UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:	)	
	)	
CHARLES D. BERRY	)	CASE NO. 04-40382
	)	
	)	
Debtor	)	

DECISION
ON MOTION TO AVOID LIENS

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

This matter is before the court on debtor's motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid judicial liens which allegedly impair his exemption in residential real estate. The liens in question are held by Lafayette Accounts Service, Argent Healthcare and Tippecanoe County Board of Commissioners in the following amounts: $8,639.42, $6,540.26 and $607.59. Notice of the motion has been given to the lienholders and there have been no objection thereto. Despite the fact that there have been no objections, the court concludes that the debtor's motion may only be granted in part.

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 lien 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).

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 $120,000. The amount due on account of all non-avoidable liens (mortgage) is placed at $112,083. Subtracting this

amount from the property's stated value leaves $7,917. This is the amount of money that would be available for distribution on account of both debtor's claimed exemption and the judicial liens. Subtracting the debtor's claimed exemption of $7,500 from $7,917 leaves $417. This is the amount of money that would be available for distribution on account of the judicial liens after the debtor's claimed exemption had been fully satisfied. Consequently, the debtor's motion may only be granted in part. The liens should be avoided, according to their relative priorities, only to the extent they secure indebtedness exceeding $417. An appropriate order will be entered.

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