

Law Office of George Weiss
Attorney in Maryland, Virginia & the District of Columbia

8211 Postoak Rd
Potomac MD 20854

Phone: (240) 401-2428
gershonw@emailaccount.com

Ms. Rebecca A. Womeldorf
Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, N.E. Washington, D.C. 20544
VIA EMAIL to RulesCommittee_Secretary@ao.uscourts.gov

March 23, 2019

Re: Rules Suggestion (Bankruptcy) FRBP 7004(h).

I write regarding the quirk in the current rules of *whom to serve*¹ (quite distinct from *how to serve*) a federally insured depository institution in adversary matter in a bankruptcy Court.

With respect to *whom to serve*, the plain text requires that service be made on “officer” of the institution (unless an attorney appearance is in or the bank has designated *in that case* another person for service).

Technically, this could be the CEO or president of the corporation not involved in daily affairs-and certainly not routine matters dealt with in bankruptcy courts by federally insured depository companies, such as avoidance or limitation of liens or ligation over discharge ability of certain debts.

Thus, read literally, (and many courts are reading this literally) service could be made by writing the president or CEO's name of the company, and then sending certified mail to the address of the president of the corporation listed in the annual report. This situation does not even remotely logically serve to give notice to the institution. Common sense indicates that mail to the CEO of a large corporation in reality is often quickly lost in the shuffle of the large institution: The entire point of having employees and agents is to deal with routine matters.

Similarly, by the same token, read literally, (and many courts are reading this literally) service on a *registered agent of the institution duly authorized to accept service generally* (such as a resident agent of a bank designated with the appropriate state authority), is *not* effective unless the institution has made a written notice authorizing service on the resident agent instead of “an officer” of the institution (unless that resident agent also happens to be an “officer” of the

¹ Rule 7004(h) was amended by the Bankruptcy Reform Act of 1994 PL. 103-94 (1994) with the intent of providing for certified rather than first class, mail on depository intuitions in bankruptcy adversary matters. This suggestion does not concern the method of service currently required-certified mail-but questions the wisdom of the wording of the current rule regarding whom to serve. As the committee notes to FRBP 7004(h) state explicitly, the thrust of Congress' concern was the *method* of service, not *whom to serve*.

Bank).

Accordingly, a person attempting service can not simply look up the publicly available resident agent of the company and serve. And depending on the reading of the rule, if one doesn't know the name of an "officer" he might have to spend hours researching this arcane information.

In the worst case scenario, the FDIC insured institution is not publicly traded, and thus information (at least not reliable information) is not publicly available about the name of its current officers. Unless the Court then accepts service addressed generically to "officer of corporation" (which it may or may not, depending on the interpretation of the current rule) service on the bank would be impossible without discovery, which would in turn be impossible without service. That of course would be absurd. It was the purpose of this Rule and the intent of Congress² to give notice to federally insured institutions-not to make service impossible-or even an elaborate labyrinth or hurdle.

In addition, given that many FDIC insured institutions are national, not state, corporations, it is not clear what law or authority controls who is an "officer" of the institution as opposed to a "director" or other official. The rule doesn't state precisely how to define "officer." Litigation over that is silly and absurd when the law could simply mandate service on a resident agent.

On that note, moreover, the language of FRBP 7004(h) stands in sharp contrast this with the more familiar FRCP 4(h) governing service on corporations generally (*very much including federally insured depository corporations*) in regular civil proceedings in federal district courts, which clearly authorizes service on a person "appointed" to receive process, which does include, (as the Court's have regularly ruled) resident agents.

To call the committee's attention to the way this sort of thing can and does play out in real life, I am attaching a recent (publicly available court document)"instruction" provided by the Court in a case attempting a simple routine lien avoidance. In this case, the Bank was served by certified mail on its resident agent, who regularly received most process for the bank, and was also the "vice president of the board" but was not technically listed as an "officer" on the latest annual report of the Bank.

Thus, the Court held service invalid, in favor of service of the same motion by the same method served at the same address but addressed to "an officer"-such as the CEO of the Bank-someone having no common sense reason to get involved and upon which service would likely provide *less* notice than before.

Well respected Bankruptcy Judge Thomas Catliola of the District of Maryland was aware of all the circumstances I just described and was obviously not trying to be obstructionist or make a ruling that lacked common sense. But despite the service made being by the requisite certified mail, on a routine, likely simple, matter, and addressed to the resident agent and vice president of the board of directors, and even despite actual notice in the case, he apparently felt

2 See note 1. Congress was directly involved in this Rule's language for the purpose of specifying certified mail.

his hands tied by the (plainly ridiculous) technical language of the Rule requiring service on “an officer.”

Let's fix things that can be fixed easily: The Rule could be fixed simply by importing the language of FRCP4(h), and then specifying that the method is certified mail-unless you have one of the exceptions already stated in the current Rule 7004(h).

Thank you for the attention of the committee,


George Weiss

Signed: March 22nd, 2019

Fed. R. Bankr. P. 7004(h) states "Service on an insured depository institution . . . in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution . . ." As shown in the attachments of ECF 101, Mr. Merryweather is not listed as an officer of the respondent. The respondent also has not made an appearance in this bankruptcy case by counsel or waived in writing its entitlement to certified mail in this case. Thus, movant must serve the motion on the respondent as required by Fed. R. Bankr. P. 7004(h), along with a new notice.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND**

IN RE:

Richard Lesser &
Andrea Tassencourt

(Debtors)

:
:
:
: Case No. 18-25831-TJC
:
: Chapter 13
:

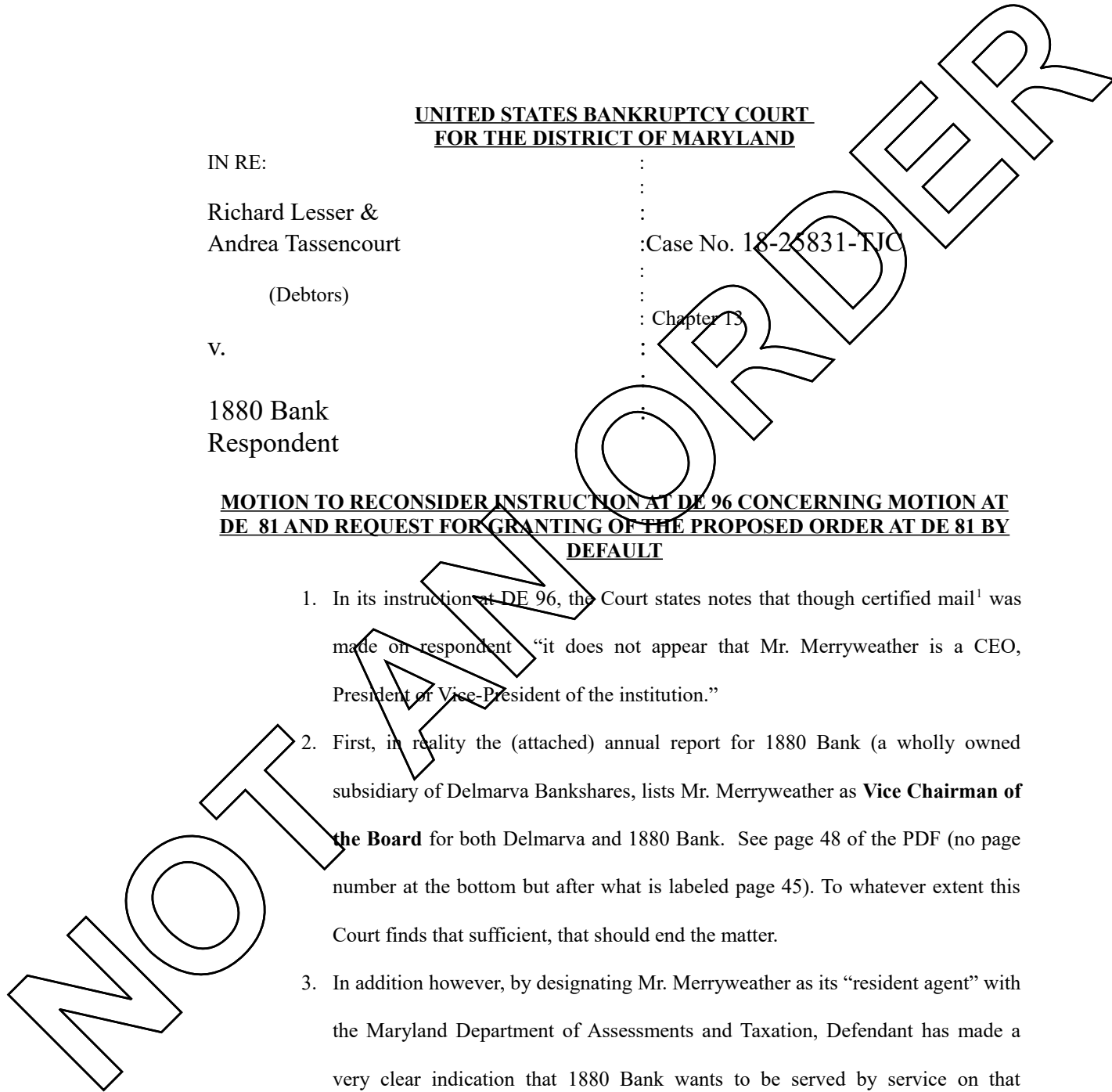
v.

1880 Bank
Respondent

**MOTION TO RECONSIDER INSTRUCTION AT DE 96 CONCERNING MOTION AT
DE 81 AND REQUEST FOR GRANTING OF THE PROPOSED ORDER AT DE 81 BY
DEFAULT**

1. In its instruction at DE 96, the Court states notes that though certified mail¹ was made on respondent "it does not appear that Mr. Merryweather is a CEO, President or Vice-President of the institution."
2. First, in reality the (attached) annual report for 1880 Bank (a wholly owned subsidiary of Delmarva Bankshares, lists Mr. Merryweather as **Vice Chairman of the Board** for both Delmarva and 1880 Bank. See page 48 of the PDF (no page number at the bottom but after what is labeled page 45). To whatever extent this Court finds that sufficient, that should end the matter.
3. In addition however, by designating Mr. Merryweather as its "resident agent" with the Maryland Department of Assessments and Taxation, Defendant has made a very clear indication that 1880 Bank wants to be served by service on that individual. Rule 7004(h) provides that service is proper where a depository

¹ Initial attempt was made for a similar motion on Mr. Merryweather by first class mail. This is indeed inconsistent with the rules, as Rule 7004(h) clearly requires certified mail unless an exception applies. The motion was thus withdrawn for that reason and re-served at DE 81.



institution has waived service “by designating an officer to receive service. “ To whatever extent the Court reads the designation as a wavier, that should also end the matter.

4. Indeed, common sense indicates that by listing its Vice President of the Board of Directors with SDAT as their resident agent to receive process, that this is where they want legal notices to be sent. Any other conclusion would mean the absurd idea that the Bank somehow wants all legal notices other than bankruptcy notices sent to Mr. Merryweather, but then bankruptcy notices should be generically addressed “OFFICER of Corporation” since the plaintiff would not know who is an “officer” within the meaning of 7004(h) without discovery.
5. Such a finding makes little sense, and indeed, a certified envelope generically addressed “officer of Corporation” or even addressed to the CEO of the corporation itself, would probably give lesser actual notice than mail to the actual resident agent previously designated and to which the Bank is used to actually getting service².
6. Finally, undersigned counsel is (now) well aware of Court's general displeasure with default and the nationwide trend toward greater scrutiny of 7004 service issues. Accordingly, undersigned counsel reached out to discuss this matter with the Bank shortly after the instruction and sent an email with stamped copy of the motion at DE81 to a Kevin Moran, a receivables agent and another officer listed on the annual report (same page) (who undersigned counsel spoke to on the phone to obtain his email. Mr. Moran, then ignored further attempts to reach him

² It also bears mentioning that in this particular case the address for the headquarters and the resident agent are the same. The resident agent is not some third party designee resident agent would be using the same address as a generically addressed “officer of the corporation” envelope. Thus, the service went to the right place and the text of the top line would be the only issue.

about the matter, likely simply bothered with real work, rather than routine simple matters.

7. Finally, in addition to actual notice, and in addition to the fact Mr. Merryweather is listed on their annual report as a Vice President, and in addition to his designation to receive service generally there is just no indication the Bank wants to contest the matter or would be successful in doing so. The other major creditor who looked at the case, the IRS, quickly agreed there is no equity in the property.

Respectfully Submitted,

/s/ George Weiss

8211 Postoak Rd
Potomac, MD 20854
Phone (240) 401-2428
gershonw@emailaccount.com
District of Maryland Bar No. 29671

NOT AN ORDER

From: [George Weiss](#)
To: [RulesCommittee Secretary](#)
Subject: Re: Bankruptcy Rules Suggestion
Date: Sunday, March 24, 2019 1:28:51 PM

In addition please add this email to the suggestion:

I understand that given that FRBP7004(h) was created by special statute (not the general bankruptcy rules enabling act) there may be special problems with alteration. I note that the FRBP 7004(h) does not define "officer" Perhaps the way to do it is simply to define "officer" to include a resident agent as an "officer" for the purpose of receiving process.

On Sat, Mar 23, 2019 at 3:03 AM George Weiss <georgeweisslaw@gmail.com> wrote:

Please see the suggestion attached.

--

George Weiss
8211 Postoak Rd.
Potomac MD 20854
Cell: 240-401-2428

--

George Weiss
8211 Postoak Rd.
Potomac MD 20854
Cell: 240-401-2428