

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
HENRY PARKER) CASE NO. 05-15569
RUBY L. PARKER)
)
Debtors)

DECISION DENYING MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on January 19, 2007.

This matter is before the court on debtors' motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid judicial liens which allegedly impair an exemption in real estate. The liens in question are held by Allen Collections, Business & Professionals, and Snow & Sauerteig. Notice of the motion has been given to the lienholders and there have been no objections thereto. Despite the fact that the motion is unopposed, the court cannot properly grant it because it fails to allege sufficient facts to state a cognizable claim for lien avoidance pursuant to §522(f)(1). See, In re Wall, 127 B.R. 353, 355 (Bankr. E.D. Va. 1991). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested matters are required to state the grounds for relief "with particularity." See, Fed. R. Bankr. P. Rule 9013.

Not every judicial lien upon exempt property may be avoided. Lien avoidance pursuant to §522(f)(1) is available only where the judicial lien impairs a claimed exemption. The concept of impairment was reduced to a mathematical formula by the amendments to §522(f) promulgated by the Bankruptcy Reform Act of 1994. 11 U.S.C. §522(f)(2)(A); In re Thomsen, 181 B.R. 1013, 1015 (Bankr. M.D. Ga. 1995). When the amount due on account of the liens sought to be avoided, all other liens on the property and the amount of the debtor's exemption "exceeds the value that the debtor's interest in the property would have in the absence of any liens" the debtor's exemption is impaired. 11 U.S.C. §522(f)(2)(A)(i) thru (iii). Thus, in order for the court to determine if a

judgment lien impairs an exemption to which a debtor may be entitled, in addition to identifying the property subject to the judicial lien, the motion must provide information concerning the value of the property, the amount due on account of all liens against it, the amount of the liens to be avoided, and the amount of the exemption claimed by the debtor. 11 U.S.C. §522(f)(2)(A); see also, Thomsen, 181 B.R. at 1015-16.

While the debtors' motion states that they are entitled to avoid the liens, the motion does not provide any information concerning the value of the property, the amount due on any liens secured by the property, or any information concerning the amount of the exemption actually claimed by the debtor. Furthermore, a review of the schedule of exemptions - Schedule C - reveals that the debtors claimed an exemption of \$0.00 in the property. In the court's opinion, a claimed exemption of \$0.00 is the equivalent of no exemption whatsoever. In re Berryhill, 254 B.R. at 242; In re Forti, 224 B.R. 323, 327 (Bankr. D. Md. 1998)(where debtors claim exemption of zero, no dollar amount of exemption is preserved). See also, Swaim v. Kleven, 1:04-CV-33 (D. N.D. Ind. 2004); In re Sherbahn, 170 B.R. 137, 140 (Bankr. N.D. Ind. 1994)("the extent of [an] exemption is determined by the value claimed exempt which the debtor placed in its schedule of exemptions."); Ainslie v. Grablowsky, 149 B.R. 402, 405 (Bankr. E.D. Va. 1993)("if debtor is entitled to exemption by declaration, then the debtor is be [sic] bound by his declaration") aff'd sub nom., Addison v. Reavis, 158 B.R. 53 (E.D. Va. 1993), aff'd, Ainslie v. Grablowsky, No. 93-2289, 1994 WL 410995 (4th Cir. Aug. 8, 1994). Without an exemption in the property, there is nothing that § 522(f) can be used to protect, and debtors' motion should be denied. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court