

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
HENRA J. DUFOR ) CASE NO. 05-15370  
 )  
 )  
Debtor )

**DECISION AND ORDER**

At Fort Wayne, Indiana, on January 31, 2007

The motion for avoidance of liens filed by the debtor on December 8, 2006, is DENIED, without prejudice, because the movant has failed 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.

Lien avoidance pursuant to § 522(f)(1) is available only where there is a judicial lien, as it is defined by § 101(36) of the Bankruptcy Code, which 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 debtor's motion states that she requests avoidance of the liens, the motion fails to allege sufficient facts to state a cognizable claim for lien avoidance. To begin with, the motion fails to identify or describe the property the debtor seeks to free from the creditors' liens. Furthermore, 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. 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). Furthermore, the notice of the motion and opportunity to object which was served on creditors and parties in interest does not comply with the local rules of this court. See, N.D. Ind. L.B.R. B-2002-2.

- a. The notice does not "state the relief sought" by the motion. N.D. Ind. L.B.R. B-2002-2(c)(3). Neither the lienholders nor the property in question are identified in the notice.
- b. The notice does not "contain a brief summary of the ground for the motion or have a copy of the motion attached to it." N.D. Ind. L.B.R. B-2002-2(c)(4). Although the notice states that a copy of the motion is attached to it, there is no attachment to the notice filed with the court.
- c. The notice does not state where objections should be filed or upon whom they should be served. N.D. Ind. L.B.R. B-2002-2(c)(5). Those portions of LBF-3 have been left blank.

IT IS THEREFORE ORDERED that the motion for avoidance of liens filed by the debtor

on December 8, 2006, is denied, without prejudice.

SO ORDERED.

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