

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)
)
DONALD LEE SCOTT, JR.) CASE NO. 07-40001
MARY E. SCOTT)
)
Debtors)

ORDER TO SHOW CAUSE

At Fort Wayne, Indiana, on May 11, 2007.

What is it about lawyers that they have such difficulty with the simple task of reading and following directions? It is something all of us generally learned by the first grade. In both its local rules and its orders, this court tries to be relatively clear – if not precise – as to how certain things are to proceed, what is to be done under particular circumstances, and what will then happen as a result. If the prescribed path is followed, and counsel does what the court has asked or expects, things operate like clockwork and cases can be processed smoothly and efficiently. Indeed, that is the very purpose for procedural rules and scheduling orders. Unfortunately, lawyers often stray from the path laid out for them and, without a word of warning or explanation, strike off in a direction of their own choosing. When that happens what was supposed to be a smooth and efficient operation immediately becomes confused and complicated.

In this chapter 13 case the debtors previously proposed a plan to which Wells Fargo Auto Finance filed objections. The court issued a scheduling order with regard to this dispute on March 23, 2007. That order gave the debtors and Wells Fargo forty-five (45) days within which to complete all discovery and to jointly file either a proposed pre-trial order or a motion to compromise. This order also indicated that if they filed a pre-trial order the court would schedule the matter for trial;

if they filed a motion to compromise the court would consider that request following notice to creditors. See, N.D. Ind. L.B.R. B-2002-2. Thus, the scheduling order put a straight-forward binary operation into place – either the parties settle or they do not, and either outcome was provided for. What could be simpler than that?

For reasons which are not apparent, debtors' counsel has chosen to ignore the two options which were made available to him and has, instead, chosen to strike off in a direction all his own. On May 9, 2007, debtors' counsel filed what he docketed as a "Second Amended Chapter 13 Plan amended to meet objection of Wells Fargo Auto Finance, Inc." Docket entry number 30. The actual document associated with this entry is titled only Second Amended Chapter 13 Plan. Nonetheless, the court is willing to take counsel at his word and accept that the purpose of this submission is to resolve the objections to confirmation which are currently before the court. Yet, in light of the court's scheduling order one can only wonder why this was done. If the debtors and Wells Fargo have actually resolved Wells Fargo's objections to confirmation, what prevented them from filing a motion to compromise and noticing that motion out to creditors as they had been directed to do? Unless we are to operate on the assumption that counsel would consciously choose to ignore or disobey the court's scheduling order – something the court does not recommend, see, Fed. R. Bankr. P. Rule 7016(f) – the court can only assume that the absence of a motion to compromise means that the parties have not resolved their dispute and that the issue of confirmation will ultimately need to be set for trial. If this is the case, however, it seems that little purpose would be served by filing an amended plan at this point in time. If the parties have not settled, the new plan will be just as objectionable to Wells Fargo as the one that went before, and for the court to process it as it normally would, by setting it for hearing and objection upon notice to all creditors, will accomplish nothing beyond delaying these proceedings. Rather than filing a plan which counsel already knows is going

to be objected to, why not proceed with the opportunity for trial that already exists and have the court to resolve the parties' factual dispute sooner rather than later?

One further alternative does present itself, and that is the possibility that the most recently filed plan could differ from its predecessor in ways other than the treatment of Wells Fargo. This possibility suggests itself because counsel has chosen to file an entirely new plan, rather than to modify the previous one in one fashion or another. If an existing plan only needs to be changed in small ways it is often easier to make those changes, and easier to understand what has been changed, if counsel files a simple modification which addresses only the portions of the plan that are being changed. Generally, it is only when changes become so many and so significant that it becomes necessary to throw out everything that has gone before and start over with an entirely new plan. Yet, even this possibility does not justify disregarding the court's scheduling order. If additional changes need to be made, the debtor can certainly propose them, see, 11 U.S.C. § 1323, and the court can decide how best to deal with them at the trial it should be scheduling with regard to Wells Fargo's objection. Depending upon the nature of those changes it might be possible to approve them without further notice or hearing. Of course, that assumes Wells Fargo's objection is overruled. If its objection is sustained, confirmation would be denied and there would be no need for the court to consider whatever changes counsel had in mind. They could simply be incorporated into any further plan the court might permit the debtors to file and then be taken up in due course.

The court has discussed the possibility of a third explanation for counsel's actions in order to emphasize that there was no need for counsel to stray from the path laid out by the scheduling order of March 23. That path already had sufficient flexibility to accommodate the possibility of any additional changes counsel might wish to make. Counsel only had to follow it and this case could smoothly come before the court for a decision concerning confirmation. As it is, however, counsel's

most recent filing has totally disrupted the process, thereby needlessly complicating and delaying these proceedings, and there was no reason to do so.

The court's preference for lawyers doing what they are supposed to do when they are supposed to do it has a purpose beyond the simple obedience to judicial orders – although that in itself would seem to be reason enough. The entire purpose of orders such as that of March 23, is to try to streamline proceedings making them more efficient, expeditious, and economical, for all concerned – debtors, creditors, trustees and the court. If the debtors and Wells Fargo have resolved the objections to confirmation a simple motion to compromise which, absent objection, would be considered by the court without a hearing, following twenty (20) days notice to all creditors, is all that would be required. See, N.D. Ind. L.B.R. B-2002-2. If the objection has not been resolved, the issue is going to have to go to trial one way or the other and no reason presents itself why sooner is not better, especially since the parties have already had ample time for discovery. As indicated above, if changes to the proposed plan need to be made they can be discussed at the scheduled trial and the court can then decide the best and most expeditious way of accommodating the debtors' wishes. Depending on the nature of those changes, notice to creditors might not be required, and even if it is required that notice might not need to go to all of the debtors' creditors.

Instead of giving the court the opportunity to consider the matter and allowing it to choose the most efficient and expeditious way of considering confirmation of debtors' desired plan, counsel has taken it upon himself to determine how the case should proceed by filing an entirely new second amended plan. Thus, the court is seemingly presented with two options. It could take this entirely new filing and start the entire confirmation process anew. This would require the court to schedule a hearing, which would be held upon notice to all creditors, and establish new deadlines for all creditors to file objections to confirmation. Of course, since the trustee is the one that is responsible

for serving the notice concerning all this, debtors' counsel does not much care because the burdens that go with it will not fall upon him. The other option would be for the court to schedule a status conference so that it could discuss the second amended plan with debtors' counsel and the trustee and then determine how best to proceed. Yet, that risks even further delaying consideration of confirmation by the time spent waiting to get to the status conference. Furthermore, neither of those two options addresses the possibility that Wells Fargo's objections to confirmation have not been resolved and that at the end of the process of additional hearings and additional notices this case is going to be in precisely the same posture it is right now – which is that the debtors and Wells Fargo are at odds over the confirmability of the debtors' proposed plan and that issue will have to be submitted to the court following trial. The only difference is that, in traveling back to this very same point, a lot of time will have been wasted and additional burdens will have been placed upon the trustee, creditors and the court: everyone except debtors' counsel. That is completely unreasonable. Given this, the court has chosen a third alternative.

Debtors' counsel shall, within ten (10) days of this date either comply with the court's order of March 23, 2007, by filing the required motion to compromise or pre-trial order, or show cause in writing why confirmation of the currently proposed plan should not be denied and why this case should not be dismissed pursuant to 11 U.S.C. § 1307(c)(1).

SO ORDERED.

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