

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Edsel & Pam Lowell
Debtors.**

**Chapter 13 Case
07-10348**

ORDER
SUA SPONTE DISMISSING CHAPTER 13 CASE

The record in this chapter 13 case presents a one year history of procedural deficiencies, and has led the Court to conclude that the Debtors are not capable of reorganizing under chapter 13.

The procedural history is as follows: On June 5, 2007, the Debtors filed a petition seeking relief under chapter 13 of the Bankruptcy Code (doc. # 1), as well as a chapter 13 plan (doc. #3). On June 12, 2007 a notice was issued (doc. # 12) setting a show cause hearing in the case for July 3, 2007, based upon the Debtors' failure to file several required documents that were due by June 20th; the Debtors ultimately filed all outstanding documents by July 2 and the hearing was cancelled. Creditor Caterpillar filed an objection and supplemental objection to the plan (doc. ## 19, 25). On July 23, 2007, the Debtors filed an "amended plan" dated June 5th as well as amended schedules (doc. ## 26, 27), and on July 25, 2007, the Debtors filed a "first amended chapter 13 plan" dated July 23, 2007 (doc. # 30). On July 31st an additional show cause hearing was set due to some outstanding deficiencies with respect to the amended schedules; the hearing was set for August 16, 2008. On August 10, 2007, the IRS filed an objection (doc. #34) to the first amended plan. However, notwithstanding their outstanding objections, Caterpillar and the IRS consented to repeated continuances of the confirmation hearing. On August 15, 2007, a third show cause notice was issued (doc. # 38) to set a hearing regarding deficient documents.

After several stipulated continuances, confirmation hearing was held in the case on September 20, 2007 and at that time, despite the Debtors having had over four months to adjust the plan and negotiate with creditors, the plan was not confirmed, the Court directed the Debtors to file an amended plan by October 15th, and the hearing adjourned to November 15, 2007. The Debtors failed to comply with that Order. On October 17th, the Debtors filed a "second amended chapter 13 plan" (doc. # 50), with a motion to extend the due date by two days (so that the filing would be timely) (doc. # 49), and further amended schedules (doc. # 51).

On October 30, 2007, a stipulated order was entered granting Caterpillar relief from stay (doc. # 55). On November 15, 2007, another confirmation hearing was held and although it appeared the plan might be ready for confirmation, that plan was ultimately never confirmed. A status conference followed, on February 28, 2008, and at that hearing the Court directed the Debtors to file an amended plan and an amended schedule F by March 10, 2008, and continued the confirmation hearing to March 20, 2008. On March 10th the Debtors filed a “third amended chapter 13 plan” and set a hearing (using the default procedure) for April 10, 2008, which was later rescheduled to April 24th on the consent of all interested parties. On March 17th, the IRS filed an objection (doc. # 63) to the third amended plan. At the April 24th hearing, the plan was once again not ready or eligible for confirmation. Based upon the Debtor’s testimony, the Court granted the Debtors one last opportunity to create a record demonstrating that the Debtors were able to reorganize under chapter 13. The Court directed the Debtors to file a fourth amended plan, and amended schedules showing that the new plan was feasible, by May 8, 2008 and specifically admonished the Debtors that if they failed to timely file these documents or were not successful in obtaining confirmation of that plan at the May 15th hearing, their case would be dismissed.

On May 7th, the Debtors requested a one day extension of time to file the amended schedules and the fourth amended plan (doc. # 71) and the Court entered an order granting that motion (doc. # 72), setting May 9th as the due date for the amended schedules and fourth amended plan. That due date was five days ago and the Debtors have still not filed these documents. Accordingly, the Court finds the Debtors to be in violation of the order directing them to file these documents by May 9th.

Based upon this record, THE COURT FINDS that the Debtors have failed to fulfill the requirements of chapter 13, have failed to comply with court orders, have failed to propose a confirmable plan, and overall have caused unreasonable delay that is prejudicial to creditors. Therefore, the Court finds cause to dismiss the case under 11 U.S.C. § 1307(c)(1) and (3) *sua sponte*.

Therefore, IT IS HEREBY ORDERED that this chapter 13 case is dismissed, pursuant to 11 U.S.C. § 1307(c)(1) and (3), and the confirmation hearing set for May 15, 2008 is consequently cancelled.

SO ORDERED.

Mau 14, 2008
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge