

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
REX A. COVERSTONE) CASE NO. 05-12160
)
Debtor)

DECISION

At Fort Wayne, Indiana, on July 27, 2006

This matter is before the court on debtor’s motions, filed pursuant to 11 U.S.C. §522(f)(1), to avoid judicial liens which allegedly impairs an exemption in real estate. The liens in question are held by First Federal Savings Bank of Wabash and Bankers Trust Co. Notice of the motions 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, 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 present motions suggest that the debtor has claimed an exemption in the property in question in the amount of \$15,000, a review of the schedule of exemptions - Schedule C - reveals that the debtor has not claimed any exemption in this property.

Exemptions in bankruptcy are not automatic. They exist only as a result of the affirmative declaration of the debtor. See, 11 U.S.C. § 522(1); Fed. R. Bankr. P. Rule 4003(a). See also, Matter of 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 places in its schedule of exemptions.”). The debtor makes this declaration only through Schedule C - Property Claimed as Exempt. Unless it does so, there is no exemption.

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). No exemption has been claimed in the real estate described in the motion. As a result, § 522(f) may not be used to avoid any judicial liens against that property.¹ The motion will be DENIED.

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

¹The court notes that this case was closed on November 16, 2005, and was reopened on debtor's motion to file motions to avoid judicial liens. Once a case has been closed, a debtor may no longer amend its exemptions. In re Bartlett, 326 B.R. 436 (Bankr. N.D. Ind. 2005); In re Clear, 1992 WL 1359570 (Bankr. N.D. Ind. 1992). Since the debtor did not claim an exemption in this property before the case was closed, it may not do so now.