

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
ROGER FREDRICK KNODERER) CASE NO. 08-11145
JOYCE DARLENE KNODERER)
)
Debtors)

DECISION AND ORDER

At Fort Wayne, Indiana June 13, 2008

This matter is before the court on debtors' motion, filed pursuant to 11 U.S.C. § 522(f)(2), to avoid a non-possessory, non-purchase money security interest in debtors' 2004 Dodge Stratus automobile. The lien is supposedly held by the Indiana Department of Revenue. Notice of the motion has been given to the lienholder and there has been no response. Despite the fact that the motion is unopposed, the court cannot properly grant it.

To begin with, the court questions the sufficiency of service of both the motion and the notice. As to the notice, there is no certificate of service accompanying it indicating to whom it may have been sent. N.D. Ind. L.B.R. B-2002-2; N.D. Ind. L.B.R. B-9013-4. Although a certificate of service accompanies the motion, it does not indicate that the motion was served upon the Indiana Attorney General, as required by Rules 7004(b)(6) and 9013 of the Federal Rules of Bankruptcy Procedure, and Rule 4.6 of the Indiana Rules of Trial Procedure. Furthermore, it indicates that the motion was served on the Office of the United States Trustee for the Southern District of Indiana, not the Office of the United States Trustee for the Northern District of Indiana, the district in which this case is pending.

The motion suffers from even greater deficiencies. The motion seeks to avoid what is alleged

to be a non-possessory, non-purchase money security interest. A security interest is a term of art in bankruptcy, and is defined by § 101(51) of the United States Bankruptcy Code as a “lien created by agreement.” 11 U.S.C. § 101(51). Given the nature of the creditor – the Indiana Department of Revenue – the court is highly skeptical that the debtors and the creditor entered into an agreement giving the IDR a lien upon the debtors’ vehicle and the motion is not accompanied by a copy of any agreement doing so. It is far more likely that the IDR claims a statutory lien. See, 11 U.S.C. § 101(53)(“‘statutory lien’ means [a] lien arising solely by force of a statute on specified circumstances or conditions”). Statutory liens cannot be avoided using § 522(f). See, In re Pfister, Case No. 04-14914, Decision dated Aug. 26, 2005 (Bankr. N.D. Ind. 2005).

Finally, even if the lien could be construed as a non-possessory, non-purchase money security interest, this court has long taken the position that motor vehicles are not among the types of property as to which a lien can be avoided. See, In re Ulrich, 203 B.R. 691, 693 (Bankr. C.D. Ill. 1997); Matter of Lenczowski, 79 B.R. 392 (Bankr. N.D. Ind. 1983); In re Yokley, 42 B.R. 574, 575 (Bankr. N.D. Ala. 1984).

Thus, for all of these reasons, debtors’ motion to avoid the lien held by the Indiana Department of Revenue on a 2004 Dodge Stratus is DENIED, without prejudice.

SO ORDERED.

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