

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JODI LYNN COYLE) CASE NO. 07-13611
)
)
Debtor)

DECISION AND ORDER
DENYING MOTION TO WAIVE NOTICE REQUIREMENT

At Fort Wayne, Indiana, on March 24, 2009

The debtor in this Chapter 13 case recently filed a motion to modify the confirmed plan. The modification proposes to change paragraph four of the plan to pay creditors in full. It also provides that the debtor will retain all tax refunds.

This matter is before the court on the debtor's motion which asks the court to approve the modification without the notice to creditors otherwise required.¹ In support of this request, the debtor states that the proposed modification is immaterial and does not adversely affect the rights of creditors. The court disagrees.

Pursuant to Rule 3015(g), all creditors and parties in interest are entitled to at least twenty days notice of the opportunity to object to the modification of a confirmed Chapter 13 plan. Fed. R. Bankr. P. Rule 3015(g). This rule is implemented through the court's local bankruptcy rule B-2002-2, which places the responsibility upon the movant for preparing and serving notice of the motion and the opportunity to object thereto. See, N.D. Ind. L.B.R. B-2002-2(a)(12), (b)(2), (d). The

¹The motion requests two forms of relief – one to waive notice and the other to approve the modification. It fails to comply with N.D. Ind. L.B.R. B-9013-1(a), which requires that “[e]very application, motion, or other request for an order from the court . . . shall be filed separately, except that requests for alternative relief may be filed together.” The present filing does not seek alternative relief. See, In re Minton, 2006 WL 533352, 2006 Bankr. LEXIS 4269 (Bankr. N.D. Ind. 2006).

requirement of notice, however, is subject to an exception. The court is authorized to dispense with notice “with respect to creditors who are not affected by the proposed modification.” Fed. R. Bankr. P. Rule 3015(g). See also, In re Pranger, 2006 WL 3755327 (Bankr. N.D. Ind. 2006); N.D. Ind. L.B.R. B-2002-2(a) (“Except as otherwise ordered, the court will consider the following matters without holding a hearing, unless a party in interest files a timely objection to the relief requested . . .”).

Whether the court authorizes the debtors to dispense with giving all creditors and parties in interest notice of the proposed modification is a matter committed to its discretion. Yet, as indicated by Rule 3015, the exercise of that discretion turns on whether the modification will have no impact – or at least no adverse impact – upon creditors. If creditors are going to be adversely affected by the proposed modification, they are entitled to notice before the court imposes it upon them.

In addition to paying unsecured creditors in full, the proposed modification also allows the debtors to retain all tax refunds, including those previously received. The court notes, however, that the trustee has already filed a motion to dismiss because of the debtor’s failure to turnover required tax refunds. That motion is scheduled to come before the court on April 7, 2009. At least to some extent it seems that the proposed modification might impact the basis for the trustee’s motion to dismiss, and, if approved, could prevent parties in interest from seeking conversion or dismissal because of the failure to turnover tax refunds. If so – in other words if approval of the modification would prevent creditors and parties in interest from complaining about the debtor’s prior default – depriving them of a claim they might otherwise possess would constitute an adverse impact upon their rights.

These considerations lead the court to believe that, despite its title, the proposed modification

is not an immaterial one. Its impact upon creditors and parties in interest may be sufficiently significant or sufficiently adverse such that they are entitled to notice of the motion and the opportunity to object thereto before the court considers it. Debtor's motion to approve without notice is therefore DENIED. The debtor will need to file a separate motion to approve the modification and serve notice of it in accordance with the local rules of this court. See, Minton, 2006 WL 533352, 2006 Bankr. LEXIS 4269.

SO ORDERED.

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