

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 28, 2017 at 1:00 p.m.

- [illegible]

CASE DISMISSED: 03/17/17

Final Ruling: No appearance at the March 28, 2017, hearing is required. This case was dismissed on March 17, 2017. The order to show cause is discharged as moot.

The court will enter an appropriate minute order.

March 28, 2017 at 1:00 p.m.

Tentative Ruling: Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The court's decision is to grant the motion to short sell.

This matter was continued from February 21, 2017, to allow Wells Fargo Home Mortgage and Wells Fargo Bank, N.A. to provide their final approval as to the short sale of property described as 35 Willotta Drive, Fairfield, California ("Property").

On March 19, 2017, Wells Fargo Home Mortgage Short Sale Consent Letter First Mortgage and Wells Fargo Home Equity Short Sale Consent Letter Second Mortgage were filed as supplemental exhibits by the Debtor. Dkt. 53.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to short sell the Property.

According to Debtors' motion and declaration, the proposed purchasers Joshua Knoll and Makenzi Knoll have agreed to purchase the Property for \$720,000.00. Dkts. 39, 41. However, the Residential Purchase Agreement and Joint Escrow Instructions attached as Exhibit A state a total purchase price of \$710,000.00. Dkt. 43. On the other hand, the supplemental exhibits filed March 19, 2017, indicate an approved purchase price of \$720,000.00. Dkt. 53. The first and second mortgages held by Wells Fargo Home Mortgage and Wells Fargo Bank, N.A., respectively, will be paid off through escrow with sale proceeds pursuant to agreement by the lenders to accept less than the full amount due. The Debtor will receive no proceeds from the short sale of the property.

While the Debtor requests waiver of a 14-day period under Rule 6004(g), the court interprets that the Debtor actually requests waiver of the 14-day stay under Rule 6004(h).

At the time of the hearing the court will announce the proposed sale, determine if a short sale agreement is approved and, if so, request that all other persons interested in submitting overbids present them in open court.

The court will enter an appropriate minute order.

3. [16-28414](#)-B-13 ARTHUR/TRISHA WHITTEN
JPJ-1 Peter G. Macaluso
Thru #4

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
2-9-17 [[33](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, Debtor Arthur Whitten failed to submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, feasibility depends on the granting of two motions to value collateral for Ford Motor Credit Company LLC as to a 2013 Ford Flex and a 2014 Ford Focus. The Debtors and Ford Motor Credit Company LLC entered into a stipulation resolving the valuation of the two vehicles. However, because the stipulated valuations are higher than the valuations alleged in Debtors' motion to value, the monthly plan payment proposed in Debtors' plan filed January 5, 2017, is not feasible.

Third, the Debtors are not putting forth their best effort to repay their creditors since they have several sources of income that are either not disclosed or incorrectly listed. The Joint Debtor receives a yearly bonus in approximately December of each year that has not been disclosed. The Debtor received a bonus of approximately \$2,592.93 in December 2016. Additionally, the Debtor has a deduction from his pay stub for \$600 per month that he testified is actually for vacation pay that is paid back to him throughout the year. This vacation pay bank account is an asset, is not disclosed or exempted on Schedule A/B or C, and should be considered part of Debtor's income and not a deduction from his pay. The plan does not appear to be proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3).

Fourth, the Debtors have failed to file their financial management course certificate and their case may be closed without entry of a discharge.

The plan filed January 5, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

4. [16-28414](#)-B-13 ARTHUR/TRISHA WHITTEN
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE
COLLATERAL OF FORD MOTOR CREDIT
COMPANY, LLC
1-19-17 [[19](#)]

Final Ruling: No appearance at the March 28, 2017, hearing is required.

The court entered an order on March 15, 2017, granting the stipulation between Debtors and Ford Motor Credit Company LLC ("Creditor") valuing the Creditor's secured claim on a 2013 Ford Flex at \$13,250.00. The claim shall be paid through the Chapter 13 plan at an interest rate of 4.00% per annum and a monthly dividend of \$245.00. The hearing set for March 28, 2017, was ordered removed from calendar.

The court will enter an appropriate minute order.

5. [16-28029](#)-B-13 BEVERLY UPCHURCH-ROBINSON ORDER TO SHOW CAUSE - FAILURE
 Pro Se TO PAY FEES
 3-10-17 [[41](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on March 6, 2017. While the delinquent installment was paid on March 16, 2017, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the March 28, 2017, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-BuTrk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to dismiss the case.

The plan filed on February 20, 2013, and confirmed on April 17, 2013, understates the priority claim of the Internal Revenue Service at \$8,536.36. The proof of claim filed by the Internal Revenue Service shows a priority debt of \$39,519.72. The confirmed plan will take a total of 108 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 48 months longer than the proposed duration of 60 months.

Pursuant to Local Bankr. R. 3007-1(d), which is applicable in cases filed on or after May 1, 2012, the Debtor was required to object to claims within 60 calendar days after service of the Notice of Filed Claims and/or file and serve a modified plan and motion to confirm it within 90 calendar days after service of the Notice of Filed Claims. The Debtor did neither of these. The failure of the Debtor to timely file objections to claims or timely file a modified plan constitutes unreasonable delay that is prejudicial to creditors. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

7. [17-20249](#)-B-13 ANGELICA OFFENBECHER ORDER TO SHOW CAUSE - FAILURE
 Steele Lanphier TO PAY FEES
 2-21-17 [[16](#)]

Final Ruling: No appearance at the March 28, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due February 16, 2017. The court's docket reflects that the default was cured on March 20, 2017. The payment of \$310.00 constituted the final installment.

The court will enter an appropriate minute order.

8. [17-20253](#)-B-13 JENNY LOPEZ
Steele Lanphier

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-21-17 [[14](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due February 16, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court's decision is to dismiss the case.

First, the Debtor did not appear at the meeting of creditors set for January 19, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$796.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$398.00 will also be due. The Debtor has not made any plan payment since this petition was filed on December 8, 2016. Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

Fourth, the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation of Chapter 13 plan and conditional motion to dismiss was heard and sustained on February 21, 2017. To date, the Debtor has not taken further action to confirm a plan in the case.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.