

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF INDIANA  
 FORT WAYNE DIVISION

IN THE MATTER OF:	)	CASE NO. 09-12423
	)	CHAPTER 11
FORT WAYNE FOUNDRY CORPORATION	)	
	)	
Debtor	)	JOINTLY ADMINISTERED
	)	
and	)	
	)	
COLE PATTERN AND	)	
ENGINEERING CO., INC.	)	
	)	
Debtor	)	

**DECISION**

At Fort Wayne, Indiana, on July 23, 2009.

In this chapter 11 case, NMHG Financial Services has filed a single motion seeking three different things: adequate protection, the allowance and immediate payment of post-petition obligations, and an order compelling the debtor to assume or reject equipment leases. The debtor filed an objection<sup>1</sup> and the matter is before the court to determine how to proceed on the motion and objection. Because the motion fails to comply with the court’s local rules, the most appropriate thing to do is deny it, without prejudice, and let the movant start over and do things right. Any other result would only create confusion and encourage litigants to ignore the requirements of the local rules.

Local bankruptcy rule B-9013-1(a) requires that “every application, motion, or other request

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<sup>1</sup>Movant’s counsel served a notice of the motion and opportunity to object, even though it is not among the types of relief to which that procedure applies and there was no order authorizing use of the procedure. See, N.D. Ind. L.B.R. B-2002-2(a), (e). This notice undoubtedly prompted the debtor’s objection. Yet, because the notice was not authorized by either the court or its local rules it is ineffective, Matter of Pratt, 2007 WL 241301 \*1-3 (Bankr. N.D. Ind. 2007), and so the court need not consider whether the content of the notice satisfies the requirements of local rule B-2002-2(c), although it suspects that it does not.

for an order from the court, including motions initiating contested matters, shall be filed separately, except that requests for alternative relief may be filed together.” N.D. Ind. L.B.R. B-9013-1(a). The next paragraph of the rule goes on to emphasize the point by stating: “Motions for relief from stay or adequate protection may not be joined with any other request or objection except abandonment.” N.D. Ind. L.B.R. B-9013-1(b).

The reason for the rule is to bring procedural order to the bankruptcy motion practice, see, Fed. R. Bankr. P. Rule 9013, where different types of relief may be subject to very different procedural requirements. For example, while the court is required to hold hearings on some requests, many can be considered without a hearing if no objection is filed following appropriate notice of the opportunity to do so. See, 11 U.S.C. § 102(1); N.D. Ind. L.B.R. B-2002-2. The amount of notice that must be given, whether of a hearing or of the opportunity to object, varies. In some instances it may be thirty days, but it could be twenty-five days or twenty, or only fifteen, see e.g., Fed. R. Bankr. P. Rules 3007(a) (requiring at least 30 days notice); 2002(a) (requiring at least 20 days notice); 2002(b) (requiring at least 25 days notice); 4001(b)(2), 6007(a) (requiring at least 15 days notice); sometimes, the required amount of notice is not stated and has been left to the court’s discretion. Not only can the required amount of notice differ, but the parties to whom notice is given can be different. All creditors and parties in interest are entitled to notice of some things, see e.g., Fed. R. Bankr. P. Rules 2002(a), (b); 6007(b), while others require notice to only a few specifically identified parties “and any other entity that the court directs.” See e.g., Fed. R. Bankr. P. Rule 4001(b)(2). Finally, the amount of time the court has to act upon different requests can be different: a motion for relief from stay must be the subject of some type of initial hearing within thirty days and decided within sixty, 11 U.S.C. § 362(e); the hearing on a motion to extend the automatic stay

must be completed within thirty days of the date the case was filed, 11 U.S.C. § 362(c)(3)(B); a motion to convert or dismiss a chapter 11 case must be decided within fifteen days after the hearing commences and that hearing, which must be held on at least twenty days notice to all creditors, Fed. R. Bankr. P. Rule 2002(a)(4), must begin within thirty days of the date the motion was filed, 11 U.S.C. 1112(b)(3); while other requests may not be associated with any specific time constraints.

If different requests for relief, each of which could be the subject of its own motion, could be combined into a single motion, the court would be confronted with a logistical nightmare trying to identify and satisfy all of the different notice and hearing and timing requirements that might apply to the motion's different components. Undoubtedly, it was concerns like these, and the difficulties (if not the impossibilities) that would be created if movants were allowed to join multiple requests for different relief in a single motion, that prompted the decision that Bankruptcy Rule 7018, which permits the joinder of multiple claims in adversary proceedings, should not apply to contested matters. Fed. R. Bankr. P. Rule 9014(c). Local rule B-9013-1(a) simply makes explicit what Rule 9014(c) already implicitly requires: each motion must be separate and multiple requests for relief may not be joined in a single motion.

The local rule allows only two exceptions: requests for alternative relief may be filed together and a motion for abandonment may be combined with a motion for relief from stay. N.D. Ind. L.B.R. B-9013-1(a), (b). The reasons for the exceptions are relatively straightforward. Requests for alternative relief do not ask the court to do more than one thing in a given situation but, instead, to choose between one of several options as the appropriate remedy for a particular problem. They will usually be characterized by the use of the word "or" in the motion's title or prayer, rather than the word "and," as in motion to convert or dismiss, or motion for relief from stay or adequate protection.

As for combining requests for relief from stay and abandonment, the reason that is permitted is because the facts a creditor must prove to succeed in getting relief from the stay under § 362(d)(2) – no equity in property – will also satisfy the requirements for abandonment under § 554(b) – property is of inconsequential value and benefit – and so it may be more convenient to all concerned to allow the two issues to be submitted at the same time.

NMHG Financial's motion does not seek alternative relief. It is not asking the court to do one of three different things. It wants all three, and as such constitutes at least three separate requests. Furthermore, each of those different requests would be handled by the court in a different way. In a chapter 11 case, a motion for adequate protection or relief from stay is usually set for a pre-trial conference, on notice to movant, the debtor and the creditors' committee. A motion for the allowance and payment of a post-petition, administrative claim is governed by the notice and opportunity to object procedure of local rule B-2002-2, and movant is responsible for serving all creditors and parties in interest with the required notice. See, N.D. Ind. L.B.R. B-2002-2(a)(7), Fed. R. Bankr. P. Rule 2002(a)(6). A motion under § 365(d)(2) to compel the assumption or rejection of a lease would usually be set for a brief, non-evidentiary or preliminary hearing, on notice to the debtor, the U.S. Trustee, the creditors' committee and all counsel of record.

NMHG Financial has filed a single motion, seeking three different things, which the court processes in three different ways, on different notice to different constituencies in this case. By combining them all into a single request, it has created a procedural conundrum. Should the court deal with one aspect of the motion and ignore the others, should it process the motion in three different ways, effectively treating it as three motions, or should it do something else entirely? Rather than untangle this procedural knot, a knot local rule B-9013-1 was designed to avoid, the

most appropriate thing to do is deny the motion, without prejudice, and give counsel the opportunity to begin again and do things in the right way. An order doing so will be entered.

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