

FILED & ENTERED

AUG 27 2015

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY bakchell DEPUTY CLERK

**ORDER NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:

DELMAC CONSTRUCTION &  
DEVELOPMENT, INC.,

Debtors.

Case No. 2:14-bk-32256-RK

Chapter 7

**ORDER DENYING MOTION OF GREAT  
AMERICAN INSURANCE COMPANY TO  
DISMISS WITHOUT PREJUDICE**

Date: September 1, 2015

Time: 3:00 p.m.

Place: Courtroom 1675  
255 East Temple Street  
Los Angeles, CA 90012

Pending before the court is Great American Insurance Company's Motion to Dismiss Pursuant to 11 U.S.C. § 707(a) ("Motion"). ECF 21. The Motion is set for hearing before the court on September 1, 2015 at 3:00 p.m. Debtor through counsel has filed a written opposition to the Motion. ECF 25.

Having reviewed the moving and opposing papers, the court determines that oral argument is unnecessary, dispenses with oral argument, takes the Motion under submission, vacates the hearing on the Motion set for September 1, 2015, and rules as follows.

- 1           1. The court determines that the Motion should be denied for insufficient service  
2           of the Motion as required by 11 U.S.C. § 707(a) and Rules 1017, 2002(a)(4),  
3           9013 and 9014 and Local Bankruptcy Rules 9013-1 and 9013-3, which require  
4           Movant to serve the Motion seeking dismissal of this Chapter 7 bankruptcy  
5           case under 11 U.S.C. § 707(a) on all creditors as well as the debtor, its  
6           counsel, the Chapter 7 trustee and the United States Trustee. *See also*, 1  
7           March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶¶ 5:2380  
8           and 5:2040 at 5(II)-93 and 5(II)-35 (2014). The proof of service of the Motion  
9           shows that Movant served copies of the Motion on the debtor, its counsel, the  
10          Chapter 7 trustee, one secured creditor, Wells Fargo Bank, but not all creditors  
11          as indicated on the creditors' mailing matrix in this case.
- 12          2. The Motion is denied without prejudice for insufficient service.
- 13          3. The hearing on the Motion, currently set for September 1, 2015 at 3:00  
14          p.m. is vacated and taken off calendar. No appearances are required on  
15          September 1, 2015.
- 16          4. If Movant intends to remedy the service deficiency identified in this order  
17          and to refile the Motion, the court offers the following unsolicited  
18          guidance for the parties based on its review of the moving and opposing  
19          papers before it determined that service of the Motion was insufficient.  
20          The court had intended to issue a tentative ruling that would state that  
21          the court would treat the Motion to dismiss the bankruptcy case for cause  
22          under 11 U.S.C. § 707(a) as a contested matter under Rule 9014 of the  
23          Federal Rules of Bankruptcy Procedure, that the parties should meet and  
24          confer about scheduling pretrial and trial proceedings in this contested  
25          matter, including any discovery if they are requesting it, that the court  
26          would set a schedule of pretrial and trial proceedings at the hearing, that  
27          if the material facts are not in dispute in this contested matter, then the  
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1 parties might want to consider filing cross-motions for summary judgment  
2 or trying the contested matter on stipulated facts, but that Movant may  
3 want to consider filing a motion for relief from the automatic stay under  
4 11 U.S.C. § 362 as an alternative course of action to accomplish its non-  
5 bankruptcy litigation objectives.

6 IT IS SO ORDERED.

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23 Date: August 27, 2015



24 Robert Kwan  
25 United States Bankruptcy Judge  
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