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

IN THE MATTER OF:)
)
MARK A. BRYANT) CASE NO. 09-40227
ROBERTA D. BRYANT)
)
Debtors)

DECISION AND ORDER ON ORDER TO SHOW CAUSE

At Fort Wayne, Indiana, on August 24, 2009.order

On July 14, 2009, the court held a hearing with regard to confirmation of the debtors' proposed chapter 13 plan and any objections. Debtor's counsel, Brad Woolley, and the trustee, David Rosenthal, appeared for the hearing. Although Ford Motor Credit Company had filed an objection, its counsel, Harley Means, was nowhere to be seen. As a result, the court overruled the objection and, on its own motion, issued an order requiring Mr. Means to show cause in writing why he should not be sanctioned and/or required to pay the reasonable attorney fees incurred by debtors' counsel and the trustee as the result of the scheduled hearing. Mr. Means filed a timely response to the order to show cause and it is that response which brings the matter before the court for a decision.

A court's most fundamental expectations of the attorneys who appear before it are to show up and be prepared. Thus, the failure to appear is specifically identified by Rule 16(f) as the basis for sanctions. At least to the extent that the opposing party should be compensated for the reasonable costs and expenses incurred because of counsel's non-compliance, the rule is almost, but not quite, mandatory. Unless non-compliance was "substantially justified" or other circumstances would make an award "unjust," the non-defaulting party is entitled to reimbursement. As a result, the imposition of sanctions under the rule does not depend upon a finding of bad faith, willfulness, or

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contumaciousness. Matter of Sanction of Baker, 744 F.2d 1438, 1440-41 (10th Cir. 1984). A negligent failure to comply will suffice. Id. at 1441. See also, Harrell v. U.S., 117 F.R.D. 86, 88 (D. E.D. N.C. 1987); Barsoumian v. Szozda, 108 F.R.D. 426 (D. S.D. N.Y. 1985).

The court has previously stated its expectations of counsel quite clearly: “If the court needs to rule on something you have filed, you need to be there.” In re Martin, 350 B.R. 812, 817 (Bankr. N.D. Ind. 2006). “Absent a concrete understanding with opposing counsel as to what that ruling should be – in other words something that had been affirmatively agreed to by both parties – an attorney needs to appear for proceedings they are responsible for having initiated.” Id. at 816 (emphasis added). See also, Matter of Philbert, 340 B.R. 886, 891 (Bankr. N.D. Ind. 2006) (counsel’s attendance is not optional). Here there was no such understanding between the objector and debtor’s counsel, only an unconfirmed assumption. As a result, counsel’s failure to appear for the hearing was not substantially justified. Nonetheless, in the court’s opinion, there are other circumstances which would make sanctions unjust.

The court is required to hold some kind of hearing on confirmation, see, 11 U.S.C. § 1334(a), and the way this particular hearing had been scheduled it would have gone forward in any event.¹ Furthermore, it was scheduled at a time when debtors’ counsel and the trustee would have otherwise been present in the courtroom. Given the disposition of Ford Motor Credit’s objection and, more importantly, the fact that no one – not the court, not the trustee, not debtors’ counsel – appears to

¹The objection to confirmation was filed before a hearing on confirmation could be scheduled. As a result, the court scheduled the hearing to consider confirmation and any objections thereto. See, Order dated May 14, 2009. This is different from the usual practice when the court is able to schedule a hearing before any objections are filed. In order to expedite the confirmation process for cases in Lafayette, the confirmation hearing is tentatively scheduled to be held in Fort Wayne, but, if objections are filed, is automatically rescheduled for a later date on the court’s Lafayette calendar to consider particular objections.

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have been inconvenienced by counsel's absence, no sanctions are necessary at this time.

SO ORDERED.

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