

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
RANDY LEE MINER) CASE NO. 06-12004
TERRY LYNN MINER)
)
Debtors)

DECISION AND ORDER
ON MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on February 16, 2007.

This matter is before the court on debtor’s 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 Ralph L. Grapner. There has been no response to the notice of the motion.¹ 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

¹Although the debtors have served notice of the motion and the opportunity to object on the creditor and parties in interest, the notice may not comply with the local rules of this court, by failing to adequately “state the relief sought” by the motion. N.D. Ind. L.B.R. B-2002-2(c)(3). The notice fails to identify the property subject to the lien sought to be avoided. In light of the deficiencies in the motion itself, the court does not need to ponder over the notice.

(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 included on the list of exempt property is the equity in the real estate and alludes to an exemption of \$15,000, nowhere in the motion do the debtors provide the amount of the exemption actually claimed by the debtor. Furthermore, a review of Schedule C indicates that the debtors claimed an exemption of only \$4,883 in this property, more than \$10,000 less than the exemption which the motion suggests has been claimed. Without the amount of the exemption actually claimed, 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