

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Modesto, California

April 20, 2009 at 3:00 P.M.

1. 08-92803-A-13G BRADY/VERONIKA POST HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
3-9-09 [28]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to commence making plan payments and has not paid approximately \$7,422.48 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c) (1) & (c) (4).

Also, a review of the proposed plan reveals that Wachovia Mortgage holds a secured, long term claim that is provided for in Class 1 of the plan. There are pre-petition arrears on this claim that must be cured through the plan. The plan provides for this cure as well as the maintenance of post-petition contract installment payments by the trustee as permitted by 11 U.S.C. § 1322(b) (5).

General Order 05-03 provides at paragraph 3(a): *"The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c) (2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."*

At paragraph 5(c) (2), the General Order provides: *"To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."*

The debtor in this case has not given the trustee a checklist for the Class 1 secured claim held by Wachovia Mortgage. This has delayed payment to this creditor to its prejudice. This is cause for dismissal. See 11 U.S.C. § 1307(c) (1).

2. 05-90208-A-13G ROSEMARIE SAMARRIPA
RDG #2

HEARING - MOTION FOR
ORDER OF DISMISSAL
3-24-09 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the case will remain pending.

The motion seeks dismissal because the plan does not provide for one or more secured claims. 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C)). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not dismissal. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

3. 09-90609-A-13G ROBERT WATROUS
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
3-30-09 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The 15-day period has expired without any of these documents being filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

4. 09-90714-A-13G CENON/GLORIA QUISOL HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
4-3-09 [11]

Final Ruling: The trustee has voluntarily dismissed the motion. Therefore, the case will remain pending.

5. 08-92617-A-13G STEVEN CONTRERAS HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
3-19-09 [24]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on December 3, 2008. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court's order denying confirmation was filed on February 20, 2009. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

6. 09-90421-A-13G JOSE SEGOVIANO JR. HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-31-09 [10]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on February 19. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on March 6. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was April 5. The schedules and statements were not filed on or before the 45th day. Thus, on April 6, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

7. 09-90322-A-13G JOSE/HERMELINDA SANCHEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-17-09 [11]

Final Ruling: The motion will be dismissed because it is moot. The case was previously ordered dismissed.

8. 09-90323-A-13G ANDRE AMMONS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-17-09 [13]

Final Ruling: The motion will be dismissed because it is moot. The case was previously ordered dismissed.

9. 09-90529-A-13G ROBERT JACOBSON HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-25-09 [7]

Final Ruling: The trustee has voluntarily dismissed the motion. Therefore, the case will remain pending.

10. 08-92635-A-13G MICHAEL THEDFORD HEARING - MOTION FOR
RDG #5 ORDER OF DISMISSAL
4-2-09 [45]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$2,279.43 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

11. 08-92836-A-13G RICK/VICKY DE LA TORRE HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
4-3-09 [21]

Final Ruling: The trustee has voluntarily dismissed the motion. Therefore, the case will remain pending.

12. 09-90536-A-13G ROMAN ALVAREZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-24-09 [10]

Final Ruling: The motion will be dismissed because it is moot. The case was previously ordered dismissed.

13. 08-92041-A-13G DONALD/CAROL DAVIS HEARING - MOTION FOR
RDG #4 ORDER OF DISMISSAL
3-2-09 [53]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor agreed with the trustee to propose a modified plan rather than seek confirmation of the plan initially proposed by the debtor. The debtor then failed to promptly file and serve a modified plan and a motion to confirm it. The failure to abide by the agreement with the trustee and to confirm a plan has caused delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(3) & (c)(4).

14. 04-90147-A-13G MARK/CHRISTINE HOLDER HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-16-09 [90]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor has failed to pay to the trustee approximately \$4,512.41 as required by the confirmed plan. The foregoing has resulted in delay that is prejudicial to creditors and is a material breach of the plan. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(6).

Second, the debtor has further breached the plan by failing to pay all dividends within the duration set by the plan.

15. 09-90153-A-13G CLIFFORD/CYNTHIA HURT HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-9-09 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on January 22. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The initial period to file those documents expired on February 6. See Fed. R. Bankr. P. 1007(c). The court extended that deadline to February 16. They were not filed by the extended deadline.

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was March 8. The schedules and statements were not filed on or before the 45th day. Thus, on March 9, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

16. 08-92754-A-13G LOUIS/LYNDA SPARKS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-24-09 [45]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was converted from one under chapter 7 to a case under chapter 13 on March 5. Therefore, Form 22C and a proposed plan should have been filed no later than March 20. They were not filed by March 20. This delay is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1301(c)(1).

While the documents were filed on April 4, this was after the trustee set the meeting of creditors. As a result, the trustee was unable to serve the proposed plan on all creditors as required by Fed. R. Bankr. P. 3015 and by General Order 05-03, ¶ 3(a)(1). This means that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a). A review of the docket reveals that no such motion has been filed and served. Once again, the debtor has delayed confirmation of a plan to the prejudice of creditors.

17. 09-90161-A-13G EFREN/LUISA SASING HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-9-09 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on January 23. Therefore, a proposed plan should have been filed no later than February 7. It was not filed by this deadline. This delay is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1301(c)(1).

While the plan was filed on March 6, this was after the trustee set the meeting of creditors. As a result, the trustee was unable to serve the proposed plan on all creditors as required by Fed. R. Bankr. P. 3015 and by General Order 05-03, ¶ 3(a)(1). This means that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a). A review of the docket reveals that no such motion has been filed and served. Once again, the debtor has delayed confirmation of a plan to the prejudice of creditors.

18. 09-90463-A-13G SCOTT/GENA BUCHANAN HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-31-09 [15]

Final Ruling: The trustee has voluntarily dismissed the motion. Therefore, the case will remain pending.

19. 09-90264-A-13G AJIT SANDHU HEARING - MOTION FOR
RDG #5 ORDER OF DISMISSAL
4-2-09 [41]

Final Ruling: The trustee has voluntarily dismissed the motion. Therefore, the case will remain pending.

20. 09-90170-A-13G JOHN/MELISSA ALCORN HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-9-09 [21]

Final Ruling: The trustee has voluntarily dismissed the motion. Therefore, the case will remain pending.

21. 09-90171-A-13G JUAN RANGEL HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-9-09 [20]

Final Ruling: The motion will be dismissed because it is moot. The case was previously ordered dismissed.

22. 09-90478-A-13G MARTHA LARRY HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-19-09 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on February 26. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The initial period to file those documents expired on March 13. See Fed. R. Bankr. P. 1007(c). They were not filed by that deadline.

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was April 12. The schedules and statements were not filed on or before the 45th day. Thus, on April 13, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

23. 09-90382-A-13G JAVIER VASQUEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
3-17-09 [11]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on February 13. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The initial period to file those documents expired on February 28. See Fed. R. Bankr. P. 1007(c). They were not filed by that deadline.

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was March 30. The schedules and statements were not filed on or before the 45th day. Thus, on March 31, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

24. 08-92183-A-13G LAWRENCE QUALLS
RDG #2

HEARING - MOTION
FOR ORDER OF DISMISSAL
3-17-09 [35]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor agreed with the trustee to propose a modified plan rather than seek confirmation of the plan initially proposed by the debtor. The debtor then failed to promptly file and serve a modified plan and a motion to confirm it. The failure to abide by the agreement with the trustee and to confirm a plan has caused delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(3) & (c)(4).

25. 09-90684-A-13G JULIAN GOMEZ
RDG #1

HEARING - MOTION
FOR ORDER OF DISMISSAL
4-3-09 [12]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The 15-day period has expired without any of these documents being filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

26. 09-90687-A-13G MARY COLLINS
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
4-6-09 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The 15-day period has expired without any of these documents being filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

27. 08-90894-A-13G GUSTAVO SERVIN
RDG #2

HEARING - MOTION FOR
ORDER OF DISMISSAL
3-26-09 [76]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor proposed a plan and served it on all parties in interest. The court ruled at a hearing on December 22 that the plan could be confirmed. The debtor thereafter failed to lodge a proposed order with the trustee for his review and approval. As a result, no plan has been confirmed to the prejudice of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

28. 09-90294-A-13G ERIC/GINA NIES
RDG #3

HEARING - MOTION FOR
ORDER OF DISMISSAL
4-3-09 [41]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part and the case will be dismissed as to Gina Nies.

If requested by the U.S. Trustee or the chapter 13 trustee, a debtor must provide photo identification or other personal identifying information establishing the debtor's identity. See 11 U.S.C. § 521(h). Fed. R. Bankr. P. 4002(b)(1) implements section 521(h). It requires individual debtors to bring two forms of personal identification to the meeting of creditors. This identification must consist of a picture identification issued by a governmental unit or "other personal identifying information that establishes the debtor's identity...." See Fed. R. Bankr. P. 4002(b)(1)(A). The debtor must also produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, Gina Nies has breached the foregoing duty by failing to provide evidence of her social security number. This is cause for dismissal of the petition as to Ms. Nies only.

29. 09-90598-A-13G JEANNIE MILTON
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
3-31-09 [12]

Final Ruling: The trustee has voluntarily dismissed the motion. Therefore, the case will remain pending.