

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
ROBERT LEE MURPHY) CASE NO. 05-13635
)
Debtor)

DECISION AND ORDER
ON MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on September 2, 2005

The motion to avoid a judicial lien in exempt property filed by the debtor on August 10, 2005 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.

While the debtor's motion states that the lien impairs debtor's 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). Furthermore, the notice of the motion and opportunity to object which was served does not comply with the local rules of this court, see, N.D. Ind. L.B.R. B-2002-2, because the notice differs 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). Additionally, the certificate of service accompanying the notice does not indicate that the notice was served on the creditor whose lien is sought to be avoided

Consequently, not only is the motion deficient, but the lienholder has not been given appropriate notice of the motion and the opportunity to object thereto.

IT IS THEREFORE ORDERED that the motion to avoid judicial lien filed by the debtor on August 10, 2005, is denied, without prejudice.

SO ORDERED.

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