

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
VICTORIA ANN SMEDLEY, ) CASE NO. 00-63142 JPK  
 ) Chapter 13  
Debtor. )

ORDER ON MOTIONS TO AVOID JUDICIAL LIENS

On May 28, 2003, the debtor, by counsel, filed amended motions to avoid judicial liens of the following creditors: (1) Associated Pathologists; (2) Community Hospital- Outpatient. On May 29, 2003, the debtor, by counsel, filed amended motions to avoid judicial liens of the following creditors: (1) Community Hospital- Outpatient (lien #2); (2) Emergency Medicine S.C. (Community). Service of each motion, together with the notice required by N.D.Ind.L.B.R. B-2002-2(a)(5), was made on each creditor in accordance with the requirements of B.R. 9014/B.R. 7004(b), and none of the creditors filed an objection to the motion served upon it or a request for hearing with respect to that motion. This decision applies to each of the four separate contested matters involving the respective liens, and will be linked to each of those motions.

**I. Standards for Review of Motions for Default Judgment**

The basic procedural provision with respect to judgment by default is provided by F.R.C.P. 55(b)(2), made applicable to contested matters by B.R. 9014(c) and by B.R. 7055. The mere fact that a party has failed to appear with respect to, or to defend against, a motion initiating a contested matter, does not *ipso facto* entitle the movant to an order which grants the movant whatever relief may have been requested in the motion. There must be a valid legal basis for awarding the movant the requested relief, even in a default circumstance. Rule 55(b)(2) in pertinent part states:

(b) Judgment. Judgment by default may be entered as follows:

...

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor: . . . If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper . . . (emphasis supplied).

The fact that a plaintiff is entitled to an entry of default does not entitle the plaintiff to the entry of judgment by default. As explained by the Bankruptcy Appellate Panel of the Ninth Circuit in *Valley Oak Credit Union v. Villegas*, 132 B.R. 742, 746 (9th Cir. BAP 1991):

The court has wide discretion in determining whether to enter a default judgment under Rule 55. See generally 10 C. Wright, A. Miller and M. Kane, *Federal Practice and Procedure Civil 2d* § 2685 (1983). Similarly, a trial court has broad discretion as to the nature of the hearing that it will hold pursuant to Rule 55(b)(2) in determining whether to enter a default judgment. This language of the rule itself confirms the discretion of the trial court to hold such hearings "as it deems necessary and proper." Fed.R.Civ.P. 55(b). This provides the trial court with discretion to require, at a hearing under Rule 55(b)(2), some proof of the facts that are necessary to a valid cause of action or to determine liability. See *Peerless Industries, Inc. v. Herrin Illinois Café, Inc.*, 593 F.Supp. 1339, 1341 (E.D.Mo.1984), *aff'd without opinion* 774 F.2d 1172 (8th Cir.1985); Wright, Miller and Kane, at § 2688. [emphasis supplied].

It is thus necessary for the Court to undertake a review of the legal principles applicable to the relief sought by the debtor, in order to ascertain if there is a valid basis in law for granting that relief.

## **II. Legal Analysis**

The debtor seeks judicial lien avoidance pursuant to 11 U.S.C. § 522(f)(1)(A). This statute, to the extent pertinent to the requested relief – the exceptions under subparagraphs (i) and (ii) being inapplicable – states:

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien **on an**

**interest of the debtor in property** to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is –  
(A) a judicial lien

[emphasis supplied].

Schedule A of the debtor's schedules lists the real property with respect to which lien avoidance is sought as "DEBTOR'S RESIDENTIAL REAL ESTATE", which is presumably located at 1016 Cherry Street, Hammond, Indiana; states that the value of that property as \$62,000.00; states that the property ownership is as "TENANTS BY THE ENTIRETY"; and states that the property is subject to a secured claim having a value of "\$38,802.23 PLUS ARREARS \$12, 280.17." Schedule D states that the secured claim is a mortgage held by Aames Capital Corp., upon which the indebtedness on the date of the petition was "\$38,802.23 plus arrears \$12, 280.17." Schedule C states an exemption for the real property in the amount of \$5458.80, claimed under I.C. 34-55-10-2(b)(1).

Thus in this case there is the circumstance in which real property is held as tenants by the entireties, but only one of the marital partners is a debtor in this case.<sup>1</sup>

The extent to which a judicial lien may be avoided in the debtor's case is a complicated one.

The characteristics of tenancy by the entireties under Indiana law were described as follows in *In re Hunter*, 970 F.2d 299, 301 (7<sup>th</sup> Cir. 1992):

Indiana continues to recognize the common law form of marital property ownership – tenancy by the entirety. It is based upon the ancient common law principle that, upon marriage, each spouse loses his or her individual identity, and the two people become one entity. This entity, rather than either spouse, holds title to

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<sup>1</sup> Presumably, each judicial lien sought to be avoided relates to a debt owed jointly by the debtor and his/her spouse, and the lien therefore attaches to the subject real estate under Indiana law. Of course, to the extent that a judgment lien arises from a judgment obtained against only one of the spouses, by operation of Indiana law, that lien would not attach to the real estate owned as tenants by the entireties; *Baker v. Cailor, Ind.*, 186 N.E. 769, 770 (1933)

entirety property. *State v. Union Bank & Trust Co.*, 177 Ind.App. 632, 380 N.E.2d 1279, 1280 (1978) ("The law in this State is clear that property held in a tenancy by the entirety is held by a single legal entity created by the . . . unity of husband and wife."). While neither spouse claims title individually, each spouse has an undivided interest in the whole. *Heffner v. White*, 113 Ind.App. 296, 45 N.E.2d 342, 346 (1942) ("[A] tenancy by the entirety is vested in two persons only, who in law are regarded as only one, and each of whom becomes seised of the estate as a whole."). Neither spouse can transfer or encumber the property by himself or herself; it takes a joint act to affect the property. *Union Bank*, 380 N.E.2d at 1280 ("[O]ne spouse cannot convey or encumber the property so held without the consent of the other."). This form of property interest is not limited to the family residence; a husband and wife can own any real estate as tenants by the entirety.

Under Indiana law, real property held as tenants by the entirety is not subject to sale or execution or other legal process sought by any creditor to whom only one of the two marital parties is liable; *Diss v. Agri Business International, Inc., Ind. App.*, 670 N.E. 2d 97, 99 (1996). However, such property is subject to collection process by a creditor having a judgment lien based upon an obligation upon which both spouses are jointly liable to that creditor.

As stated in *Mid-West Federal Savings Bank v. Kerlin*, Ind. App., 672 N.E.2d 82, 85 [fn 3]:

[The] estate [by the entirety] is characterized by the 'four unities': (1) unity of estate; (2) unity of possession; (3) unity of control; and (4) unity in conveying or encumbering. See *Chandler v. Cheney*, 37 Ind. 391 (1871); *Barnes v. Luttrull*, 557 N.E.2d 692, 694 (Ind. Ct. App. 1990), *trans. denied*.

As Indiana law stood at one time, because tenancy by the entirety property was deemed to be held by the marital unit as an entity separate and apart from each of the individual spouses, such property did not become in any manner property of the bankruptcy estate of an individually filing spouse; *First National Bank of Goodland v. Pothuisje*, Ind., 25 N.E.2d 436 (1940). However, the enactment of the Bankruptcy Code, amendments to the Bankruptcy Code, and the Indiana Legislature's "opting out" of the federal exemptions provided by 11 U.S.C.

§ 522(b)(1) changed the dynamics of the concepts stated in *Pothuisje*. As stated in *In re Paeplow*, 972 F.2d 730, 736-737 (7<sup>th</sup> Cir. 1992):

At any rate, the legislative history behind § 541 makes clear that Congress intended a **debtor's interest in entirety property**, at least initially, to enter the bankruptcy estate. *Hunter*, 970 F.2d at 305-06; *Schlossberg*, 777 F.2d at 925; *Napotnik*, 679 F.2d at 318. The House Report to § 541 notes, for example, that **the undivided interest of a spouse** who is a debtor in a case under the Act is property of the estate. This is contrary to the present Act which looks to state law to determine what happens with respect to property jointly owned by husband and wife.

H.R.Doc. No. 137, 93d Cong., 1st Sess. 195 (1973).

That is not to say Congress intended to circumvent the protection afforded entirety property under state law. It simply means congress intended entirety property to enter the bankruptcy estate and to pass out of the estate if subject to an exemption, and if claimed by the debtor on his or her bankruptcy schedules. *In re Hunter*, 122 B.R. at 355. [emphasis supplied]

The concept that an individual spouse has some form of separate interest in tenancy by the entireties property which allows that interest to enter his or her individual bankruptcy estate is in consonance with the principles underlying the decision of the United States Supreme Court in *United States v. Craft*, 535 U.S. 274 (2002). The issue addressed in *Craft* is the extent to which a spouse has an individual interest in tenancy by the entireties property for the purpose of attachment of the federal tax lien to that interest as "property" or "rights to property" within the scope of 26 U.S.C.A. § 6321. It bears noting that *Craft* discusses tenancy by the entireties concepts within the context of a federal statute (26 U.S.C. § 6321) , and thus the analysis in *Craft* - if not in fact its precise determination - is instructive with respect to the issue at hand in this case. The *Craft* majority likened the incidents of ownership of each of the spouses in a tenancy by the entireties context to a "bundle of sticks" – *Craft*, 535 U.S. 274, 278-279 – and determined that certain of the sticks in each spouse's bundle constitutes a property interest in the real property held by that spouse alone, apart from the larger brush pile which comprises all

of the sticks of both of the marital partners. The critical point to be derived from *Craft's* analysis is that each of the spousal partners has a separate interest of some kind in tenancy by the entirety property, which may be segregated apart from the concept of the single unitary interest in the property as a whole which a state's law may ascribe to that form of ownership.<sup>2</sup>

As stated in 11 U.S.C. § 541(a)(1) – as noted by the Seventh Circuit Court of Appeals in *Paeplow, supra*. – an individual spousal debtor's bankruptcy estate "is comprised of" . . . "**all legal or equitable interests of the debtor** in property as of the commencement of the case" [emphasis supplied]. As illustrated by *Craft*, it is **the individual interest of the debtor**, and not the whole of the property held as tenants by the entirety, that constitutes property of an individual spouse's bankruptcy estate.<sup>3</sup> Properly understood, the "entireties property" – the

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<sup>2</sup> Interestingly enough, even under Indiana law, certain incidents of ownership in tenancy by the entirety property do not adhere to the "unity" concept of exemption from collection process with respect to the individual debts of one spouse. For example, "rental income from entirety property does not retain its character of entireties' ownership, and thus, one-half of the income is subject to the claims of creditors of spouses incurring individual indebtedness [citations omitted]," *Diss v. Agri Business International, Inc., Ind. App.*, 670 N.E. 2d 97, 99 (1996).

<sup>3</sup>As stated in *In re Hunter*, 970 F.2d 299, 305 (7<sup>th</sup> Cir. 1992):

In enacting section 541, Congress intended to include within the bankruptcy estate **a debtor's interest in entirety property**. This is revealed by legislative history. It is also evident in the operation of sections 363 and 522 which, when read together, allow the trustee to make the entirety property available to satisfy claims of joint creditors. Several courts addressing this issue have come to the same conclusion. [FN8] Thus, we must reject the Bank's argument and conclude that the bankruptcy court and the district court were correct in determining that entirety property is brought into the bankruptcy estate by operation of section 541. [emphasis supplied] [footnote omitted]

FN8. See *Sumy v. Schlossberg*, 777 F.2d 921, 925 (4th Cir.1985) ( "§ 541 now includes the debtor's interest in entireties property as part of the estate"); *Liberty State Bank & Trust v. Grosslight (In re Grosslight)*, 757 F.2d 773, 775 (6th Cir.1985) ("It is now established that [section 541(a) ] brings entireties property into the bankruptcy estate."); *Napotnik v. Equibank & Parkvale Sav. Ass'n*, 679

entire brush pile, if you will – is not brought into the estate of an individual spousal debtor; rather, only the separate interest of the individual spousal debtor in the entirety property constitutes property of that debtor's estate. There is no provision in the law which can be reasonably construed to cause the whole of entirety property to constitute property of the bankruptcy estate of an individual spousal debtor.

This conceptual framework is further supported by analysis of the Indiana "opt out" exemption statute in relation to the interests of an individual spousal debtor in tenancy by the entirety property. The procedural history of the Indiana exemption statute for the purposes of bankruptcy was stated as follows in *In re Hunter*, 970 F.2d 299, 303-304 (7<sup>th</sup> Cir. 1992):

Under this section, two alternative sets of exemptions are created. Subsection 522(b)(1) affords the debtor the federal exemptions set forth in subsection 522(d); alternatively, under subsection 522(b)(2), the debtor may choose the exemptions provided by his domicile state along with exemptions provided by federal, non-Code bankruptcy law (e.g., the social security payment exemption, 42 U.S.C. § 407, and veterans benefits exemption, 38 U.S.C. § 1970(g)). As the statute reveals, debtors who choose the state and federal non-Code exemptions can also exempt **any interest in property in which the debtor had**, immediately before the commencement of the case, **an interest as a tenant by the entirety** or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from

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F.2d 316, 318 (3d Cir.1982) ("This definition is certainly broad enough to include an individual debtor's interest in property held as a tenant by the entirety.").

The foregoing quotation contains an unfortunate mixing of proprietary metaphors, which seems to equate an individual spouse's interest in tenancy by the entirety property (whatever that interest may be) with the entirety of the property itself. It is clear, however, from the recitation of the decisions of other courts stated in footnote 8 above that the Seventh Circuit was referring to the former concept of an individual spouse's interest rather than the latter concept of the whole of the property. This construction also precludes the untenable situation which would arise were each spouse to file separate bankruptcy cases: if each spouse's interest is deemed to be the whole of the property, then in the situation of separate filings, any tenancy by the entirety property would be entirely within each of the two separate bankruptcy estates, creating unnecessary conceptual and administrative issues.

process under applicable nonbankruptcy law.  
11 U.S.C. § 522(b)(2)(B). [FN5] [omitted] The Code also allows individual states to take this choice away from the debtor by "opting out" of the federal exemptions altogether. See 11 U.S.C. § 522(b)(1). Subject to exceptions that are not relevant to this case, section 522(c) provides that property exempted under this section is not liable for any pre-petition debt.

....

In 1980, Indiana amended its statutes governing real estate exemptions and "opted out" of the Code exemptions:

34-2-28-0.5 Exemptions allowed and prohibited

In accordance with section 522(b) of the Bankruptcy Code of 1978 (11 U.S.C. 522(b)), in any bankruptcy proceeding, an individual debtor domiciled in Indiana:

(1) is not entitled to the federal exemptions as provided by section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)); and

(2) may exempt from the property of the estate only that property specified by Indiana Law.

Ind.Code § 34-2-28-0.5. The legislature also amended the existing exemption statute to create what appears to be a complete exemption, in individual bankruptcies, for property held by the entirety:

34-2-28-1 List of exemptions; limitations

(a) The following property of a judgment debtor domiciled in Indiana is not subject to levy or sale on execution or any other final process from a court, for a judgment founded upon an express or implied contract or a tort claim:

....

(5) Any interest the judgment debtor has in real estate held as a tenant by the entireties on the date of the filing of the petition for relief under the bankruptcy code, unless a joint petition for relief is filed by the judgment debtor and spouse, or individual petitions of the judgment debtor and spouse are subsequently consolidated.

Ind.Code § 34-2-28-1(a)(5).

In order to properly apply I.C. 34-55-10-2(b)(5), it is of critical importance to note that the statute does not exempt "real estate held as a tenant by the entireties", but rather exempts only **"[a]ny interest that the judgment debtor has** in real estate held as a tenant by the entireties"; [emphasis supplied]. Therefore, under 11 U.S.C. § 522(b)(1), the interest which an individual

spousal debtor is entitled to exempt with respect to tenancy by the entirety real estate to the extent of his/her interest in that property, and not the whole of that property itself, including whatever separate interests his or her spouse may hold in that property.

Thus, in the instant case, application of Indiana law results in the interest of the debtor in the subject real property entering the debtor's bankruptcy estate, and application of I.C. 34-55-10-2(b)(5) allows for the exemption of that interest from the estate. This is a critical concept, because 11 U.S.C. § 522(f)(1)(A) provides that a debtor "may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs **an exemption to which the debtor would have been entitled under subsection (b) of this section**, if such lien is . . . a judicial lien". [emphasis supplied]. As explained above, because the exemption which is impaired by the judicial liens which the debtor seeks to avoid is allowable and applicable only with respect to his/her separate interest in the real property held as tenancy by the entirety, and the exemption does not reach the separate interests of his/her spouse in that property<sup>4</sup> - it becomes necessary to determine the extent of the individual spousal debtor's interest in tenancy by the entirety property. Schedule A of the debtor's schedules in this case does not accomplish that task. Moreover, the United States Supreme Court in *Craft, supra.*, provided no guidance on the manner of valuation of that individual interest [523 U.S. 274, 289], and no statute or case in Indiana provides any guidance on this issue. At first blush, it may appear to be impossible, then, to apply the formula for avoidance of judicial liens provided by 11 U.S.C.

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<sup>4</sup> This analysis is underscored by the clear Congressional expression of severability of those interests for the purposes of administration by a trustee pursuant to 11 U.S.C. § 363(h). This section provides that notwithstanding subsection (f) of §363 [which would preclude the severance of the individual interest of each spouse in tenants by the entirety property under Indiana law], "the trustee may sell both the estate's interest ... and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a ... tenant by the entirety..." [emphasis supplied]. This section completely parallels the language of 11 U.S.C. §541(a)(1) as to interests in property which enter into a debtor's bankruptcy estate, and serves to again underscore that the analysis stated in *Craft, supra.*, is pertinent to this case.

§ 522(f)(2)(A), which states:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of –  
(i) the lien;  
(ii) all other liens on the property; and  
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

This formula provides for subtracting the value of the "debtor's interest in the property", from the sum of the lien/liens sought to be avoided, all other liens on the property<sup>5</sup>, and the amount of the allowable exemption of the debtor. However, the fact that there is no evidence in this record of the value of the debtor's individual interest in the subject real property would not be critical in light of the foregoing formula, if the debtor had claimed exemption under I.C. 34-55-10-2(b)(5) for her full interest (whatever value that might have) in the subject property. The statutory language of 11 U.S.C. § 522(f) would then yield a clear result without the need to "plug in" certain monetary values.<sup>6</sup>

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<sup>5</sup> An issue lurking within the context of this case is the manner in which the amount of indebtedness subject to liens is to be computed in light of the fact that only one of the two co-obligated spouses is a debtor in this case. There being no Seventh Circuit precedent on this issue, the Court deems the analysis stated in *In re Miller*, 299 F.3d 183 (3<sup>rd</sup> Cir. 2002) to be correct: the extent of the debt secured by the liens required to be valued in the §522(f)(2)(A) formula is the amount of that debt which bears the same ratio to the entire debt secured by said liens, as the value of the debtor's interest in the subject real estate bears to the value of the property as a whole. Again, the evaluation of this issue does not render impossible the determination of the extent to which the judicial lien/liens at issue in the instant case may be avoided: The amount of the joint debt attributable to the debtor is simply irrelevant to determination of the extent of the allowable lien avoidance in the context of this case.

<sup>6</sup> It was obviously the debtor's intent – and no ulterior or improper motive is intended to be suggested hereby – that the result of the debtor's lien avoidance motions would be to entirely unencumber the whole of the real estate, including the non-debtor spouse's interest, from the judicial liens which are the subject of the debtor's motions. As stated above, the Court has determined that this is not the correct result because the separate interest of the non-debtor spouse – whatever that might be – has never been included in property of the debtor spouse's bankruptcy estate, can therefore never be the subject of exemption, and thus cannot be subject to the operation of 11 U.S.C. § 522(f)(1)(A).

Thus, all of the foregoing would have been well and good if the debtor had sought exemption of the real property under I.C. 34-55-10-2(b)(5). She didn't. The exemption is claimed under I.C. 34-55-10-2(b)(1), which allows a maximum exemption of \$7500. for a debtor's principal residence; she claimed \$5458.80 of that exemption limit.

With respect to the extent of judicial lien avoidance, the extent to which a lien may be avoided is expressed by the §522(f)(2)(A) formula as the sum of the debtor's allocable portion of the specific creditor's judgment lien (whatever that may be); plus the sum of the debtor's allocable portion (whatever that may be) of the mortgage indebtedness owed to Aames Capital Corp and the other judicial liens on the property, plus the value of the debtor's exemption (\$5458.80)... MINUS the value of the debtor's interest in the subject property. Under the Court's analysis, if exemption had been claimed under I.C. 34-55-10-2(b)(5) to the extent of the debtor's interest in the property, the value of the exemption and the value of the debtor's interest in the property would be the same amount. In that circumstance, one can readily see that because the value of the debtor's interest in the property and the value of the exemption are equal, those values cancel each other out in the §522(f)(2)(A) formula, and the extent of the debtor's allocable portion of the joint debt subject to the joint judgment liens becomes irrelevant. Thus, if exemption had been claimed under I.C. 34-55-10-2(b)(5), all judicial liens would have been avoided to the extent of the allocable values of those liens to the proportionate interest of the debtor in the subject property. Because the percentage of amount of the debts allocable to the debtor to be utilized in the §522(f)(2)(A) formula under the *Miller, supra.*, analysis is equal to the debtor's proportionate individual interest in the property as a whole, all judicial liens would then have been avoided as to the interest of the debtor in the subject real property **to the extent of the debtor's interest in that real property**. Under any claim of exemption, the debtor's lien avoidance action could have no effect on a judgment creditor's lien to the extent of the non-debtor spouse's interest in the subject real estate.

However, the debtor claimed an exemption of \$5458.80 under I.C. 34-55-10-2(b)(1). In order to determine the extent of judicial lien avoidance, it is thus necessary to determine the value of **the debtor's interest** in the residence, which cannot be determined from the record at hand.<sup>7</sup> Based upon the record, the best that the Court can determine on the debtor's motions for judicial lien avoidance is that **if it is assumed that the debtor's interest in the property is equal to ½ of the gross value of the property of \$62,000.**, then the four judicial liens are avoidable completely **to the extent of the debtor's interest in the property**, but that those liens are not avoidable at all to the extent of those liens with respect to the individual interests of the debtor's spouse in that real estate. Thus, under the circumstance of this case, **if it is assumed that the debtor's interest in the property is equal to ½ of the gross value of the property of \$62,000.**, the result of the judicial lien avoidance motions would be the same as if the debtor had elected to exempt her interest in the property pursuant to I.C. 34-55-10-2(b)(5).

However, the Court is unwilling at this juncture to decide so novel an issue as the value of the debtor's **individual interest** in tenancy by the entireties property as being ½ of the gross value of the property without additional input from counsel.

IT IS THEREFORE ORDERED that the four judicial liens designated above are avoided **with respect to the interest of the debtor in the subject real property** to the extent that they exceed \$5458.80 plus the value of the individual interest of the debtor in that property, but that they are not avoided to the extent of those liens with respect to the individual interests of the

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<sup>7</sup> While Schedule A states a purported value of \$62,000. for this interest, the Court assumes that this value is the value of the property itself, rather than the value of **the debtor's interest** in the property. Given the "cushion" between the stated value of the property and the mortgage debt (\$10,917.60) [the only non-judicial lien disclosed by the schedules], it is apparent that the stated amount of the exemption of \$5458.80 in Schedule C was computed based upon ½ of this cushion.

debtor's spouse in that real estate.<sup>8</sup>

IT IS FURTHER ORDERED that a hearing will be held pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure on May 3, 2004, at 3 p.m. to address the issue of the value of the debtor's interest in the subject real property.

Dated at Hammond, Indiana on April 7, 2004.

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J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee

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<sup>8</sup> The effect of this decision on the rights of a judgment lien creditor to enforce its lien against the interests of the non-debtor spouse in the subject real property is not an issue before the Court. The sole issue presented and decided here is the extent to which the debtor may avoid judicial liens pursuant to 11 U.S.C. §522(f)(1)(A). The extent and enforceability of a joint liability lien on the interest of the non-debtor spouse will be, or at least can be, determined in a proceeding subsequently undertaken to enforce such a lien, or in a proceeding akin to a declaratory judgment action to determine the extent to which such a lien may "cloud" the title to the property. Any such action will presumably be subject to the jurisdiction of an Indiana state court. Although this issue is not before the Court, and thus the following pronouncement is not final or conclusive with respect to a proceeding presenting this issue to the Court, it would seem that any such proceeding will not relate to any interest of the debtor or of the debtor's estate in the subject real estate, and will not involve an issue of administration of the debtor's estate. Thus, any such proceeding will neither "arise under title 11" or be "related to a case under title 11", and this Court would not seem to have jurisdiction under 28 U.S.C. §1334/ 28 U.S.C. §157 with respect to the issues in that proceeding.