

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
LLOYD DEWAYNE GIBSON) CASE NO. 07-10795
GAIL MARIE GIBSON)
)
Debtors)

DECISION AND ORDER

At Fort Wayne, Indiana, on May 4, 2007.

This case is pending under chapter 13 of the United States Bankruptcy Code and the court is currently scheduled to consider confirmation of the debtors' plan on May 29, 2007. That plan was filed on March 29, 2007. The schedule for proceedings to consider its confirmation was set out in an order issued on March 30, 2007, which has since been served upon all creditors and parties in interest.

On May 2, 2007, the debtors filed a motion asking to withdraw their plan, remove the currently scheduled hearing, and give the debtors thirty (30) days within which to file a new plan. What counsel wants the court to do with the new plan is not stated. Presumably counsel expects the court to start the entire confirmation process anew once a new plan has been filed.

In one sense the court probably has little reason to stand in the way of debtors' request. Only the debtors may file a plan, and the debtors are free to modify that plan anytime before confirmation. See, 11 U.S.C. §§ 1321, 1323. Consequently, it would seem that there should be no reason not to allow the debtors to freely withdraw a plan if they no longer want the court to consider its confirmation. Despite this, the court must also recognize that there should be no reason for the

debtors to have to do so. The court's order scheduling proceedings concerning confirmation specifically contemplated that the plan might be modified or amended prior to confirmation and it includes a mechanism by which this can be done. The court asks only that the modification or amendment be filed and served upon all creditors and parties in interest no later than twenty (20) days before the last day for filing objections to confirmation. Even if the debtors are not able to comply with that timetable, not every change or modification to the plan needs to be noticed or noticed to all creditors. Whether or not notice is needed, and to whom notice should be given, is a function of the nature of the changes. It is only material changes to the plan – changes which adversely affect the rights of creditors – which need to be noticed out and then notice need only be given to the creditors whose rights are being so affected. Immaterial changes can be approved without any notice whatsoever.

In this instance, the debtors' motion indicates that they feel the need to change their proposed plan based upon a change in the debtors' income and expenses and because of something which occurred at the § 341 meeting. Depending upon the nature of the contemplated changes, notice might not be needed and, even if additional notice is needed, it is entirely likely that the court could establish a procedure for giving that notice at the currently scheduled hearing. See, N.D. Ind. L.B.R. B-2002-2(e). If so, the issue of the confirmability of the debtors' yet to be proposed plan could well come before the court sooner than it would by withdrawing the currently proposed plan, waiting for a new one, and then restarting the entire confirmation process from square one. The court cannot tell until it actually knows what the debtors propose to do and the motion does not provide this information. Presumably, the debtors know because they have already come to the conclusion that the currently proposed plan needs to be changed and they probably have a very good idea of how it

needs to be changed. Accordingly, the court cannot see any good reason why the debtors need to withdraw their currently proposed plan and need an additional thirty (30) days within which to file a new one. In view of the available alternatives, to allow that plan to be withdrawn, and then sit back and wait for the debtors to file yet another plan before the court proceeds to re-engage the machinery of the confirmation process – machinery which has already been set in motion – would seem to accomplish little beyond unnecessarily delaying these proceedings.

Debtors' motion is therefore DENIED. The currently scheduled confirmation hearing will remain on the court's calendar and if debtors intend to modify or change their proposed plan, they can do so prior to that hearing.

SO ORDERED.

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