

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

IN THE MATTER OF:)
)
OWEN DONALD NANNENGA) CASE NO. 04-41825
LISA ANNE NANNENGA)
)
Debtors)

DECISION AND ORDER
ON MOTION TO AVOID LIENS

At Fort Wayne, Indiana, on December 20, 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 Chiphone Federal Credit Union and Bricklayers Union Local No. 6 of Indiana Pension Fund, Bricklayers and Towel Trades International Pension Fund, Bricklayers Union No. 6 of Indiana Health & Welfare Fund, Bricklayers Union No. 6 Apprenticeship Fund, International Union of Bricklayers & Allied Craftworkers Local 4 of IN & KY Apprenticeship Fund, and Bricklayers Local No. 4 of IN & KY. Notice of the motion has been given to the lienholders and there have been no objections thereto.¹ 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.

¹The notice of the motion and opportunity to object which was served on creditors and parties in interest does not comply with the local rules of this court. See, N.D. Ind. L.B.R. B-2002-2. The notice does not adequately "state the relief sought" by the motion. N.D. Ind. L.B.R. B-2002-2(c)(3). The notice does not identify the lienholders whose liens are sought to be avoided.

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 they claim that their interest in the real estate is exempt in an amount up to \$30,000, 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. As such, the motion fails to state a cognizable claim for lien avoidance pursuant to §522(f)(1) and is DENIED without prejudice to resubmission.

SO ORDERED.

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