

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
DENNIS PATRICK DIRINDIN,) CASE NO. 09-22572 JPK
) Chapter 13
Debtor.)

ORDER DENYING MOTION FOR RELIEF FROM THE
DEBTOR AND CO-DEBTOR AUTOMATIC STAY ("MOTION")

The Motion was filed on March 15, 2010 on behalf of Harris N.A. It was accompanied by a form of notice in the nature of that provided for by N.D.Ind.L.B.R. B-2002-2.

The Motion is sufficiently procedurally deficient to require its denial, without prejudice.

The deficiencies include the following:

1. The Motion combines both a motion for stay relief pursuant to 11 U.S.C. § 362(d) and a motion for relief from the co-debtor stay pursuant to 11 U.S.C. § 1301(c). The party-in-interest with respect to the § 362(d) motion is the debtor; the parties-in-interest with respect to the § 1301(c) motion include the co-debtor. A motion for relief from the automatic stay initiates a contested matter under Fed.R.Bankr.P. 9014. Pursuant to Fed.R.Bankr.P. 9014(c), certain provisions applicable to adversary proceedings are incorporated into contested matters. Conspicuously absent from provisions incorporated by Rule 9014(c) are Fed.R.Bankr.P. 7018, 7019 and 7020, which respectively reference to Fed.R.Civ.P. 18, 19 and 20. It is clear from the foregoing omission that the concepts of joinder of claims, and of joinder of parties, are not concepts applicable in a contested matter. A contested matter is essentially a discrete action seeking one form of relief as to a single party. Thus, the Motion does not comply with Fed.R.Bankr.P. 9014(a).
2. The Motion violates the provisions of N.D.Ind.L.B.R. B-9013-1(a) and (b).
3. A "drop dead" procedure was used with respect to the request for relief pursuant to 11 U.S.C. § 362(d). There is no authorization in N.D.Ind.L.B.R. B-2002-2(a) for the use of a

“drop dead” procedure with respect to stay relief in a Chapter 13 case.

4. The request for relief pursuant to 11 U.S.C. § 362(d) comes perilously close to not stating a claim for relief. The gist of the Motion is that the creditor has received no payment since the inception of the bankruptcy case. The debtor’s plan provides for payments to be made to Harris N.A. by the Trustee, and pursuant to 11 U.S.C. § 1326(a)(2), the Trustee cannot disburse payments under the plan until the plan has been confirmed. By separate order of the United States Bankruptcy Court for the Northern District of Indiana, the provisions of 11 U.S.C. § 1326(a)(1)(C) have been modified to preclude direct payment to the creditor, and to direct that payments under that provision only be made by Trustee disbursement.¹ As far as the Motion states, its premise has no apparent legal basis.

The court determines that the deficiencies in the Motion cannot be corrected by bifurcation of requested relief, or by severance of parties.

IT IS ORDERED that the Motion is denied, without prejudice.²

Dated at Hammond, Indiana on April 15, 2010.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
Attorney for Creditor

¹ The court willingly entertains motions which request pre-confirmation disbursements to a creditor of amounts provided for by a plan. Upon the filing of a motion requesting that relief, the court will set a hearing on the motion and itself notify all necessary parties of the hearing. The use of a “drop dead” procedure with respect to a motion of this nature is not authorized.

² The proper procedure is to file a separate motion for relief from the automatic stay under 11 U.S.C. § 362(d), and a separate motion for relief from the co-debtor stay under 11 U.S.C. § 1301(c). As provided by N.D.Ind.L.B.R. B-2002-2(a)(18), a “drop dead” procedure may be utilized with respect to a motion seeking relief from the co-debtor stay. No such procedure is available with respect to a § 362(d) motion in a Chapter 13 case; upon the filing of a motion, the court will schedule the motion for a preliminary hearing.