

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
PHILIP R. DAVIS) CASE NO. 08-10924
)
)
Debtor)

DECISION AND ORDER DENYING MOTION TO AVOID LIEN

At Fort Wayne, Indiana, on November 12, 2008.

The motion to avoid judicial liens in exempt property filed by the debtor on October 13, 2008, is DENIED, without prejudice, because the movant has failed 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.

The debtor's motion states that the lienholder, Barbara Armstrong, has a lien in the amount of \$8,723.07 upon seventeen properties owned by the debtor. The motion then goes on to state that the debtor is entitled to an exemption in the amount of \$30,000 and the creditor's lien impairs this exemption. Nowhere in the motion does the debtor provide any information concerning the value of the properties, the amount due on any liens secured by these properties, or any information concerning the amount of the exemption actually claimed, if any, by the debtor in each of them.¹ 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). Furthermore, the notice of the motion and opportunity to object which was served on the lienholder does not comply with the local rules of this court, because the notice fails to adequately "state the relief sought" by the motion by describing the property subject to the lien. N.D. Ind. L.B.R. B-2002-2(c)(3).

IT IS THEREFORE ORDERED that the motion to avoid a judicial lien filed by the debtor on October 13, 2008, is denied, without prejudice.

¹Indiana caps a debtor's exemptions at \$23,300 in tangible and intangible property, I.C. 34-55-10-2(c), so it is not at all clear how one individual debtor can claim exemptions totaling \$30,000 in real property. Furthermore, the court's review of the debtor's schedule of exemptions, Schedule C, filed on April 1, 2008, indicates that an exemption has been claimed in a single parcel of real estate, identified as 5116 Fairfield Avenue, Fort Wayne, Indiana, in the amount \$15,000. Thus, the exemptions actually claimed by the debtor are decidedly different from those asserted in the motion. Rule 9011 would seem to require greater accuracy. Fed. R. Bankr. P. Rule 9011.

SO ORDERED.

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