

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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

DECISION AND ORDER DENYING MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on June 8, 2007.

The motion to avoid judicial liens in exempt property filed by the debtors on May 11, 2007 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.

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 or the amount due on any liens secured by the property. 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, because the notice does not "state the relief sought" by the motion, N.D. Ind. L.B.R. B-2002-2(c)(3), as it fails to identify the property subject to the liens. In addition, the court notes that neither the motion nor the notice of the opportunity to object to it were served upon the lienholder, but upon someone else, presumably an attorney, who has not filed an appearance in the bankruptcy. This is not appropriate. In re Rae, 286 B.R. 675 (Bankr. N.D. Ind. 2002).

IT IS THEREFORE ORDERED that the motion to avoid judicial liens filed by the debtors on May 11, 2007, is denied, without prejudice.

SO ORDERED.

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