

# ANATOMY OF A MOTION

EDNY Bankruptcy Court

Central Islip Brown Bag

May 3, 2016

What should your motion contain?

**What is the relief that you are seeking?**

Use of a short, plain statement  
of the requested relief.

**Debtor requests an order voiding  
a lien claimed against Debtor's home.**

## Why are you entitled to this relief?

Section 522f provides that a debtor may void a judgment lien against his home if the lien impairs an exemption that he is entitled to.

What are the facts that entitle  
you to have this relief?

Debtor has resided at 1313 Mockingbird Lane, Center Island, Suffolk County, New York since January 1, 2003, and lived there on December 2, 2015 when he filed his chapter 7 bankruptcy petition.

- Debtor has owned this house as a joint tenant with his wife, Sue, since they bought the house in January 2003. See Deed, Exhibit A.
- Debtor has claimed his interest in this house as exempt in his Schedule C – see Exhibit B.

- **Debtor owes \$350,000 on his first mortgage on his house. See Exhibit C, payoff statement from Big Mortgage Corp. dated as of November 15, 2015.**
- **Debtor's house was worth \$325,000 as of his petition date. See Exhibit D, appraisal dated as of December 2, 2015.**



- Debtor had 2 judgments taken against him, one for \$25,000 by Super EZ Credit Corp. (“EZC”) in 2007 and one for \$17,625 by Your Way Plumbing (“YWP”) in 2009 (collectively, the “Judgments”). These judgments were indexed in Suffolk County in 2007 and 2010, respectively; see Exhibit E, abstract of title (or other evidence of recorded liens).

- These Judgments impair Debtor's homestead exemption. Debtor has claimed a \$150,000 exemption as authorized by N.Y. C.P.L.R. § 5206(a). See Exhibit C.
- Debtor is entitled to void these liens pursuant to Section 522(f). *See In re Case on Point*, 2014 WL 13131313 (Bankr. E.D.N.Y. 2014).

- Debtor has complied with E.D.N.Y. Local Rule 9013-1(g), which provides that a § 522(f) motion must “be supported by evidence of the fair market value of the property as of the date of the filing of the bankruptcy petition”.

## Who did you serve?

- Debtor has served this motion on the Judgment lien holders by mailing a copy to these creditors at the address listed on their respective proofs of claim, as well as by mailing a copy to the attorneys listed on the Judgments. See affidavit of service attached as Ex. F..

## Is there an Order?

- Debtor request this Court grant this motion and void these liens. A proposed form of order is attached as Exhibit G; this form of order has been obtained from Judge X's web page, and has also been uploaded as required by the Court.

**Thus, your motion contains the relief you seek, the law (statute, rules if applicable, and case law) that entitles you to obtain this relief, the facts that support being granted this relief, the evidence you are asking the court to consider, compliance with any applicable local rule, how the motion was served, and a proposed form of order.**

What should we avoid in motion practice?

## Too many facts / extraneous information:

- In 2011, the former owner of YWP was indicted on charges of attempting to bribe various legislators in Suffolk County.
- My basement flooded in 2012.



## Extraneous?

- I do not believe EZC should have a judgment against my client. We raised these issues with the state court but the judge didn't believe my client. We filed a complaint against EZC with the New York State Attorney General.

## Extraneous?

- **Debtor needs to void these liens so he can take out a home equity loan to cover the money he lost on his March Madness brackets.**

What else should we avoid  
in motion practice?

## Colorful language / unnecessary attacks:

- The owner of YWP came to my house and acted like he would shoot me if I didn't pay his Judgment off.
- My neighbors also borrowed money from EZC and we all think they are really bad people.

What else should we  
avoid in motion practice?

- **Generic statements about the purpose and history of the bankruptcy code where not relevant to the dispute.**

## Avoid

- Long discussions of the standards for granting Rule 12b dismissal or summary judgment.
- Long statements about the history of the bankruptcy case and all of the events that have occurred in the bankruptcy case.