

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JERRY LEE HARTMAN) CASE NO. 08-13886
)
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on April 17, 2009.

This matter is before the court on debtor's motion to approve a modification to its confirmed chapter 13 plan. Normally such a request requires twenty days notice to all creditors and parties in interest of the opportunity to object thereto. See, Fed. R. Bankr. P. Rule 3015(g); N.D. Ind. L.B.R. B-2002-2. This motion, however, asks the court to approve the modification without notice or a hearing. To do so requires the court to be able to find that creditors are not affected by the proposed modification. Fed. R. Bankr. P. Rule 3015(g). Debtor tries to satisfy this requirement by representing that the proposed modification is an immaterial one – one which does not adversely affect creditors – because it proposes to increase the debtor's payments under the plan.

Whether or not a proposed modification is material or immaterial must be determined within the overall context of the case. Although the court will readily agree that a modification which does nothing more than increase payments into the plan would not usually be regarded as a material change, that may not always be the case depending on what else is going on. In this case, there is something else going on which makes the debtor's proposed change a material one. On March 20, 2009, the chapter 13 trustee filed a motion asking the court to modify the proposed plan, and there have been no objections to the trustee's motion within the time required by the court's local rules.

See, N.D. Ind. L.B.R. B-2002-2. The trustee's motion asks the court to increase the debtor's monthly payment to \$1,349.76, beginning in April 2009. The debtor's motion, on the other hand, while it also seeks to increase the payments above what is called for by the confirmed plan, only increases those payments to \$1,284.00 per month, beginning May 2009. Thus, although debtor's modification may not be a material one if viewed solely in the context of the terms of the confirmed plan, it is a material one when viewed in the context of the unobjected to modification sought by the trustee, because it calls for lower payments, beginning at a later date, than does the trustee's modification. Consequently, the court should not consider it without notice to creditors and the opportunity to object.¹ Debtor's motion to approve the modification without notice is therefore DENIED. Given that the debtor did not file its motion to modify separately from the request to do so without notice, see, In re Minton, 2006 WL 533352, 2006 Bankr. LEXIS 4269 (Bankr. N.D. Ind. 2006), if the debtor wants the court to give further consideration to its proposed modification a new motion will be required.

SO ORDERED.

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

¹As an alternative, the court could grant the debtor's motion and then, after having done so, grant the trustee's motion thereby allowing the trustee's modification to supersede the one coming from the debtor. Proceeding in that fashion does not seem to be particularly productive and would be more of a smoke and mirrors type of thing than a serious consideration of the debtor's request.