

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
ROBERT L. LAMB ) CASE NO. 05-17287  
RITA K. LAMB )  
 )  
Debtors )

**DECISION**

At Fort Wayne, Indiana, on January 4, 2006

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 GE Money Bank as successor in interest to Monogram Credit Card Bank of Georgia. Notice of the motion has been given to the lienholder and there has been no objection thereto.<sup>1</sup> 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

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<sup>1</sup>The notice of the motion fails to comply with the local rules of this court. 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). Consequently, creditors and parties in interest have not been given proper notice of the motion and opportunity to object thereto.

(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.

In order to determine whether the judicial lien against the debtor's property impairs an exemption, the court must apply the formula set out in § 522(f)(2)(A). Yet, before that becomes necessary, the court should first determine whether the debtor has actually claimed an exemption in the property, because 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).

In this case, debtors' claimed exemption for the property is \$0.00. In the court's opinion, a

claimed exemption of \$0.00 is the equivalent of no exemption whatsoever. In re Berryhill, 254 B.R. at 242; In re Forti, 224 B.R. 323, 327 (Bankr. D. Md. 1998)(where debtors claim exemption of zero, no dollar amount of exemption is preserved). See also, In re 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 placed in its schedule of exemptions.”); Ainslie v. Grablowsky, 149 B.R. 402, 405 (Bankr. E.D. Va. 1993)(“if debtor is entitled to exemption by declaration, then the debtor is be [sic] bound by his declaration”) aff’d sub nom., Addison v. Reavis, 158 B.R. 53 (E.D. Va. 1993), aff’d, Ainslie v. Grablowsky, No. 93-2289, 1994 WL 410995 (4th Cir. Aug. 8, 1994). Without an exemption in the property, there is nothing that § 522(f) can be used to protect, and debtors’ motion should be denied. An order doing so will be entered.

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