

Not for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
MARY C. FEE) CASE NO. 09-15562
)
)
Debtor)

**DECISION AND ORDER DENYING MOTION
TO APPROVE WITHOUT NOTICE OR HEARING**

At Fort Wayne, Indiana, on May 14, 2010.

This matter is before the court on the debtor's motion to approve a modification to its confirmed chapter 13 plan. Normally such a request requires twenty-one 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(a)(12). This motion, however, asks the court to approve the modification without notice or a hearing.¹ To do so requires the court to be able to find that creditors are not adversely affected by the proposed modification. Fed. R. Bankr. P. Rule 3015(g). The debtor tries to satisfy this requirement by representing that the proposed modification is an immaterial one because it proposes to increase the debtor's payments under the plan.

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, in this instance that does not appear to be the case. The proposed modification seeks to repay tax refunds over the

¹As a result, the motion really 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 Fort Wayne Foundry, 2009 WL 2524493, 2009 Bankr. LEXIS 2153 (Bankr. N.D. Ind. 2009); In re Minton, 2006 WL 533352, 2006 Bankr. LEXIS 4269 (Bankr. N.D. Ind. 2006).

life of the plan – a tax refund that, according to the terms of the confirmed plan, should have been paid to the trustee and distributed to creditors. Chapter 13 Plan, ¶ 5. At least to some extent it seems that the proposed modification could prevent parties in interest from seeking conversion or dismissal because of the failure to turnover the tax refund. 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 that they should be given notice of the motion and the opportunity to object thereto before the court considers it. Consequently, the court should not consider it without notice to creditors and the opportunity to object. 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 Bankr. LEXIS 4269, 2006 WL 533352 (Bankr. N.D. Ind. 2006); In re Coyle, 2009 Bankr. LEXIS 678 (Bankr. N.D. Ind. 2009); In re Hartman, 2009 Bankr. LEXIS 1312 (Bankr. N.D. Ind. 2009), 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
Chief Judge, United States Bankruptcy Court