

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JOHN A. SMITH) CASE NO. 04-12364
NORMA J. SMITH)
)
Debtors)

DECISION

At Fort Wayne, Indiana, on April 28, 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 Capital One. Despite the fact that the motion is unopposed, the court cannot properly grant it.

In the first instance, the court notes that neither the motion nor notice of the opportunity to object to it were served upon the lienholder, but upon an attorney who has not filed an appearance in the bankruptcy. This is not appropriate. In re Rae, 286 B.R. 675 (Bankr. N.D. Ind. 2002). If this were the only problem with the motion, the court would simply direct the debtors to make proper service. However, there is a more fundamental problem which would make any attempt at additional service futile. Even if properly served, the motion cannot be granted.

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, 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.

The analysis of lien avoidance under § 522(f)(1) can be viewed as an attempt to replicate the results of a hypothetical sale of the property in question. The value of the property would represent the proceeds from such sale, and is distributed to the various lienholders and the debtor according to the priority of their respective interests. Since consensual liens are generally superior to judicial liens, they would be paid first. Since the entire purpose of an exemption is to protect property from creditors, a debtor's exemption is superior to the judicial liens. Accordingly, the claimed exemption is fully satisfied before any distribution to judicial lienholders. To the extent funds remain, judicial lienholders receive the remaining proceeds, in accordance with the relative priority of their liens. Once the sale proceeds are exhausted, any lienholder that remains unpaid receives nothing.

Section 522(f)(1) attempts to accomplish essentially the same type of result; but, instead of actually distributing money, the court fixes the amount of the lien holder's interest based upon what, if anything, it would have received from the hypothetical sale. Consequently, the steps followed in determining whether to avoid a judicial lien are:

1. Determine the value of the property subject to the judicial lien;
2. Deduct the amount of all liens not to be avoided from (1);

3. Deduct the debtor's allowable exemptions from (2);
4. Avoidance of all judicial liens results unless (3) is a positive figure; and
5. If (3) does result in a positive figure, to that extent, the liens cannot be avoided.

In re Silveira, 141 F.3d 34 (1st Cir. 1998). See also, In re Finn, 211 B.R. 780 (1st Cir. BAP 1997); In re Lindsey, 313 B.R. 390, 394-95 (Bankr. W.D. Penn. 2004).

According to the debtors' motion, the fair market value of the property is \$72,000. The amount due on account of all non-avoidable liens (mortgage) is placed at \$60,953. Subtracting this amount from the property's stated value leaves \$11,047. This is the amount of money that would be available for distribution on account of both debtors' claimed exemption and the judicial liens. Subtracting the debtors' claimed exemption of \$3,400 from \$11,047 leaves \$7,627. This is the amount of money that would be available for distribution on account of the judicial liens after the debtor's claimed exemption had been fully satisfied. The amount due on account of the judicial lien held by Capital One is 2,894.48. Since the value of the property is sufficient to fully satisfy both debtors' claimed exemption and the judicial lien against the property, the lien does not impair the claimed exemption and the motion to avoid the lien of Capital One will be denied.

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