

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

IN THE MATTER OF:

ALFREDO ROSALES
MARICELA ROSALES

Debtors

)
)
)
)
)
)

CASE NO. 04-41488

DECISION AND ORDER
ON MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on December 16, 2005.

This matter is before the court on debtors' motions, 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 Raul and Sylvia Cancino, Huston Electric and Riddles, Inc.. Notice of the motion has been given to the lienholders and there have been no objections thereto. Despite the fact that the motions are unopposed, the court cannot properly grant them because they fail 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 debtors' motions state that they would be entitled to an exemption of up to \$15,000, 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 motions fail to state a cognizable claim for lien avoidance pursuant to §522(f)(1) and are DENIED without prejudice to resubmission.

SO ORDERED.

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