UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 26, 2015 at 10:00 a.m.

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1. 11-42606-A-12 GARY GUERRERO — MOTION FOR ENTRY OF DISCHARGE
SAC-6 — 4-4-15 [52]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the chapter 12 trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion for entry of a chapter 12 discharge will be granted.

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 September 19, 2011. The court confirmed the debtor's chapter 12 plan on December 2, 2011. Dockets 18 & 44. The debtor does not have any domestic support obligations.

First, the trustee has filed a final report and the time to file objections to it has expired. Dockets 47 & 48. The report was filed on February 26, 2015 and the last day to file an objection to the report was on March 31, 2015. Id. The report was approved on April 2, 2015. Docket 51. The trustee's report demonstrates that the debtor has made the payments required by the plan and that the trustee has made the payments to creditors required by the plan.

Dockets 47 at 2 & 18 at 1. The requirement imposed by 11 U.S.C. § 1228(a) that the debtor receive a discharge only after completion of all payments under the plan has been satisfied.

Second, the debtor has filed a certificate in connection with this motion that the debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a); Docket 54 at 1. No objection has been filed to that certificate and the time to file an objection has expired.

Finally, by service of this motion, the debtor has given all creditors notice that 11 U.S.C. § 522(q)(1) is not applicable, and that there is no pending 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 specified in section 522(q)(1)(B). No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1228(f).

2. 14-20348-A-11 JOE/CAROL MOBLEY — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
CAH-8 — 4-21-15 [148]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The debtor's counsel, C. Anthony Hughes, has filed a first and final motion for approval of compensation. The requested compensation consists of $17,467.50 in fees and $0.00 in expenses. This motion covers the period from January 16, 2014 through March 3, 2015. The court approved the movant's employment as the chapter 11 debtor's attorney on April 16, 2014. In performing services, the movant charged hourly rates of $150 and $375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) analyzing estate asset issues, such as valuation, (2) preparing for and attending the IDI and meeting of creditors, (3) communicating with the United States Trustee, (4) preparing and reviewing pleadings and documents, such as motions and reports, (5) attending court hearings, (6) preparing, filing and prosecuting valuation and sales motions, (7) responding to stay relief, cash collateral prohibition, and conversion / dismissal motions, (8) preparing plan and disclosure statement, (9) communicating with various parties about plan confirmation, (10) reviewing and analyzing proofs of claim, (11) communicating with the debtor about various issues, and (12) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will

be approved.

3. 15-21063-A-7 BRUCE WILLIAMSON
15-2038 SNM-2
WILLIAMSON V. UNITED STATES OF AMERICA ET AL.,

MOTION TO DISMISS UNITED STATES OF AMERICA AND DEPARTMENT OF TREASURY
4-16-15 [20]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the defendants and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the claims against the United States of America and the United States Department of Treasury will be dismissed.

The plaintiff, Bruce Williamson, the debtor in the underlying chapter 7 case, seeks dismissal of the claims asserted against the United States of America and the United States Department of Treasury.

Fed. R. Civ. P. 41(a)(2), as made applicable here via Fed. R. Bankr. P. 7041, provides that "Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice."

Neither the United States of America, nor the United States Department of Treasury have filed an answer to the complaint. No counterclaims are pending against the plaintiff. Accordingly, the adversary proceeding will be dismissed as to the United States of America and the United States Department of Treasury. The motion will be granted.

4. 14-24689-A-11 ROY SMALLY AND VIVI MITCHELL-SMALLY
UST-1

MOTION TO CONVERT OR TO DISMISS CASE
4-29-15 [95]

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

The U.S. Trustee moves for dismissal, pursuant to 11 U.S.C. § 1112(b), arguing bad faith and diminution of the estate along with absence of a reasonable likelihood of rehabilitation, as causes under section 1112(b)(1).

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

Bad faith exists here and it is cause for dismissal or conversion under section 1112(b)(1). Bad faith is determined by examining the totality of the circumstances. Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994); Ellsworth v. Lifescape Medical Assocs. (In re Ellsworth), 455 B.R. 904, 917 (B.A.P. 9th Cir. 2011); Morimoto v. United States of America (In re Morimoto), 171 B.R. 85, 86 (B.A.P. 9th Cir. 1994); In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

"The bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present."

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

This is the debtors' third bankruptcy case since May 1, 2013. The debtors filed two chapter 13 cases in 2013 (Case Nos. 13-26110 & 13-29665), both of which were dismissed. The debtors were represented by counsel in both chapter 13 cases. The second of the two prior chapter 13 cases, Case No. 13-29665, was dismissed because:

- the debtors had failed to make $200 in plan payments (11 U.S.C. § 362(c)(4)(D)(i)(II)),

- the debtors failed to cooperate with the chapter 13 trustee by not providing him with their federal income tax return, as required by 11 U.S.C. § 521(e)(2)(B) & (C), and

- the debtors failed to cooperate with the chapter 13 trustee by not providing him with the Domestic Support Obligation Checklist, designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

Case No. 13-29665, Docket 35.

This case was filed on May 2, 2014. The court denied the debtors' motion for extension of the automatic stay, meaning that this case has been pending without a stay in effect. The filing of this case will not keep creditors at bay while the debtors attempt to reorganize. Therefore, to the extent creditors are depending on this case to be paid, they likely will be disappointed because other creditors are free to pursue their nonbankruptcy remedies against the debtors and their property.

Moreover, this case has been pending for over an year without a plan being confirmed. The debtors filed a plan and disclosure statement on August 30, 2014 (Dockets 51 & 52), but withdrew their motion for conditional approval of the disclosure statement on December 9, 2014 (Docket 82). Since then, no new

plan has been filed. And, as the debtors themselves admit, they have received no response from Marin Mortgage about a proposed plan treatment.

The multiple bankruptcy filings, delay in prosecution of this case, and prejudice to creditors amount to unfair manipulation of the Bankruptcy Code and bad faith. This is cause for dismissal or conversion under section 1112(b)(1).

As the debtors have no or nominal nonexempt equity in assets, the court will dismiss rather than convert the case to chapter 7. The debtors' three real property assets are over-encumbered and $60,637 of their $66,487 in personal property assets have been claimed as exempt. Docket 1, Schedules A, B, C, and D.

The motion will be granted and the case will be dismissed.

5. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
JHH-7 — 5-5-15 [134]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor's counsel, Judson Henry, has filed a first interim motion for approval of compensation. The requested compensation consists of $7,000 in fees and $0.00 in expenses. This motion covers the period from December 6, 2014 through April 20, 2015. The court approved the movant's employment as the chapter 11 debtor's attorney on February 11, 2015. In performing services, the movant charged an hourly rate of $250. The movant's fees are capped at $19,000. The movant has not reached the cap yet.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) analyzing estate asset issues, such as valuation, (2) preparing for and attending the IDI and meeting of creditors, (3) communicating with the United States Trustee, (4) preparing pleadings and documents, such as motions and reports, (5) attending court hearings, (6) preparing, filing and prosecuting valuation motions, (7) communicating with the debtor about various administration issues, and (8) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.