UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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| IN RE: | § | |
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| PATRICK R. WASHINGTON and | § | Case No. 03-43611 |
| FELICIA R. WASHINGTON, | § | |
| | § | |
| Debtors. | § | |

**MEMORANDUM OPINION AND ORDER**
**DENYING DEBTORS' RECONSIDERATION MOTION**

Patrick R. Washington and Felicia R. Washington (collectively, the "Debtors") initiated this bankruptcy case by filing a petition for relief under Chapter 13 of the Bankruptcy Code on August 4, 2003. The Court entered an order confirming the Debtors' Chapter 13 plan on February 26, 2004. The Debtors Chapter 13 plan, as later modified, required the Debtors to "pay the sum of $830 per month for 58 months, plus application of the Debtors' 2003 income tax refund of $6,222.00 upon entry of this Order, for a total of $54,362.00 . . . ."[1]

The Debtors failed to make their monthly plan payments in August, September and October 2005. As a consequence of the Debtors' payment defaults, the Chapter 13 trustee filed a motion to dismiss the case. Prior to a hearing on the Chapter 13 trustee's dismissal motion, the Debtors and the Chapter 13 trustee submitted an Agreed Order on Trustee's Motion to Dismiss (the "Agreed Order") to this Court. The Agreed Order provided that the Debtors' case

[1] The original confirmation order required the Debtors to "pay the sum of $830 per month for 58 months for a total of $48,140.00 …." The Court subsequently modified their plan to include the 2003 tax refund, and the Debtors appealed. On September 28, 2007, the District Court for the Eastern District of Texas entered an order affirming this Court's order modifying the plan.

would be dismissed if (1) the Debtors failed to cure their then-existing payment defaults or to remain current on their required monthly payments to the Chapter 13 trustee, and (2) the Chapter 13 trustee filed a certification of non-compliance with this Court. The Court entered the Agreed Order on August 12, 2005.

On September 5, 2007, the Chapter 13 trustee filed a Certificate of Non-Compliance with the Court (the "Certificate").[2] In the Certificate, the Chapter 13 trustee stated that the Debtors had failed to make their payments due for the months of August and September 2007. The Debtors and their bankruptcy counsel were served with a copy of the Certificate but took no immediate action in this Court. The Court entered an Order of Dismissal (the "Dismissal Order") on September 10, 2007, dismissing the Debtors' case.

This matter is now before the Court on the First Amended Debtors' Motion to Vacate Dismissal Order and Reinstate Chapter 13 Case Pursuant to Federal Rule of Bankruptcy Procedure 9023 and 11 U.S.C. § 105 (the "Reconsideration Motion") filed by the Debtors. The Debtors, having failed to make all required Chapter 13 plan payments or to comply with the Agreed Order, request that the Court vacate its Dismissal Order and reinstate their bankruptcy case.[3] The Debtors state in their Reconsideration Motion that the Chapter 13 trustee does not

[2] The Chapter 13 trustee filed an Amended Certificate of Non-Compliance on September 6, 2007. The Amended Certificate of Non-Compliance was identical to the original but added a second address for service upon the Debtors.

[3] Although the Debtors state in the Motion that they signed the Agreed Order without the advice of counsel, the Debtors have not sought to vacate the Agreed Order pursuant to Rule 60(b).

oppose the relief they request and, indeed, the Chapter 13 trustee has filed no objection to the Debtors' Reconsideration Motion.

Rulings of bankruptcy courts are not intended as mere first drafts, subject to revision and reconsideration by the agreement of the litigants. *See In re Von Volkmar*, 218 B.R. 890 (Bankr. N.D. Ill. 1998). Motions to alter or amend a judgment under Rule 59(e) "serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989) (citations omitted). A Rule 59(e) motion should not be granted unless there is: (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *See, e.g., Schiller v. Physicians Resource Group, Inc*., 342 F.3d 563, 567 (5th Cir. 2003); *Russ v. Int'l Paper Co.*, 943 F.2d 589, 593 (5th Cir. 1991).

Here, there is no dispute that the Debtors were in default of their plan payment obligations or that cause existed to dismiss their case when the Chapter 13 trustee filed the motion to dismiss. *See* 11 U.S.C. §1307(c)(6). Through the Agreed Order, the Debtors received an opportunity to cure their default and continue with their bankruptcy case. The Debtors subsequently defaulted under the terms of their Chapter 13 plan as well as the Agreed Order by again failing to make required plan payments, and there is no dispute that the Debtors remained in default at the time the Court entered the Dismissal Order. The Debtors have offered no explanation for their defaults or for their inability to cure their defaults

prior to dismissal, but simply argue that it would be manifestly unjust to dismiss their case since they now have the ability to bring their plan payments current. Likewise, the Debtors have offered no defense to the dismissal of their case based on their material default with respect to their confirmed plan. *See* 11 U.S.C. §1307(c)(6). The Court concludes that, under the circumstances, the Debtors have failed to establish grounds for relief from the Dismissal Order pursuant to Rule 59(e).

With respect to the Debtors' request for relief from the Dismissal Order pursuant to §105(a) of the Bankruptcy Code, the Court's powers under §105(a) are limited. This provision only "authorizes bankruptcy courts to fashion such orders as are necessary to further the substantive provisions of the Code," and does not permit those courts to "act as roving commission[s] to do equity." *In re Southmark Corp.*, 49 F.3d 1111, 1116 (5th Cir. 1995) (citations and internal quotations omitted). Here, the Debtors failed to identify any substantive provision of the Bankruptcy Code that would be furthered by vacating the Dismissal Order or abrogating the terms of the Agreed Order. The Debtors simply argue that to dismiss their case and thereby deny them a fresh start would be contrary to the purpose of the Bankruptcy Code. However, in order to be entitled to a fresh start, the Debtors must have first complied with the terms of the Bankruptcy Code, the requirements of their Chapter 13 plan, and the orders of this Court.

**IT IS THEREFORE ORDERED** that the First Amended Debtors' Motion to Vacate Dismissal Order and Reinstate Chapter 13 Case Pursuant to Federal

Rule of Bankruptcy Procedure 9012 and 11 U.S.C. § 105 [Dkt. No. 56] shall be, and it is hereby, **DENIED**.

Signed on 11/8/2007

Brenda T. Rhoades SR

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE