UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

Rufus Walden,

Debtor.

CASE NO. 05-72465

CHAPTER 13

JUDGE MASSEY

Rufus Walden,

Movant,

v.

Drive Financial Services,

Respondent.

CONTESTED MATTER

ORDER

Drive Financial Services filed a Default Motion for Relief from Stay on May 22, 2006, asserting that Debtor was in default under a Consent Order entered on April 25, 2006 by failing to be current with the Chapter 13 Trustee and by failing to amend his plan by April 5, 2006. The Court granted the motion on June 9 but vacated that Order in an Order entered on July 13, which determined that Debtor was current as of May 3, 2006, the date of the letter sent by Drive Financial's attorneys to Debtor contending he was in default. At a hearing held on August 8, 2006, Drive Financial contended that the Court had erred in its calculations and overlooked a post-confirmation modification of the plan filed on February 20, 2006, which increased the monthly plan payment to $1,098.

Debtor filed his plan on July 8, 2005 and proposed plan payments of $525 per month (not $507 as the July 13 Order stated). An employer deduction order calling for biweekly deductions of

$243 from Debtor's salary was entered on July 12, 2005. Under 11 U.S.C. § 1326, Debtor was required to commence making plan payments on August 8, 2005, 30 days after the plan was filed. The Court confirmed the plan in an Order entered on November 8, 2005. In 2005, Drive Financial Services filed a motion for stay relief, but the hearing on that motion was continued until it was finally on the calendar on March 29, 2006.

On February 20, 2006, Debtor filed a modification to his confirmed plan, proposing to raise the plan payments to $1,098 a month. This proposed modification was probably in response to Drive Financial's motion for stay relief. The hearing on the modification was on March 29, 2006, and the modification was approved in an Order entered on March 30. Hence, the first periodic payment in respect to the increase was due to be made beginning in April.

On February 27, 2006, the Trustee moved to dismiss the case on the ground that Debtor was delinquent in making plan payments. The attachment to that motion showed that plan payments had been regular since August 25, 2005. Thus, the problem giving rise to that motion was either that the employer deducted payments from Debtor's pay but did not remit them during the last half of June, July and the first half of August or that the employer is delaying two months to remit payments or that the employer did not deduct the payments for the June to mid-August period and Debtor failed to make the payments to the Trustee directly. The confirmation of the plan mooted any contention that Debtor had been delinquent based on payments not made in the summer of 2005. Nonetheless, the Trustee moved to dismiss the case in a motion filed on February 17, 2006, in which the Trustee contended Debtor was delinquent. That motion was put on the April 5 calendar and was resolved in a Consent Order entered on April 17, 2006. That Order in effect resolved the question of whether Debtor was delinquent by concluding that as of April 5, he was not.

In a Consent Order entered on April 25, 2006, Drive Financial and Debtor agreed on terms that would resolve the motion for stay relief that Drive Financial had filed in 2006. The Court has no record of when the Consent Order was presented, but it was not effective until it was entered. The hearing on Drive Financial's stay relief motion was held on March 29, 2006. It is possible that the Consent Order was presented shortly after that hearing, but it is rare for the Court not to sign an order for weeks after it has been presented.

That Consent Order required Debtor to perform tasks that it was impossible for him to perform. In particular it required him to file an amendment to his plan by April 5, but Debtor had not done so. The Court is confident that Drive Financial's attorney, who prepared that Order, did not contact Chambers with a message that the Order had to be entered prior to April 5. That Order implied, and the Court interprets that Order, as an agreement that as of April 25, the Debtor was current with the Trustee. The Court would not have entered that Order had Drive Financial contacted the Court and pointed out that Debtor was not current.

From time to time in past years, I have declined to enter proposed orders that set deadlines that had passed. I failed to catch this discrepancy in the April 25 Consent Order. The delinquency letter sent to Debtor was dated May 3, 2006, a mere 8 days after the Consent Order was entered, but the defaults alleged already existed on April 25.

The import of a consent order that purports to settle a dispute is that neither party is in default as of the moment such an order is entered. Such an order might require a party to cure an existing default, but the cure date should be after the order is entered. If time is of the essence, a written order should be presented promptly after the dispute is resolved or the parties should ask for an oral order on the record to be embodied in a written order entered subsequent to the hearing at which the oral order is made. To present a consent order that purports to settle a dispute but is in

fact a time bomb that will go shortly after it is entered based on acts or omissions that occurred prior to its entry is to undermine confidence in the use of consent orders to settle disputes.

Although this Order concludes that enforcing the April 25 Consent Order would be fundamentally unfair to the Debtor, Debtor's counsel has been lax in carrying out the deal that the parties thought they had reached. This raises the question of the value of the services counsel has performed. A deal made in a proposed consent order, like a plan, is not a mere hope; it is a promise, albeit one that is not enforceable until the order is entered. Consent orders are extremely important in this business. Making deals is more efficient than litigating. Deals are more likely to reflect the reality of what a debtor can do financially. Hence, making a deal and then not following through on the deal undermines not just that deal but faith in compromise that greases cases through this system.

For these reasons, it is

ORDERED that the automatic stay remains in place in this case, and the Consent Order entered on April 25, 2006 is VACATED. Drive Financial is free to schedule a new hearing on its original motion for stay relief at the earliest possible date, and it may contact the Courtroom Deputy Clerk to set such a hearing specially.

Dated: August 10, 2006.

James E. Massey

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE