

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
JAMES RICHARD PALMER ) CASE NO. 04-13053  
CRISTY LOU PALMER )  
)  
Debtors )

**DECISION AND ORDER**  
**ON MOTION TO AVOID LIENS**

At Fort Wayne, Indiana, on February 1, 2007.

This matter is before the court on debtors' motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid a lien which allegedly impairs their exemption in residential real estate. The lien in question is held by Harvest Credit Management. There has been no response to the notice of the motion.<sup>1</sup> 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

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<sup>1</sup>Although the debtors have served notice of the motion and the opportunity to object upon a number of creditors, it is not entirely clear from the list of those served that the lienholder was served with a copy of the notice or the motion as Harvest Credit Management. It is possible that the debtors served an attorney for the lienholder who has not filed an appearance in this bankruptcy. If so, that is not appropriate. In re Rae, 286 B.R. 675 (Bankr. N.D. Ind. 2002).

(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 an exemption, the motion does not provide any information concerning the amount of the exemption actually claimed by the debtor. Without this information the court does not have sufficient facts before it to determine whether the liens in question impair a claimed exemption. As such, the motion fails to state a cognizable claim for lien avoidance pursuant to §522(f)(1) and is DENIED without prejudice to resubmission.

SO ORDERED.

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