

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 21, 2014 at 2:00 p.m.

1. 10-31610-A-13 KELLY MOMOH MOTION TO
JPJ-3 DISMISS CASE
6-3-14 [42]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The trustee's Notice of Filed Claims was filed and served on March 29, 2011 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 102 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

2. 13-28417-A-13 PAUL/SARAH HAMM MOTION TO
JPJ-3 DISMISS CASE
7-2-14 [50]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor has failed to discharge the duties required by 11 U.S.C. § 521(f), Section 6.02 of the confirmed plan, and Local Bankruptcy Rule 3015-1(b)(5) by

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providing the trustee with a copy of the debtor's 2013 income tax return as well wage and income documentation. This failure to cooperate with the trustee also violates 11 U.S.C. § 521(a)(3) and warrants dismissal of the case.

3. 11-43322-A-13 JOHN/VICKI MEDEIROS MOTION TO
JPJ-1 DISMISS CASE
6-3-14 [41]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The trustee's Notice of Filed Claims was filed and served on September 19, 2012 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 42 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 36 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

4. 14-22790-A-13 AMANDA SHRINER MOTION TO
JPJ-1 DISMISS CASE
6-24-14 [58]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case was filed on March 19, 2014. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained an objection to confirmation on May 27, 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).