

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

IN THE MATTER OF:)
)
GERALD JOSEPH SPANNAN, SR.) CASE NO. 08-40060
CHARLENE MAE SPANNAN)
)
Debtors)

**DECISION AND ORDER DENYING
MOTION FOR POST CONFIRMATION MODIFICATION**

At Fort Wayne, Indiana, on October 10, 2008.

This matter is before the court with regard to a motion to modify a confirmed plan filed on September 17, 2008. Attached to the motion was an Amended Chapter 13 Plan, but that plan was not otherwise filed with the court. Notice of the motion was given to creditors and parties in interest and there has been no objection thereto. Despite the fact that the motion is unopposed, the court cannot properly grant it at this time.

To begin with, the notice of the motion which was served on all creditors and parties in interest fails to comply with the local rules of this court. The notice does not adequately “state the relief sought” by the motion. N.D. Ind. L.B.R. B-2002-2(c)(3). The requirements of paragraph (c)(3) contemplate the relief sought will be described with a greater degree of specificity than that which comes from simply restating the name of the motion. See also, LBR-3(a), 3(b). Furthermore, the notice does not “contain a brief summary of the ground for the motion or have a copy of the motion attached to it.” N.D. Ind. L.B.R. B-2002-2(c)(4). Although the notice states that a copy of the motion is attached to it, there is no such attachment to the notice as filed with the court. Additionally, the address of the clerk’s office to which objections should be mailed is different from the one in which the case is pending. N.D. Ind. L.B.R. B-2002-2(c)(5). Consequently, creditors and

parties in interest have not been given appropriate notice of the motion and the opportunity to object thereto.

The motion also suffers from deficiencies. By an order dated May 14, 2008, the court confirmed a Chapter 13 plan in this case. If the debtors want to change the obligations contained in their confirmed plan, the proper way to do so is to follow the procedure and meet the criteria established by the Bankruptcy Code and the applicable rules of procedure. See, 11 U.S.C. § 1329; Fed. R. Bankr. P. Rule 3015(g). That procedure does not contemplate filing a completely new plan, but only a proposed modification that simply addresses the portions of the confirmed plan that are to be changed. This proposal is supposed to be accompanied by a separate motion asking the court to approve it, which should explain the nature of the proposed changes and the reasons for making them. All creditors and parties in interest are then entitled to notice of the motion and the opportunity to object thereto. Id. See also, N.D. Ind. L.B.R. B-2002-2. There is absolutely nothing about this procedure that would require the debtors to restate and thus give everyone the opportunity to object to the parts of the plan that are not being changed; those provisions are already binding. 11 U.S.C. § 1327(a). Furthermore, this procedure also has the additional virtue of making it far easier to tell precisely what about the confirmed plan is really being changed.

By apparently trying to propose a completely new plan, the debtors have not followed the proper procedure for modifying a confirmed plan. And, even if the debtors' efforts were procedurally permissible, because of the deficiencies in the notice, creditors and parties in interest have not been given appropriate notice of the debtors' attempt. Under these circumstances, the most appropriate thing to do is begin the process anew, so that everything can be done correctly.

The debtors' motion for post-confirmation modification is therefore DENIED, without

prejudice to resubmission.

SO ORDERED.

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