

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

IN THE MATTER OF:)
)
ANDREW W. WATKINS) CASE NO. 02-41421
)
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on June 18, 2008.

The debtor filed chapter 13 on November 5, 2002. On August 11, 2003, the court confirmed a proposed plan which specifically treated Homecomings Financial as an unsecured creditor because there was no value to support its second mortgage. The debtor made all the payments required by the confirmed plan, received a discharge on November 9, 2007 and the case was subsequently closed. At the debtor's request the case was reopened and so that the debtor could seek to avoid Homecomings Financial's lien. A motion to do so was filed on May 21, 2008. The motion is based upon § 506(d) and § 1322 of the United States Bankruptcy Code and essentially seeks a declaration that because of the confirmed plan and the lack of value to support its mortgage, Homecomings Financial's lien is void.¹

The court does not know why the debtor has found it necessary to initiate these proceedings in this court. Nonetheless, the debtor is seeking either some type of declaratory judgment or a determination concerning the validity, priority or extent of Homecomings Financial's lien and that

¹The debtor also served a notice of the motion and of the opportunity to object thereto on Homecomings Financial; yet, since the motion does not seek to avoid a lien upon exempt property, see, 11 U.S.C. § 522(f), the court's notice and opportunity to object procedure does not apply. See, N.D. Ind. L.B.R. B-2002-2(a)(5). Even if it did, the notice served does not even begin to comply with the court's local rules. See, N.D. Ind. L.B.R. B-2002-2(c).

type of relief requires an adversary proceeding. Fed. R. Bankr. P. Rule 7001. See also, Matter of Perkins, 902 F.2d 1254, 1259 (7th Cir. 1990).

Debtor's motion to avoid the lien held by Homecomings Financial is therefore DENIED.

SO ORDERED.

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