

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
TERRY L. LOMMATZSCH) CASE NO. 08-11637
)
Debtor)

DECISION ON MOTION TO AVOID JUDICIAL LIENS

At Fort Wayne, Indiana, on August 14, 2008.

This matter is before the court on debtor’s motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid liens which allegedly impair his exemption in residential real estate. The liens in question are held by Robert A. Fletcher and Snow & Sauerteig, LLP. Notice of the motion has been given to the lienholders and there have been no objections thereto. 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 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 debtor's motion states that he is entitled to an exemption of \$2,461 and that there was an allowable exemption at the time the bankruptcy was filed, 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.

Even if the court accepts the debtor's claim that the exemption to which he says he is entitled is the amount of the exemption actually claimed, the motion still fails. According to the debtor's motion, the fair market value of the property is \$138,000. The amount due on account of all non-avoidable liens (mortgage) is placed at \$118,539. Subtracting this amount from the property's stated value leaves \$19,461. This is the amount of money that would be available for distribution on account of both debtor's claimed exemption and the judicial liens. Subtracting the debtor's purported exemption of \$2,461 from \$19,461 leaves \$17,000. This is the amount of money that would be available for distribution on account of the judicial liens after the debtor's claimed exemption had been fully satisfied. The amount due on account of the judicial liens held by Robert A. Fletcher and Snow & Sauerteig is \$2,445.28. Since the value of the property is sufficient to fully satisfy both debtor's exemption and the judicial liens against the property, the liens do not impair the debtor's purported exemption.

For all of these reasons, the motion to avoid judicial liens filed by the debtor on July 11, 2008, will be denied. An order doing so will be entered.

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