

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

IN THE MATTER OF:)
)
WILLIAM JOE SEXTON, JR.) CASE NO. 07-40621
DEANNA LARAE SEXTON)
)
Debtors)

DECISION AND ORDER

At Fort Wayne, Indiana, on January 11, 2008.

The motions to avoid the judicial liens held by Deutsche Bank National Trust Co., Personal Finance Co., and Med-1 Solutions, LLC, filed by the debtors on December 10, 2007, are 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 motions state that “the lien impairs the exemptions to which the Debtors would be entitled” and reference an amount for these impaired exemptions, the motions do not provide any information concerning the amount of the exemption actually claimed by the debtors. 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 motions fail to state a cognizable claim for lien avoidance pursuant to §522(f)(1). Furthermore, the notices of the motions and opportunity to object which were served on creditors and parties in interest do not comply with the local rules of this court, because the notices differ from Local Bankruptcy Forms 3a and 3b, by omitting language those forms contain, so that they are not “substantially similar thereto.” N.D. Ind. L.B.R. B-2002-2(c). Consequently, not only are the motions deficient, but creditors and parties in interest have not been given appropriate notice of the motions and the opportunity to object thereto.¹

IT IS THEREFORE ORDERED that the motions to avoid judicial liens held by Deutsche Bank National Trust Co., Personal Finance Co., and Med-1 Solutions, LLC, filed by the debtors on

¹The court notes that the debtors failed to tender a proposed form of order as required by the local rules of this court. N.D. Ind. L.B.R. B-9013-1(c). The court would also note that this case is pending in the Northern District of Indiana, not the Southern District of Indiana as the captions of both the notices and the motions state, and that the local rules for the Southern District of Indiana, to which the debtors refer in the notices, have no applicability in the Northern District of Indiana. Furthermore, the notices and motions were served upon the office of the United States Trustee for the Southern District of Indiana, not the Northern District of Indiana where this case is pending. See, N.D. Ind. L.B.R. B-9013-2(c).

December 10, 2007, are denied, without prejudice.

SO ORDERED.

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