* Unless otherwise ordered, not less than 20 days after the mailing of the notice.