

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

March 31, 2014 at 2:00 p.m.

-
1. 14-20630-A-13 JOHN MCCALL MOTION TO
JPJ-1 DISMISS CASE
3-17-14 [33]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on March 12, 2014.

2. 10-41734-A-13 MICHAEL/BRANDI GIRON MOTION TO
JPJ-7 DISMISS CASE
2-25-14 [141]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion notes that the debtor has failed to lodge a proposed order confirming the plan. This has delayed distributions to creditors. However, on March 20, after this motion was filed, an order was entered confirming a plan.

3. 14-20356-A-13 RAUL GARCIA MOTION TO
JPJ-1 DISMISS CASE
3-3-14 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, this case was filed on January 15. Therefore, a proposed plan should have been filed no later than January 29. See Fed. R. Bankr. P. 3015(b). It was filed on January 30. Because it was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by Local Bankruptcy Rule 3015-1(c)(3) and (d)(1). This meant that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. Id. A review of the docket reveals that the debtor has filed a proposed plan but no motion to confirm it. This will necessarily delay confirmation of a plan and prevent the conduct of a confirmation hearing within the time required by 11 U.S.C. § 1324. This delay, then, is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the debtor has failed to pay to the trustee approximately \$100 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

March 31, 2014 at 2:00 p.m.

cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Third, the debtor failed to file Exhibit D to the petition together with a certificate for credit counseling 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.

4. 13-36168-A-13 TERRI O'BRIEN MOTION TO
JPJ-1 DISMISS CASE
3-4-14 [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 \$832 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).

5. 14-20074-A-13 JOHN ENRIQUES AND LOIS MOTION TO
JPJ-1 VASCONCELLES-ENRIQUES DISMISS CASE
3-4-14 [17]

- ☐ 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 3. Therefore, a proposed plan should have been filed no later than January 17. See Fed. R. Bankr. P. 3015(b). It was filed on January 23. Because it was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by Local Bankruptcy Rule 3015-1(c)(3) and (d)(1). This meant that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. Id. A review of the docket reveals that the debtor has filed a proposed plan but no motion to confirm it. This will necessarily delay confirmation of a plan and prevent the conduct of a confirmation hearing within the time required by 11 U.S.C. § 1324. This delay, then, is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

6. 13-34679-A-13 YOLANDA GIBSON MOTION TO
JPJ-1 DISMISS CASE
3-10-14 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

This case was filed on November 26, 2013. 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, 2014. 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).

However, after the trustee filed his dismissal motion, a modified plan and a motion to confirm it were filed, served and set for hearing on May 12, 2014. On condition that the modified plan is confirmed, the case will remain pending. In the event it is not confirmed on May 12, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a plan by that date will cause undue delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

7. 14-20584-A-13 JAMES HAYES
JPJ-1

MOTION TO
DISMISS CASE
3-17-14 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The debtor failed to provide the trustee with a copy of this return. This failure, and the debtor's inability to demonstrate that the failure to provide the copy to the trustee was due to circumstances beyond the control of the debtor, requires that the case be dismissed.

Second, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, the debtor is not eligible for chapter 13 relief because Schedule F shows that the debtor owes \$548,957 in noncontingent, liquidated unsecured debt. This exceeds the \$383,175 maximum permitted by 11 U.S.C. § 109(e).

Fourth, this case was filed on January 23. Therefore, a proposed plan should have been filed no later than February 6. See Fed. R. Bankr. P. 3015(b). It was filed on February 19. Because it was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by Local Bankruptcy Rule 3015-1(c)(3) and (d)(1). This meant that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. Id. A review of the docket reveals that the debtor has filed a proposed plan but no motion to confirm it. This will necessarily delay confirmation of a plan and prevent the conduct of a confirmation hearing within the time required by 11 U.S.C. § 1324. This delay, then, is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

8. 13-34795-A-13 IRVALENE BLOUNT
JPJ-1

MOTION TO
DISMISS CASE
3-12-14 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Local Bankruptcy Rule 3015-1(e) provides:

"When no objection is filed to the proposed chapter 13 plan, a confirmation order shall be lodged within fourteen (14) days of the expiration of the deadline for filing objections. The confirmation order shall identify the plan by the date it was filed. If an objection is filed but is overruled, an order confirming the plan and overruling the objection shall be lodged within fourteen (14) days after conclusion of the hearing on the objection. The order shall conform substantially with Form EDC 3-081, Order Confirming Plan."

The debtor failed to timely lodge the confirmation order even though no objections to confirmation were filed. Further, the debtor failed to lodge an order granting a valuation order within 14 days of the January 6 hearing even though directed to do so by the court.

The debtor's failure to diligently prosecute the case is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c).