

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 16, 2015 at 2:00 p.m.

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| 1. 14-27941-A-13 STEPHEN OCONNOR
JPJ-1 | MOTION TO
DISMISS CASE
2-20-15 [35] |
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Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$10,900, five monthly plan payments, as required by the last 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).

Also, the court denied confirmation of the last plan proposed by the debtor and the debtor has failed, despite having more than five months to do so, to proposed a modified plan. This fact suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This too is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

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| 2. 15-20047-A-13 RICHARD BROWN
JPJ-1 | MOTION TO
DISMISS CASE
2-19-15 [20] |
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Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor failed to file a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). While a certificate was filed, it shows that the debtor received the counseling after rather than before the bankruptcy case was filed. Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This is cause for dismissal.

Second, the debtor failed to appear at the meeting of creditors 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, 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).

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, this case was filed on January 6. Therefore, a proposed plan should have been filed no later than January 20. See Fed. R. Bankr. P. 3015(b). It was filed on January 26. Because it was of this, the trustee was unable to serve the plan with the notice of commencement of case as required by General Order 05-03, ¶ 3(a)(1). 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 General Order 05-03, ¶¶ 3(a)(2) & 8(a). 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 delay, then, is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c)(1).