

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

October 14, 2014 at 2:00 p.m.

1. 14-28304-A-13 ZE LO
JPJ-1

MOTION TO
DISMISS CASE
9-26-14 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency before the petition is filed. In this case, the certificate evidencing that briefing indicates that it was received after, not before, the petition was filed. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Second, the debtor failed to appear at the meeting of creditors on September 25 as required by 11 U.S.C. § 343. This breach of duty is cause to dismiss the petition. See 11 U.S.C. § 1307(c)(6).

Third, the debtor has failed to commence making plan payments and has not paid approximately \$730.87 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).

Fourth, 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.

Fifth, 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).

October 14, 2014 at 1:30 p.m.

2. 14-26623-A-13 ROBERT/NICHOLA DANIEL MOTION TO
JPJ-1 DISMISS CASE
9-15-14 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

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 at a hearing on August 18. 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 moved to dismiss the case, the debtor filed a modified plan and a motion to confirm it that will be considered by the court on November 17. On condition that the modified plan is confirmed, the case will remain pending. In the event it is not confirmed on November 17, 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).

3. 10-41626-A-13 CRISANTO TONGOL MOTION TO
JPJ-2 DISMISS CASE
9-19-14 [64]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The trustee asked the debtor to produce income documentation for 2013 and 2014 but the debtor has not produced it. This documentation must be produced pursuant to Local Bankruptcy Rule 3015-1(b) (5) which provides: "Upon the trustee's request, the debtor shall provide the trustee with a copy of any tax return . . . and furnish the trustee with periodic financial information regarding the debtor's business or financial affairs."

The failure to provide the information to the trustee hinders his ability to determine whether the plan should be modified. See 11 U.S.C. §§ 1307(b) (2) (C), 1329. This ultimately is prejudicial to creditors and is cause for dismissal.

4. 13-34247-A-13 LORRAINE LITTLE-DENNIS MOTION TO
JPJ-3 DISMISS CASE
9-29-14 [66]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor has failed to pay to the trustee approximately \$1,851 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).

Second, the debtor has failed to lodge an order granting a motion to approve a modified plan. The failure to do so has delayed distributions to creditors pursuant to the modified plan to their prejudice. This too is cause for dismissal.

5. 10-25252-A-13 LESLIE SAWYER MOTION TO
JPJ-5 DISMISS CASE
9-29-14 [106]

- 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 \$18,718 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).

6. 14-28570-A-13 REBECCA ERWAY MOTION TO
JPJ-1 DISMISS CASE
9-29-14 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, according to the proposed plan, the debtor owes a domestic support obligation. Local Bankruptcy Rule 3015-1(b)(6) provides:

"In addition to the duties imposed on a chapter 13 debtor by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and elsewhere in these Local Bankruptcy Rules, the following duties are imposed on chapter 13 debtors:

. . .

The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, Domestic Support Obligation Checklist, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant State child support enforcement agency (see 42 U.S.C. §§ 464 & 466). . . ."

The debtor failed to deliver to the trustee the Domestic Support Obligation Checklist. This checklist is designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

The trustee must provide a written notice both to the holder of a claim for a domestic support obligation and to the state child support enforcement agency. See 11 U.S.C. §§ 1302(d)(1)(A) & (B). The state child support enforcement agency is the agency established under sections 464 and 466 of the Social Security Act. See 42 U.S.C. §§ 664 & 666. Section 1302(d)(1)(C) requires a third, post-discharge notice to both the claim holder and the state child support enforcement agency.

The trustee's notice to the claimant must: (a) advise the holder that he or she is owed a domestic support obligation; (b) advise the holder of the right to use the services of the state child support enforcement agency for assistance in collecting such claim; and (c) include the address and telephone number of the state child support enforcement agency.

The trustee's notice to the State child support enforcement agency required by section 1302(d)(1)(B) must: (a) advise the agency of such claim; and (b) advise the agency of the name, address and telephone number of the holder of such claim.

By failing to provide the checklist to the trustee, the debtor has disregarded the order that it be provided, has breached the duty to cooperate with the trustee imposed by 11 U.S.C. § 521(a)(3) & (a)(4), and has caused delay to the prejudice of creditors. This is cause for dismissal. See 1307(c)(1).

Second, this case was filed on August 22. Therefore, a proposed plan should have been filed no later than September 5. See Fed. R. Bankr. P. 3015(b). While one was filed on August 22, a modified plan was filed on September 18. Because the modified plan was filed after the trustee had caused service of the original plan with the notice of commencement of case as required by Local Bankruptcy Rule 3015-1(c)(2) & (3), the modified plan was not served on anyone. This meant that it is incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See Local Bankruptcy Rule 3015-1(d)(1). A review of the docket reveals that the debtor has not filed a motion nor has the debtor served the plan. 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 deadline is 45 days after the meeting of creditors. That date is November 9 in this case. But, to set a hearing on confirmation consistent with Fed. R. Bankr. P. 2002(b) and Local Bankruptcy Rule 3015-1(d)(1) and 9014-1(f)(1) requires 42 days of notice of the hearing. Assuming the debtor filed and served a motion to confirm the modified plan on October 14, the earliest the hearing could take place is November 28, a date after the November 9 deadline.

This delay, then, is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

7. 13-21871-A-13 LAWRENCE MASSA MOTION TO
JPJ-1 DISMISS CASE
9-30-14 [53]

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

8. 14-25075-A-13 FERNANDO RODRIGUEZ MOTION TO
JPJ-3 DISMISS CASE
9-4-14 [37]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case was filed on May 14. 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 July 30. 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).