

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
HARVEY WOODROW BIDDLE ) CASE NO. 08-40491  
TINA LOREEN BIDDLE )  
 )  
Debtors )

**DECISION AND ORDER**

At Fort Wayne, Indiana, on August 4, 2008.

This matter is before the court on debtors' motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid a judicial lien which allegedly impairs an exemption in real estate. The lien in question is held by Anesthesiology Associates. Notice of the motion has been given to the lienholder and there has been no objection thereto.<sup>1</sup> 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

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<sup>1</sup>The notice of the motions and opportunity to object which was served on the lienholder does not comply with the local rules of this court, see, N.D. Ind. L.B.R. B-2002-2, because it differs substantially from Local Bankruptcy Forms 3a and 3b, by omitting language those forms contain, so that it is not "substantially similar thereto." N.D. Ind. L.B.R. B-2002-2(c). Furthermore, the notice was apparently issued and served before the motion was filed, as the certificate of service accompanying the notice is dated November 1, 2007, while the motion was filed on July 14, 2008. Moreover, the notice asks that objections be mailed to an address which is different from the court in which this case is pending.

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, 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 he is entitled to an exemption, 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. 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.

SO ORDERED.

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