

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
BRYAN EARL PRENTICE) CASE NO. 02-11615
MINDY SUE PRENTICE)
)
Debtors)

DECISION AND ORDER
ON DEBTORS' MOTION TO AVOID A JUDICIAL LIEN

At Fort Wayne, Indiana, on April 25, 2005

On January 25, 2005, debtors filed a motion to avoid a judicial lien held by Star Bank. The court denied that motion by a decision and order issued on March 2, 2005. On April 1, 2005, the debtors filed essentially the same motion a second time. The court has already ruled that the debtors are not entitled to avoid Star Bank's judicial lien and it should not have to do so again. Nonetheless, at the risk of being redundant, the court points out that §522(f) does not permit avoidance of a judicial lien unless an exemption has actually been claimed in the property. Swaim v. Kleven, 1:04-CV-33 (D. N.D. Ind. 2004). See also, In re Berryhill, 254 B.R. 242, 243 (Bankr. N.D. Ind. 2000). Since the debtors have not claimed an exemption in the property subject to Star Bank's lien, their motion to avoid that lien is DENIED.¹

SO ORDERED.

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

¹The court would also point out that this case was originally closed on July 31, 2002 and was reopened at the debtors' request on January 1, 2005, so that they could attempt to avoid Star Bank's judicial lien. Since they failed to claim any exemption in the property subject to that lien before their case was closed, they cannot amend their claimed exemptions to do so now. See, In re Clear, 1992 WL 1359570 (Bankr. N.D. Ind. 1992).