

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
DANIEL ALAN GAISKI) CASE NO. 06-12385
)
)
Debtor)

DECISION AND ORDER

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

This matter is before the court on debtor’s motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid a judicial lien which allegedly impairs an exemption in real estate. The lien in question is held by Angola Physical Therapy. Notice of the motion has been given to the lienholder and there has been no objection thereto.¹ Despite the fact that the motion is unopposed, the court cannot properly grant it for the reasons set forth below.

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

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.

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, 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.

The analysis of lien avoidance under § 522(f)(1) can be viewed as an attempt to replicate the results of a hypothetical sale of the property in question. The value of the property would represent the proceeds from such sale, and is distributed to the various lienholders and the debtor according to the priority of their respective interests. Since consensual liens are generally superior to judicial liens, they would be paid first. Since the entire purpose of an exemption is to protect property from creditors, a debtor's exemption is superior to the judicial liens. Accordingly, the claimed exemption is fully satisfied before any distribution to judicial lienholders. To the extent funds remain, judicial lienholders receive the remaining proceeds, in accordance with the relative priority of their liens. Once the sale proceeds are exhausted, any lienholder that remains unpaid receives nothing.

Section 522(f)(1) attempts to accomplish essentially the same type of result; but, instead of actually distributing money, the court fixes the amount of the lien holder's interest based upon what, if anything, it would have received from the hypothetical sale. Consequently, the steps followed in determining whether to avoid a judicial lien are:

1. Determine the value of the property subject to the judicial lien;
2. Deduct the amount of all liens not to be avoided from (1);
3. Deduct the debtor's allowable exemptions from (2);
4. Avoidance of all judicial liens results unless (3) is a positive figure; and

5. If (3) does result in a positive figure, to that extent, the liens cannot be avoided.

In re Silveira, 141 F.3d 34 (1st Cir. 1998). See also, In re Finn, 211 B.R. 780 (1st Cir. BAP 1997); In re Lindsey, 313 B.R. 390, 394-95 (Bankr. W.D. Penn. 2004).

According to the debtor's motion, the fair market value of the property is \$23,500, and there is nothing due on account of all non-avoidable liens (mortgage). Thus, \$23,500 is the amount of money that would be available for distribution on account of both debtor's claimed exemption and the judicial lien. Subtracting the debtor's claimed exemption of \$11,750 from \$23,500 leaves \$11,750. This is the amount of money that would be available for distribution on account of the judicial lien after the debtor's claimed exemption had been fully satisfied. The amount due on account of the judicial lien held by Angola Physical Therapy has not been provided. Without that information, the court cannot determine the degree to which the lien impairs the debtor's exemption. The exemption will be impaired only to the extent the amount due exceeds \$11,500; below that amount the lien would not impair the debtor's exemption at all. Without more information the court does not have sufficient facts before it to determine whether, or to what extent, the lien in question impairs 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