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

IN RE:	)	
RICARDO MORENO	)	
JULIE MARIE MORENO	)	BANKRUPTCY NO 08-21658
	)	
Debtors	)	

ORDER DENYING MOTION TO AVOID LIEN WITHOUT PREJUDICE WITH LEAVE TO FILE AMENDED MOTION

This case is before the Court on the Motion filed by the Debtors pursuant to §522)(f)(1)(A) on June 20, 2008, to avoid the fixing of the judicial lien of Chase Bank USA, N.A. ("Lienholder") on an interest of the Debtors in property to the extent that such lien impairs an exemption to which the Debtors would have been entitled under §522(b).

The Motion and Notice of Opportunity for Hearing was duly served by the Debtors on the Lienholder and the Lienholder has failed to request a hearing on said Motion within the time provided in said Notice. Accordingly, a default Order may be entered granting the Motion by the Debtors. A proposed default order has been submitted to the Court by the Debtors. However, the Court concludes that said Motion does not state a claim upon which relief may be granted pursuant to §522(f)(1)(A).[1]

In order to state a claim for relief under §522(f)(1)(A), the Motion must set out the following:

1. A description of real estate, including the commonly known address.
2. A statement as to all parties who held record legal title to the real estate on the Petition date.
3. The fair market value of real estate on the Petition date

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[1] The power to enter a default judgment is in the broad discretion of the trial court. In re Kubick, 171 B.R. 658, 659 (9th Cir. BAP 1994) (collecting cases). The Court prior to the entry of a default judgment has an independent duty to determine the sufficiency of a claim. Id. 171 B.R. at 662. The entry of a default judgment without a hearing is improper where the complaint is not pled sufficiently to withstand a motion to dismiss. Id. 171 B.R. at 662. A complaint that merely recites statutory language will not withstand a motion to dismiss. Id., 171 B.R. at 660.

As the Court noted in McDaniel v. Nationwide, 85 B.R. 69 (Bankr. N.D. Ill. 1988):

> A default judgment, even where an order of default has been entered, is not a matter of right. Finch v. Big Chief Drilling Company, 56 F.R.D. 456, 458 (E.D. Tex. 1972). Whether a default judgment should be entered is a matter resting in the sound discretion of the trial judge. Duling v. Markun, 231 F.2d 833, 836 (7th Cir. 1956), cert. denied, 352 U.S. 870, 77 S. Ct. 96, 98, 1 L. Ed.2d 76, 77 (1956). One of the factors the Court may consider in exercising its discretion is whether entry of the default judgment will result in injustice. Id. at 458. Injustice may be done where there is a valid defense to a plaintiff's claim and, were it not for the defendant's default, the proceeding probably would have had a different result. Atlantic Dredging and Construction Company v. Nashville Bridge Company, 57 F.2d 519, 521 (5th Cir. 1921). Defaults are also disfavored in actions where public issues are implicated. Wilson v. Winstead, 84 F.R.D. 218, 219 (E.D. Tenn. 1979).

Id. 85 B.R. at 71. See also, In re Beltran, 182 B.R. 820, 823-35 (9th Cir. B.A.P. 1995); In re Villegas, 132 B.R. 742, 746 (9th Cir. B.A.P. 1991); In re Wall, 127 B.R. 353, 355 (Bankr. E.D. Va. 1991).

4. An itemization of all nonavoidable mortgage liens and other nonavoidable liens such as statutory tax liens and amounts due on same as of the Petition date.
5. The amount of exemption as to the real estate to which the Debtors would have been entitled.
6. A description of the Judicial Lien attaching to real estate sought to be avoided by the Debtors including:
   a) The Court, cause number, and caption of case in which judicial lien was entered
   b) Date of Judgment
   c) Amount of Judgment as of the Petition date.

The Motion by the Debtors does not state a claim upon which relief may be granted in that it does not satisfactorily plead items numbered 3, 4, and 5 as set out above with sufficient specificity for the Court to decide if said Motion should be granted.

Not all judicial liens may be avoided. The judicial lien sought to be avoided pursuant to §522(f)(1)(A) can only be avoided if the judicial lien impairs an exemption. The amendments to the Bankruptcy Reform Act of 1994 reduced the concept of impairment to a mathematical formula. In re Thomsen, 181 B.R. 1013, 1016 (Bankr. N. D. GA 1995). 11 U.S.C. §522(f)(2)(A)(i) through (iii). The Court also observes that the correct mathematical test to be applied in determining whether a judicial lien should be avoided pursuant to §522(f)(I)(A) is as follows:

1. Determine the value of the subject real estate on the Petition date on which a judicial lien is sought to be avoided;
2. Deduct the amount of all liens on the Petition date not be avoided from No. 1;
3. Deduct the Debtors's allowable exemptions from No. 2;
4. Avoidance of judicial lien results unless No. 3 is a positive figure; and
5. If No. 3 does result in a positive figure, do not allow avoidance of judicial lien, in order of priority, to that extent only.

In re Silveria, 141 F.3d 34, 38 (1st Cir. 1998). See also In re Finn, 211 B.R. 780, 782 (1st Cir. BAP 1997).

It is therefore,

ORDERED, that the Motion of the Debtors should be and is hereby Denied without prejudice and with leave to file an Amended Motion.

Dated: September 3, 2008

JUDGE, U. S. BANKRUPTCY COURT

Distribution:
Debtors Attorney for Debtors
Trustee