

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 25, 2013 at 2:00 p.m.

1. 13-28804-A-13 JOHNATHAN/AUTUMN CABODI MOTION TO
JPJ-1 DISMISS CASE
10-29-13 [48]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it because the court sustained an objection to the plan's confirmation on or about September 30. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

2. 13-32915-A-13 CLARENCE MCGREGOR MOTION TO
JPJ-1 DISMISS CASE
11-4-13 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The petition was filed on September 25. The debtor has not filed all schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on October 9. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was November 9. The schedules and statements were not filed on or before the 45th day. Thus, on November 10, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

November 25, 2013 at 2:00 p.m.

3. 09-33938-A-13 REBECCA NICHOLS MOTION TO
JPJ-2 DISMISS CASE
10-14-13 [45]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan has a duration of 60 months. The debtor is now in her 52nd month under the plan. Because a claim has been filed by a secured creditor that is higher than assumed by the plan, and because the plan requires that this claim be paid in full, it will take 73 to perform the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan.

This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

4. 09-46246-A-13 JEFFERY/CAROLE ADELL MOTION TO
JPJ-1 DISMISS CASE
11-6-13 [42]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan has a duration of 50 months. The debtor is now in the 47th month under the plan. Because claims exceeded the total amount assumed by the debtor when drafting the plan, it will take 60 to perform the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan.

This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

5. 13-33657-A-13 STEVEN HERRON MOTION TO
JPJ-1 DISMISS CASE
11-6-13 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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.

6. 09-32358-A-13 MARYLOUISE PADLO MOTION TO
JPJ-2 DISMISS CASE
10-14-13 [45]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The plan has a duration of 60 months. The debtor is now in the 52nd month under the plan. Because a claim has been filed by a secured creditor that is higher than assumed by the plan, and because the plan requires that this claim be paid in full, it will take 86 to perform the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan.

This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this motion was filed, the debtor filed a tardy objection to a claim. If sustained, the plan will be completed within 60 months. Therefore, provided the objection to the claim to be heard on December 16 is sustained, the case will remain pending. If not sustained, the case will be dismissed on the trustee's ex parte application.

7. 13-29062-A-13 NAZILA EDALATI MOTION TO
JPJ-1 DISMISS CASE
10-15-13 [22]
- 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 because the court sustained an objection to its confirmation. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, given the debtor's efforts to file amended tax returns, she will be given additional time to file those returns and file a modified plan and a motion to confirm to confirm it. If a plan is not confirmed within 75 days, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a modified plan within a reasonable time will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

8. 13-33385-A-13 SHERRIE CUNNINGHAM
JPJ-1

MOTION TO
DISMISS CASE
11-4-13 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor filed Exhibit D to the petition with a statement that the debtor had received credit counseling prior to filing the petition. However, the debtor failed to file the certificate evidencing completion of the counseling within 14 days after filing the petition as required by 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.

9. 13-30287-A-13 RODNEY/CHANDRA LAMBERT
JPJ-1

MOTION TO
DISMISS CASE
10-22-13 [41]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it because the court sustained an objection to the plan's confirmation on or about September 30. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).