

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
PAUL D. ALEJANDRO) CASE NO. 07-12436
JENNIFER L. ALEJANDRO)
)
Debtors)

DECISION DENYING CONFIRMATION

At Fort Wayne, Indiana, on December 6, 2007.

The open question in this chapter 13 case involves the confirmability of the debtor's proposed plan. The issues raised by confirmation and the objections thereto filed by the trustee and Bank of America/FIA Card Services by eCAST Settlement Corporation are scheduled to come before the court for trial on the afternoon of December 10, 2007. See, Order dated November 1, 2007. The order scheduling trial required all three parties to "jointly file appropriate stipulations of fact, witness and exhibit lists no later than seven (7) days prior to the scheduled trial." Because the bar has demonstrated an increasingly common propensity to ignore the court's deadlines, the order went on to provide:

The failure to do so will constitute a waiver of the opportunity to submit evidence or arguments and may subject the matter to a summary disposition without further hearing.

The deadline has come and gone. Debtor's counsel, the trustee, and Bank of America/FIA Card Services by eCAST Settlement Corporation have failed to file the required joint submissions¹; neither have they sought an extension of time within which to do so. Accordingly, the court finds

¹The court notes that on December 6, 2007, the debtor and the objecting creditor, eCAST Settlement Corporation, filed a joint stipulation which indicates that neither of them intends to call witnesses or present evidence at the scheduled trial, however, the trustee is not a party to this agreement.

that they have waived the opportunity to submit evidence or arguments with regard to the issues raised by confirmation and the objections thereto filed by the trustee and Bank of America/FIA Card Services by eCAST Settlement Corporation, and it is appropriate to dispose of the matter without further hearing.

The debtor bears the burden of proving that the proposed plan is worthy of confirmation. In re Chinichian, 784 F.2d 1440, 1443-44 (9th Cir. 1986). This principle makes it relatively easy to dispose of the issue before the court, which is confirmation. In the face of an objection, without evidence it is not possible for the debtor to prove that a plan meets the requirements for confirmation. See, 11 U.S.C. § 1325. See also, Petro v. Mishler, 276 F.3d 375, 377-78 (7th Cir. 2002). Accordingly, confirmation of the proposed chapter 13 plan will be denied and the trial thereon removed from the court's calendar. An appropriate order doing so will be entered.

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