

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

March 22, 2022 at 1:30 p.m.

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| 1. | <u>21-24304</u> -C-13
<u>KMM</u> -1 | ARMANDO/BETH DEL REAL
Julius Cherry | OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
2-22-22 [<u>15</u>] |
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Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 18.

<p>The Objection to Confirmation of Plan is sustained.</p>

Wells Fargo Bank, N.A. as Trustee for the MASTR Asset Backed Securities Trust 2007-NCW Mortgage Pass-Through Certificate Series 2007-NCW ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. Plan fails to cure the entire amount of pre-petition arrears of \$40,847.02.
2. The plan payment includes all of the debtors' monthly net income but is insufficient to provide for the additional arrears of \$8,347.02 that are not included in the debtors' plan.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. as Trustee for the MASTR Asset Backed

March 22, 2022 at 1:30 p.m.

Securities Trust 2007-NCW Mortgage Pass-Through Certificate Series 2007-NCW, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the March 22, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 63 days' notice was provided. Dkt. 30.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 27) filed on January 17, 2022.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, David Sergio Castro, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Chapter 13 Plan (Dkt. 27) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

3. [21-22036](#)-C-13 MEGAN ADCOCK
[GC-1](#) Julius Cherry

CONTINUED MOTION TO CONFIRM
PLAN
10-18-21 [[31](#)]

Final Ruling: No appearance at the March 22, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 57 days' notice was provided. Dkt. 35.

The Motion to Confirm is denied as moot.

On March 15, 2022, the debtor filed a new proposed plan. Filing a new plan is a de facto withdrawal of the pending plan. Therefore, the Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Megan Danielle Adcock, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

4. [22-20337](#)-C-13 ALYSSA HALL
[MRL](#)-1 Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA INC.
2-16-22 [[10](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 13.

The Motion to Value is xxxxxx.

The debtor filed this Motion seeking to value the portion of Santander Consumer USA Inc., dba Chrysler Capital's ("Creditor") claim secured by the debtor's property commonly known as 2019 Dodge Journey (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$18,000. Declaration, Dckt. 12. Creditor has provided evidence that the value of the property at the time of filing was \$25,325.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 24, 2019, which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9) (hanging paragraph).

Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. Because there is a disputed material fact, the Matter must be set for evidentiary hearing.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is xxxxxxxxxx

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 70.

The Motion to Modify is ~~xxxxxxx~~.

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 65) filed on February 10, 2022.

The Chapter 13 Trustee filed an Opposition (Dkts. 72, 75) on February 28, 2022 and March 8, 2022, respectively, opposing confirmation on the following grounds:

1. Debtors plan does not meet the liquidation test of 11 U.S.C. § 1325(a)(4).
2. The plan is not feasible because to meet the liquidation test the plan's monthly payments would need to be at least \$85 more than proposed.
3. The debtors have not filed the attachment to Schedule I that provides for the debtors' business income and expenses to determine whether the plan is feasible.
4. The plan appears to over-state the amount of post-petition arrears payments to Select Portfolio than the Trustee's records indicate.

DISCUSSION

At the hearing, ~~xxxxxxx~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxx~~

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 19 days' notice was provided. Dkt. 15.

The Motion to Extend the Automatic Stay is xxxxx.

Nathaniel Jones ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on February 18, 2022, after Debtor was delinquent in plan payments and unable to file an amended plan in a timely manner that constituted unreasonable delay under 11 U.S.C. § 1307(c)(1). Order, Bankr. E.D. Cal. No. 21-23202, Dkt. 53. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because xxxx.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay terminates as to Debtor, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay never goes into effect in the bankruptcy case when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith

under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

At the hearing, xxxxxxxx

The Motion is xxxxxx.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Nathaniel Jones having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to extend the automatic stay, is xxxxxxxx.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 57 days' notice was provided. Dkt. 96.

The Motion to Confirm is ~~xxxxxxx~~

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 92) filed on January 24, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 99) on February 24, 2022, opposing confirmation on the following grounds:

1. The Plan does not specify how mortgage forbearance arrears will be paid to class 1 creditor, JP Morgan Chase Bank, Chase Mortgage.

DISCUSSION

At the hearing ~~xxxxxxxxxxx~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Katrina Teresa Nobel, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is ~~xxxxxxx~~

Final Ruling: No appearance at the March 22, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 37.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtor, Jennifer Ramel, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Modified Chapter 13 Plan (Dkt. 34) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.