

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
MICHAEL W. HELMICK) CASE NO. 07-10641
)
)
Debtor)

DECISION AND ORDER DENYING MOTION TO AVOID A LIEN

At Fort Wayne, Indiana, on August 29, 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 and a checking account. The lien in question is held by Beneficial Indiana, Inc. 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 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

¹Not only is the motion deficient, but the lienholder has not been given appropriate notice of the motion and the opportunity to object thereto. The court notes that neither the motion nor the notice of the opportunity to object to it were served upon the lienholder, but upon 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).

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 the amounts of any allowable exemption and that the lien impairs the exemptions to which he would be entitled, the motion does not provide 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.² 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.

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

²This is not the only problem with the debtor’s motion. In addition to seeking to avoid a lien on real property, the debtor also asks to avoid a judicial lien on the debtor’s checking account. Unlike real property, a judicial lien does not automatically attach to bank accounts, and the debtor has not done anything to explain how a judicial lien came to be attached to the debtor’s checking account. Absent proof that a lien exists and that it is a judicial lien, there would seem to be nothing for the court to do.

