

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 20, 2017 at 10:00 a.m.

1. 09-43612-A-11 RANDALL/PATRICIA ALBERS MOTION FOR
RLC-2 ENTRY OF DISCHARGE
3-1-17 [121]

Tentative Ruling: The motion will be denied without prejudice.

Randall Albers, the surviving debtor in this case, asks the court to enter a discharge pursuant to 11 U.S.C. § 1141(d) (5), which provides that:

"In a case in which the debtor is an individual—

"(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

"(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if —

"(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and

"(ii) modification of the plan under section 1127 is not practicable; and

"(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —

"(i) section 522(q) (1) may be applicable to the debtor; and

"(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q) (1) (A) or liable for a debt of the kind described in section 522(q) (1) (B)."

This case was filed on October 29, 2009. The order confirming the debtors' chapter 11 plan was entered on May 5, 2010.

While there is evidence that all payments under the plan have been completed, the evidence concerning the inapplicability of 11 U.S.C. § 522(q) (1) is not convincing. The debtor merely states he is "unaware of any criminal proceeding or investigation as contemplated by 11 U.S.C. § 522(q) (1) (B)." Docket 123.

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Yet, the debtor says nothing about the applicability of section 522(q)(1)(A), namely whether there has been a criminal conviction of a felony demonstrating that the filing of this case was an abuse of the Bankruptcy Code. Docket 123.

More important, the debtor admits to having claimed exemptions in the aggregate amount of \$148,149, exceeding the \$136,875 exemption limit of section 522(q)(1), a limit in force at the time this case was filed, on October 29, 2009. Docket 123; see also 11 U.S.C. § 104(c) (prescribing that "[a]djustments made in accordance with subsection (a) [including the figure in section 522(q)(1),] shall not apply with respect to cases commenced before the date of such adjustments").

Finally, the debtor has not invoked section 522(q)(2), prescribing that "[subsection (q)(1)] shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor." Dockets 121 & 123.

2. 16-27323-A-12 DANNY SMITH AND SUSAN MOTION TO
JPJ-1 KELLOGG DISMISS CASE
2-28-17 [19]

Final Ruling: The motion will be dismissed without prejudice because it was set for hearing on less than 21 days' notice, in violation of Fed. R. Bankr. P. 2002(a)(4), which requires 21 days' notice on the hearing of motions to dismiss in chapter 12 cases. The motion was served and filed on February 28, 2017, only 20 days prior to the March 20 hearing on the motion. Dockets 19 & 22.

3. 13-35835-A-7 GREG MASTERSON ORDER FOR
14-2091 APPEARANCE AND EXAMINATION
TAYLOR V. MASTERSON (GREG MASTERSON)
11-29-16 [39]

Tentative Ruling: None. The judgment debtor shall appear and be sworn in prior to the 10:00 a.m. calendar and then the judgment creditor may examine the judgment debtor outside the courtroom.

4. 12-27454-A-12 STEVEN STELLINA MOTION FOR
SAC-6 ENTRY OF DISCHARGE
1-21-17 [57]

Tentative Ruling: The motion will be denied without prejudice.

The debtor asks the court to enter his chapter 12 discharge.

11 U.S.C. § 1228(a) provides that:

"Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter,

the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

- (1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or
- (2) of the kind specified in section 523(a) of this title.”

This case was filed on April 18, 2012. The court confirmed the debtor’s chapter 12 plan on April 1, 2014. Docket 49.

The trustee filed a final report on January 18, 2017, but the report has not been approved yet. Docket 53. Given this, the court cannot grant a discharge at this time. The motion will be denied without prejudice. The motion for entry of a chapter 12 discharge will be granted.

5. 16-22163-A-7 SYLVIA KINERSON MOTION TO
16-2137 JDS-1 AMEND CLAIM
KINERSON V. KINERSON 2-9-17 [23]

Tentative Ruling: The motion will be denied without prejudice.

The plaintiff in this adversary proceeding, Mick Kinerson, the administrator of the probate estate of Lawrence Edward Kinerson, asks that his complaint, filed on July 5, 2016, be deemed a timely informal proof of claim in the underlying bankruptcy case of Sylvia Kinerson. Ms. Kinerson is the debtor in that case. Mick Kinerson, the son of the late Lawrence Kinerson, is a creditor of Ms. Kinerson. Ms. Kinerson was married to Lawrence Kinerson prior to his passing.

Mick Kinerson also asks the court to deem his late-filed formal proof of claim, filed on September 19, 2016 to be an amendment to this timely informal proof of claim.

The claims bar deadline in the underlying case was September 8, 2016.

Motions pertaining to the administration of the underlying chapter 7 bankruptcy case must be filed in that case. The court will not entertain such motions in an adversary proceeding to which the chapter 7 case trustee is not even a party.

And, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion’s factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(7), which provides: “Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).”