

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
MICHAEL VINCENT RHODES) CASE NO. 04-14986
PENNY DAWN EDMONDSON RHODES)
)
Debtors)

DECISION AND ORDER
ON MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on August 1, 2005.

This matter is before the court on debtors' motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid liens which allegedly impair their exemption in residential real estate. The liens in question are held by Capital One Bank and Snow & Sauerteig, LLC. 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 debtors' 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 debtors' motion states that they are entitled to an exemption and have claimed the equity in the property as exempt, the motion does not provide any information concerning the amount of the exemption actually claimed by the debtors. Without this information the court does not have sufficient facts before it to determine whether the liens in question impair a claimed exemption. Furthermore, the notice of the motion and opportunity to object does not comply with the local rules of this court. See, N.D. Ind. L.B.R. B-2002-2.

- a. The notice does not "state the relief sought" by the motion. N.D. Ind. L.B.R. B-2002-2(c)(3). The notice does not identify the property subject to the liens sought to be avoided.
- b. The notice does not "contain a brief summary of the ground for the motion or have a copy of the motion attached to it." N.D. Ind. L.B.R. B-2002-2(c)(4).
- c. The notice does not correctly state the date upon which the motion was filed. N.D. Ind. L.B.R. B-2002-2(c)(2). The motion was filed on June 28, 2005, while the notice refers to a motion filed on June 28, 2004.
- d. The certificate of service accompanying the notice indicates that the notice was served only on the creditors whose liens are sought to be avoided. The trustee and U.S. Trustee are also entitled to service of the notice and opportunity to object. N.D. Ind. L.B.R. B-9013-2(c).

Consequently, not only is the motion deficient, but creditors and parties in interest have not been given appropriate notice of the motion and the opportunity to object thereto.

IT IS THEREFORE ORDERED that the motion to avoid judicial liens filed by the debtors on June 28, 2005, is denied, without prejudice.

SO ORDERED.

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