

Not Intended for Publication and/or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
CHRISTOPHER T. SCHEUMANN) CASE NO. 10-14996
DONNA L. SCHEUMANN)
)
Debtors)

**DECISION AND ORDER DENYING
MOTION TO VACATE ORDER OF DISMISSAL**

At Fort Wayne, Indiana, on March 30, 2011.

The court's order of February 17, 2011, denied confirmation of the debtors' proposed chapter 13 plan. It also required any further plan to be filed on or before February 28, 2011, emphasizing the point by stating: "The failure to do so may result in dismissal of this case without further notice or hearing." February 28 came and went without any further plan having been filed. Two weeks later the court dismissed the case. The debtors have asked the court to reconsider the dismissal and it is that motion which is presently before the court. The motion has been filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. See, Fed. R. Bankr. P. Rule 9024. It is addressed to the court's discretion, In re Prince, 85 F.3d 314, 324 (7th Cir.1996), and may be considered without a hearing and without requiring a response. See, Dunn v. Truck World, Inc., 929 F.2d 311, 313 (7th Cir. 1991). See also, N.D. Ind. L.B.R. B-9023-1(b).

Debtors argue that their failure to file an amended plan was due to excusable neglect and so the order dismissing the case should be vacated. Counsel indicates that an amended plan had been prepared but "due to inadvertence and mistake" on his part it was not filed with the court. Brief in Support, pg. 2. What those circumstances might have been we are never told. We are only given the somewhat conclusory statement that they constitute inadvertence and mistake.

Determinations of excusable neglect are, at their core, equitable ones, taking into account all the relevant circumstances surrounding a party's omission including, among other things, the length of the delay and the reasons for it, whether that delay was within the reasonable control of the movant and its impact upon the proceedings. Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993). But, in order to be able to actually evaluate those circumstances, the court must know what they are. At a minimum, it should be told the specific reasons for delay, so that it can decide for itself whether those reasons constitute mistake or inadvertence sufficient to warrant relieving a party of an order. Id. at 391-92, 395 (explaining that Federal Rule of Bankruptcy Procedure 9006(b) requires that the movant's actions constitute "neglect" and such neglect is "excusable"). Cf., Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 557 127 S.Ct. 1955) ("naked assertions" which lack "further factual enhancement" are insufficient). The failure to comply with a clearly stated deadline, of which all concerned were apprised, does not, without knowing more, constitute excusable neglect. See, Pioneer, 507 U.S. at 394-96, 113 S.Ct. 1489. This is especially so when the consequences of the failure to comply were stated with equal clarity.¹

The court would also note that the dismissal of this case was without prejudice. See, 11 U.S.C. § 349(a). See also, Rodriguez v. Washington, 1995 WL 593081 (N.D. Ill. 1995)(dismissal without prejudice gives no just cause to complain). As a result, there is no bar to the debtors filing a subsequent case, save for the temporary nature of the automatic stay should they refile within one

¹The court notes that counsel still has not corrected the underlying problem that led to the order of dismissal. See, Tolliver v. Northrup Corp., 786 F.2d 316, 319 (7th Cir. 1986)("It would take an extraordinary set of facts – one we cannot now imagine – to make a case of 'abuse of discretion' in failing to restore to the docket a case in which the defaulting party is still in default at the time the [] judge rules on the motion to vacate.")

year. See, 11 U.S.C. § 362(c)(3).

Debtors' motion to vacate the order dismissing this case is DENIED.

SO ORDERED.

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