

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Modesto, California

August 18, 2008 at 3:00 p.m.

1. 08-91404-A-13G MARGARITO/VIVIAN CAPETILLO HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-30-08 [8]

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

2. 08-90806-A-13G DENNIS/CYNTHIA BAER HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-9-08 [25]

- 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 \$2,650 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).

3. 08-91310-A-13G JOHNNY GONZALES HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-4-08 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The petition was filed on June 30. 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 July 15. 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 August 14. The schedules and statements were not filed on or before the 45th day. Thus, on August 15, 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.

4. 07-90814-A-13G GLORIA GARCIA HEARING - MOTION FOR
RDG #1 ORDER CONVERTING CASE TO CHAPTER 7
7-21-08 [78]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be converted to one under chapter 7.

The debtor has failed to pay to the trustee approximately \$9,296 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 or conversion to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1).

A review of the schedules indicates that there is likely to be a distribution to unsecured creditors in a chapter 7 case. Hence, conversion of the case to chapter 7, not dismissal, is in the best interests of creditors. See 11 U.S.C. § 1307(c).

5. 08-91220-A-13G NIGELIA SYEED HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-4-08 [21]

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

6. 07-91326-A-13G JOSE FELIX AND HEARING - MOTION FOR
RDG #4 ROSALINDA MUNOZ ORDER OF DISMISSAL
7-9-08 [69]

- 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 \$2,829 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).

7. 08-90628-A-13G JAINANT/RANJIT SINGH HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
7-9-08 [23]

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

8. 08-91133-A-13G PARIS/GARY SCOTT HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-21-08 [14]

Final Ruling: The motion will be dismissed because it is moot. The case was previously dismissed on August 5, 2008.

9. 08-91244-A-13G MIGUEL AVILA HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-14-08 [12]

Final Ruling: The motion will be dismissed because it is moot. The case was previously dismissed on August 5, 2008.

10. 08-90847-A-13G CYNTHIA/ISRAEL RODRIQUEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-9-08 [17]

- 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 \$183 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).

11. 08-91248-A-13G RUBEN HIRISCAU HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-16-08 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The petition was filed on June 24. 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 July 9. 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 August 8. The schedules and statements were not filed on or before the 45th day. Thus, on August 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.

12. 08-91351-A-13G MARIA JIMENEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-4-08 [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 documents were not filed by the deadline. 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).

Also, the debtor failed to file a certificate to the petition together with a certificate demonstrating that she received credit counseling prior to filing the petition as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This too is cause for dismissal.

13. 08-90854-A-13G BRYAN COX HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
8-1-08 [32]
- 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 \$3,477 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).

14. 08-90559-A-13G DONALD MCANALLY HEARING - MOTION FOR
RDG #3 ORDER OF DISMISSAL
7-9-08 [31]
- 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 \$715 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).

15. 08-90959-A-13G ANGEL GOMEZ AND HEARING - MOTION FOR
RDG #1 YOLANDA FLORES ORDER OF DISMISSAL
7-14-08 [23]
- 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 \$933.85 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).

16. 08-90160-A-13G DAVID/MICHELLE STURTEVANT HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
8-4-08 [81]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case was filed on February 5. 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 May 21. 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).

17. 08-91264-A-13G EUNICE MENDOZA-MONCUR HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-16-08 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor failed to file a certificate to the petition together with a certificate demonstrating that she received credit counseling prior to filing the petition as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This is cause for dismissal.

Second, the debtor has not proposed a plan within 15 days of the filing of the petition as required by Fed. R. Bankr. P. 3015(b). Because no plan has been filed, it comes as no surprise that the debtor has failed to commence plan payments. This is cause for dismissal of the case. See 11 U.S.C. § 1307(c)(3) & (c)(4).

18. 08-90865-A-13G ROBERT/KAREN MEDINA HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
7-21-08 [30]

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

19. 08-91372-A-13G DALE/DEAN McMIHELK HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-4-08 [9]

- 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 documents were not filed by the deadline. 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).

Also, the debtor failed to file a certificate to the petition together with a certificate demonstrating that she received credit counseling prior to filing the petition as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This too is cause for dismissal.

20. 04-93974-A-13G CARLOS/GUADALUPE MONTES RDG #1 HEARING - MOTION FOR ORDER CONVERTING CASE TO CHAPTER 7 7-21-08 [168]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be converted to one under chapter 7.

The debtor has failed to pay to the trustee approximately \$4,600 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 or conversion to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1).

A review of the schedules indicates that there is likely to be a distribution to unsecured creditors in a chapter 7 case. Hence, conversion of the case to chapter 7, not dismissal, is in the best interests of creditors. See 11 U.S.C. § 1307(c).

21. 08-90375-A-13G MARK/MICHELLE DOBBINS RDG #1 HEARING - MOTION FOR ORDER OF DISMISSAL 7-25-08 [38]

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

22. 08-90986-A-13G WAYNE/LORI FREDERICK RDG #1 HEARING - MOTION FOR ORDER OF DISMISSAL 7-30-08 [34]

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

23. 08-91187-A-13G GABRIEL ARK-MAJIYAGBE RDG #1 HEARING - MOTION FOR ORDER OF DISMISSAL 7-9-08 [8]

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

24. 08-91387-A-13G KIERSTON DOWD
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
7-30-08 [9]

- 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 documents were not filed by the deadline. 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).

Also, the debtor failed to file a certificate to the petition together with a certificate demonstrating that she received credit counseling prior to filing the petition as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This too is cause for dismissal.

25. 08-90194-A-13G ERIC/KAREN JONES
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
7-22-08 [56]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case was converted from chapter 7 to chapter 13 on July 3. Therefore, the chapter 13 variant of Form 22 and a proposed plan should have been filed no later than July 18. See Fed. R. Bankr. P. 1007(b) & (c) and 3015(b). Form 22 has not been filed and the plan was filed late, on July 23.