

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
MARK ALLEN SHANYFELT ) CASE NO. 04-11589  
LORI FELT SHANYFELT )  
)  
Debtors )

**DECISION**

At Fort Wayne, Indiana, on September 6, 2005.

This matter is before the court on debtors' motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid a judicial lien which allegedly impairs an exemption in real estate. The lien in question is held by Helig Myers Master Trust. Notice of the motion has been given to the lienholder and there has been no objection 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 debtors' 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, 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 present motion may suggest that the debtors have claimed an exemption in the property in question, it never specifically makes such an allegation. It says nothing about any exemption that was actually claimed. More significantly, a review of the schedule of exemptions - Schedule C - reveals that the debtors have not claimed an exemption in the property.

Exemptions in bankruptcy are not automatic. They exist only as a result of the affirmative declaration of the debtor. See, 11 U.S.C. § 522(1); Fed. R. Bankr. P. Rule 4003(a). See also, Matter of Sherbahn, 170 B.R. 137, 140 (Bankr. N.D. Ind. 1994)("the extent of [an] exemption is determined by the value claimed exempt which the debtor places in its schedule of exemptions."). The debtor makes this declaration only through Schedule C - Property Claimed as Exempt. Unless it does so, there is no exemption.

Lien avoidance pursuant to § 522(f)(1) is available only where the judicial lien impairs an exemption. Where a debtor has not claimed an exemption in the property subject to a judicial lien, there is nothing for § 522(f) to protect. See, In re Berryhill, 254 B.R. 242, 243 (Bankr. N.D. Ind. 2000); In re Wall, 127 B.R. 353, 356 (Bankr. E.D. Va. 1991)("[I]t does not make sense to allow a lien to be avoided on property that has not been claimed exempt."); Swaim v. Kleven, 1:04-CV-33 (D. N.D. Ind. 2004). See also, In re Mukhi, 246 B.R. 859, 862 (Bankr. N.D. Ill. 2000)(one requirement

for lien avoidance under 522(f) is that debtor claim an exemption); In re Rushdi, 174 B.R. 126, 127 (Bankr. D. Idaho 1994)(debtor has burden of showing that property is listed on debtors schedules as claimed exemption). No exemption has been claimed in the real estate described in the motion. As a result, § 522(f) may not be used to avoid any judicial liens against that property.<sup>1</sup> The motion will be DENIED.

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

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<sup>1</sup>The court notes that this case was closed on August 11, 2004, and was reopened on debtor's motion to file a motion to avoid a judicial lien. Once a case has been closed, the debtors may no longer amend their exemptions. In re Bartlett, 326 B.R. 436 (Bankr. N.D. Ind. 2005); In re Clear, 1992 WL 1359570 (Bankr. N.D. Ind. 1992). Since the debtors did not claim an exemption in this property before the case was closed, they may not do so now.