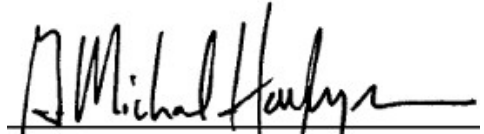


THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:



DATED: November 8, 2018


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Patricia Reed,

Case No. 18-26531-GMH

Chapter 13

Debtor.

**ORDER REQUIRING THE DEBTOR TO SHOW CAUSE WHY THE COURT
SHOULD NOT DISMISS THE DEBTOR'S BANKRUPTCY CASE**

On July 31, 2018, Ocwen Loan Servicing LLC objected to confirmation of the debtor's chapter 13 plan. CM-ECF Doc. No. 20. The court set an evidentiary hearing on plan confirmation for October 5, 2018, and ordered the parties to file exhibits, witness lists, and pretrial reports at least seven days before the hearing. CM-ECF Doc. No. 21. Neither Ocwen nor the debtor complied with that order, so the court overruled Ocwen's objection to confirmation, denied confirmation of the debtor's chapter 13 plan, canceled the evidentiary hearing on plan confirmation, and ordered the debtor to show cause why the court should not prohibit her from filing an amended plan and dismiss the case under 11 U.S.C. §1307(c)(5). CM-ECF Doc. No. 32.

On October 9, 2018, debtor's counsel filed a letter explaining that he "wrongfully assumed" that the court would adjourn the evidentiary hearing on plan confirmation at the parties' request to allow them "to resolve the matter without a hearing." CM-ECF Doc. No. 34, ¶9. Counsel conceded that he should have filed the debtor's prehearing materials as ordered "even though the opposing parties" had agreed between "themselves to delay [the] proceedings for purposes of reaching an agreement". *Id.* ¶11. Finally, counsel asked that the court "not prohibit the filing of an amended plan and dismiss this case". *Id.* ¶12.

On October 23, 2018, the court held a hearing on its show-cause order, at which debtor's counsel largely reiterated what he had written in his letter to the court. See CM-ECF Doc. No. 36. Counsel reported that the debtor could file an amended plan within seven days. CM-ECF Doc. No. 35, at 4:56–5:02. The court deemed its show-cause order satisfied and ordered the debtor to file an amended plan on or before November 2—i.e., within ten days after the hearing. See CM-ECF Doc. No. 36. The court entered an order so providing on October 24. *Id.*

The debtor did not timely file an amended plan. Instead, on November 7 (five days after the court-ordered deadline), debtor's counsel entered text on the docket "withdraw[ing]" the debtor's latest plan amendment "because [the] original plan was correct". Counsel then filed a certificate of service stating that a member of his staff "served a copy of the Plan" by mailing it to Ocwen's registered agent. CM-ECF Doc. No. 38. Finally, counsel filed a letter acknowledging that the court ordered the debtor to file an amended plan and explaining that the debtor did not comply with that order "because the Original Plan filed with the Court on July 2, 2018 (CM-ECF Doc. No. 5) was feasible as proposed" and correctly provided for "Lien Avoidance in Section 3.4". CM-ECF Doc. No. 39. This course of conduct was ill conceived.

After the court denied plan confirmation and *ordered* the debtor to file an amended plan, the debtor had three options: (a) timely file an amended plan; (b) file a

request to modify the order; or (c) stand in contempt of the order. The record and counsel's letter make clear that the debtor neither timely filed an amended plan nor sought to modify the court's order requiring her to do so. Thus, the debtor chose option (c). That the debtor thought that she could cure the problem that led the court to deny plan confirmation by withdrawing her previous plan amendment does not change the fact that the debtor knowingly refused to comply with a court order and that the debtor is therefore in contempt.

Moreover, a debtor cannot by docket entry "withdraw" a pre-confirmation plan amendment (referred to in the Bankruptcy Code as a "modification"). Pre-confirmation plan modification in a chapter 13 case is governed by 11 U.S.C. §1323, which provides that "[t]he debtor may modify the plan at any time before confirmation" —so long as the plan as modified meets the requirements of 11 U.S.C. §1322—and that, "[a]fter the debtor files a [pre-confirmation] modification . . . , the plan as modified *becomes the plan.*" 11 U.S.C. §1323(a) & (b) (emphasis added). Section 1323 does not distinguish between plan terms based on whether a pre-confirmation modification added (or subtracted) them from the plan. To change a plan's terms—even terms added by a pre-confirmation amendment—a chapter 13 debtor must *further amend* the plan in accordance with the requirements of chapter 13 and in the manner provided by applicable federal and local procedural rules.

Under this court's rules, "[t]he debtor must use the court's Notice and Request to Amend Unconfirmed Chapter 13 Plan form when filing any pre-confirmation amendment to the plan." Local Rule 3015(c)(1) (Bankr. E.D. Wis. 2017). To comply with this rule (and to ensure adequate notice of the plan as modified), a debtor seeking to abandon or alter provisions of an unconfirmed plan that the debtor previously added by filing a plan amendment must file and serve notice and a request to modify the plan to eliminate those provisions. The debtor's "withdrawal" of her previously filed pre-confirmation plan amendment failed to comply with this rule.

The record demonstrates that the debtor knowingly and intentionally disobeyed the October 24, 2018 order requiring her to file an amended plan by November 2, 2018. The record further establishes that the plan as modified by the debtor on August 14, 2018, is the plan, notwithstanding the attempt by debtor's counsel to "withdraw" the debtor's pre-confirmation plan modification.

Therefore, IT IS ORDERED that the debtor must show cause in writing on or before **November 19, 2018**, why the court should not deny her additional time to file an amended plan and dismiss this case under 11 U.S.C. §1307(c)(5).

IT IS FURTHER ORDERED that the operative plan is the plan as modified by the debtor on August 14, 2018.

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