

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE:)	
)	CASE NO. 05-12177
FORT WAYNE TELSAT, INC.)	
)	
Debtor)	ADV. PROC. NO. 07-1286
)	
)	
R. DAVID BOYER)	
)	
Plaintiff)	
)	
vs.)	
)	
JAMES A. SIMON, et al)	
)	
Defendants)	

ORDER

The parties have recently filed a proposed pre-trial order for this litigation. In it they have asked to court to schedule the matter for a three day trial. The court’s present task is to determine whether the proposed pre-trial order contains the information required by the court’s local rules, see, N.D. Ind. L.B.R. B-7016-1(c), and is otherwise sufficient to its purpose.

The fundamental purpose of a pre-trial order is to ensure that the parties have a common understanding as to what is and is not at issue in the litigation and to convey that information to the court. That is the reason the court’s local rule, N.D. Ind. L.B.R. B-7016-1(c), specifies the information a pre-trial order should indicate or contain. A pre-trial order which satisfies the requirements of the rule and the ultimate purpose of that submission will give the reader a concise, yet complete, understanding of the relief being sought, the nature of the dispute and the respective

positions each of the parties will be taking, the facts they believe they can prove in support of their positions, and the witnesses and exhibits they will use to do so. Furthermore, it should accomplish this goal in a document which is complete and self-contained and can be understood by any reader, without regard to their familiarity with other aspects of the litigation and without the need to read other documents. When measured by this standard, the parties' pre-trial order fails to satisfy either the local rules of this court or the more important and more fundamental purpose for the pre-trial order itself.

To begin with, the court is not at all certain that the parties themselves have a common understanding as to what is being litigated in this matter or the source for that litigation. For example, although this dispute has something to do with enforcing what the parties refer to as the "Scheumann agreement," the Shoaff litigants assert that the court lacks the jurisdiction to do more than that or to entertain other claims being asserted against them by the Simon litigants. Unfortunately, it gives the court no idea what those claims might be or why the Shoaff litigants think the Simon litigants may be trying to do more. See, Proposed Pretrial Order ¶A. The parties also appear to lack any common understanding of the source of their dispute, or more precisely, the vehicle by which it has come before the court. See, N.D. Ind. L.B.R. B-7016(c)(2) (a pre-trial order shall contain a statement identifying the pleadings, motions, objections or other requests upon which the matter is at issue). The Shoaff group thinks the source of the dispute is Counts IV and V of the trustee's complaint and the Simon cross claim against them. Proposed Pretrial Order, ¶ B. Simon, on the other hand, makes no reference to a cross-claim but takes the position that the matter is at issue on the plaintiff/trustee's amended complaint, the Simon group's answer thereto, and counterclaim. Proposed Pretrial Order, ¶ C.

The court understands that this litigation has something to do with enforcing the “Scheumann agreement.” Yet, despite that fact and despite the parties’ numerous references to that agreement, nowhere in the pre-trial order is there any type of description as to what it is supposed to do or what the result of enforcing it might be. Although it is very clear that the Simon litigants want the court to enforce it according to its terms, they never really tell the court what those terms might be. See, Proposed Pretrial Order, ¶ G. Similarly, many of the Shoaff group’s contentions concerning why the court should not enforce that agreement are equally vague. For example, they make reference to multiple unfulfilled obligations which have not been satisfied, without identifying any one of them. See, Proposed Pretrial Order, ¶ H(3). Likewise, they contend the agreement was induced by fraud and Mr. Simon’s multiple false statements or omissions, without ever giving either the reader or the other side a clue as to what they might be talking about. See, Proposed Pretrial Order, ¶ H(4). Thus, despite its verbosity, the proposed pre-trial order does not give the reader a clear understanding of what this litigation is all about, and it is obvious that the parties’ proposal does not satisfy the requirements of B-7016-1(c)(4).

Finally, the court notes that the parties have failed to stipulate to a single fact. See, N.D. Ind. L.B.R. B-7016-1(c)(5). Surely, there must be at least one relevant fact they are able to agree upon. Along these same lines, although both parties have numerous exhibits, some of which are unnecessarily duplicative, they have not been able to identify a single exhibit which may be received into evidence without further proof, as required by N.D. Ind. L.B.R. B-7016-1(c)(8). This is true even though there are many instances in which the parties’ lists refer to the same exhibit, be it a document, deposition, or a transcript. While the court understands that the parties are not always able to agree as to the admissibility of all exhibits, it would seem that there should be very little

reason for a dispute over admissibility when both of them plan to use the same exhibit.

The parties have asked the court to set this matter for a three (3) day trial, and although it is usually willing to give litigants all the time they ask for, the court expects litigants to do everything they reasonably can to narrow the focus of their litigation in order to make efficient use of the time they seek. Here, the parties are requesting a substantial portion of the court's available trial time and, yet, have done so without having made any meaningful effort to work together in order to hone their dispute, the nature of their respective presentations or to otherwise minimize the demands they seek to place upon the court. To the contrary, the pre-trial order has many of the hallmarks of two ships passing in the night, where there has been little, if any, joint participation in its formulation. It is, instead, some sort of gumbo in which both sides have blindly thrown in whatever ingredients they quickly found at hand, without any real thought as to whether the finished product will be a delightful dish, in which the ingredients harmonize and compliment one another, or just a mass of slop which no self-respecting chef would want to put their name to. Sadly the parties' creation is the latter and not the former. It not only fails to contain the information required by the local rules of this court, but fails to achieve the ultimate purpose for which a pre-trial order is required. As a result, the court declines to approve it.

The parties shall have fourteen (14) days from this date to work together and jointly submit an amended pre-trial order which fully satisfies the court's requirements. The failure to do so may result in the dismissal of this adversary proceeding without further notice.

SO ORDERED.

Dated: June 12, 2009.

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