

SIGNED.



Dated: January 26, 2010

James M. Marlar

JAMES M. MARLAR
Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

ROBERT W NICHOLS and MARY ANN
NICHOLS,

Debtors.

Chapter 13

No. 4:05-bk-02153-JMM

MEMORANDUM DECISION

The Debtors filed a Chapter 13 petition on April 21, 2005. An order confirming the Debtors' Chapter 13 plan was entered on December 12, 2005 (DN 46).

An appeal was taken from that confirmation order, by creditor Louise Whipple. On January 3, 2007, the Bankruptcy Appellate Panel ("BAP") vacated the confirmation order, and directed the bankruptcy court to dismiss the case.

Consistent with the directive on remand, this court dismissed the Debtors' Chapter 13 case on January 29, 2007 (DN 79). The case was then closed by the Clerk.

Thereafter, on March 16, 2007, Ms. Whipple filed a motion for sanctions against the Debtors' attorney. However, since Ms. Whipple took no steps thereafter to either reopen the case at that time, or to perfect and pursue the matter further, that motion sat in the closed file for what is now approaching its three-year anniversary.

1 Now, on January 21, 2010, almost three years to the day since the BAP's decision,
2 Ms. Whipple has returned to this court, seeking to prosecute a sanctions case against the Debtors'
3 attorney, Scott Gibson. Her "authority" for doing so is a concurring opinion, in the BAP case, by
4 Judge Christopher M. Klein, wherein Judge Klein added what he termed "an observation" about
5 Debtors' counsel's handling of the Chapter 13 case. In his concurrence, not joined by the other
6 members of the panel and thus lacking binding effect on this court, Judge Klein felt it was best to
7 "leave counsel to the mercy of the bankruptcy court and the Arizona bar disciplinary authorities."
8 Ms. Whipple has now waited almost three years to press forward on her sanctions' grievance.
9 This is too late, and the equitable doctrine of laches prevents her from continuing this course of
10 action. In addition, the BAP did not grant her, in its decision, any authority to so move. It should
11 be noted that a concurrence containing a mere "observation" from a single member of the BAP,
12 carries no directive value. Even the concurrence implied that the bankruptcy court was free to
13 exercise its discretion on the point.
14

15
16 Exercising its discretion, this court declines to hear the latest motion of Ms.
17 Whipple, feeling that this case's long three-year rest should not be disturbed. A separate order
18 will be entered which denies Ms. Whipple's motion to reopen, with prejudice. Any aggrieved
19 party shall have 14 days after entry within which to appeal. FED. R. BANKR. P. 8002. No
20 motions for reconsideration of any type shall be entertained. Ms. Whipple's sole remedy,
21 henceforth, shall be by appeal.
22
23

24 DATED AND SIGNED ABOVE.
25
26

1 Copies to be sent by the Bankruptcy Notification
Center ("BNC") to the following:

2 Robert W Nichols and Mary Ann Nichols, Debtors

3 Ronald S. George, Attorney for Louise Whipple

4 Scott D. Gibson, Attorney for Debtors

5 Dianne C. Kerns, Chapter 13 Trustee

6 Office of the U.S. Trustee

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26