

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 26, 2016 at 1:00 p.m.

1. [16-20613](#)-B-13 URAL THOMAS MOTION TO DISMISS CASE
JPJ-2 Pro Se 3-30-16 [[25](#)]

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, although the Debtor filed a certificate of completion from an approved nonprofit budget and credit counseling agency, this briefing was not received during the 180-day period preceding the date of filing of the petition pursuant to 11 U.S.C. § 190(h).

Second, the Debtor has not provided the Trustee with the domestic support obligation checklist as required pursuant to Local Bankr. R. 3015-1(b)(6). The Trustee is therefore hindered from performing his duties. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,571.43, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$1,571.43 will also be due. The Debtor has failed to make any plan payments since this petition was filed on February 3, 2016. There is cause to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

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

April 26, 2016 at 1:00 p.m.

2. [11-25718](#)-B-13 ERIC/STACEY TOLES
JPJ-14 Peter G. Macaluso

MOTION TO DISMISS CASE
3-22-16 [[74](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case provided that the Debtors have cured their delinquency of \$420.00 as stated in their response to the Trustee's motion to dismiss.

Provided that the delinquency is cured, cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

3. [16-20923](#)-B-13 PHILIP MARRIA
Jeffrey P. Guyton

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-25-16 [[33](#)]

Final Ruling: No appearance at the April 26, 2016, 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 March 21, 2016. The court's docket reflects that the default was cured on April 1, 2016, by payment of \$310.00. The payment was the final installment.

4. [16-20127](#)-B-7 JESUS AVILA ORDER TO SHOW CAUSE - FAILURE
 Michael O'Dowd Hays TO PAY FEES
 3-16-16 [[33](#)]

CASE CONVERTED: 03/23/2016

Final Ruling: No appearance at the April 26, 2016, hearing is required.

5. [16-21328](#)-B-13 GABRIEL GOMEZ AND MOTION TO DISMISS CASE
 JPJ-1 ANGELICA CERVANTES 4-12-16 [[18](#)]
 David Foyil

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 Debtors, 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, neither the Debtors nor their attorney appeared at the § 341 meeting set for April 7, 2016, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtors have not provided the Trustee with a copy of their tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, the Debtors have not provided the Trustee with copies of their payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Debtors have not filed certificates of completion from an approved nonprofit budget and credit counseling agency. The Debtors have not complied with 11 U.S.C. § 521(b)(1) and are not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(h).

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

6. [11-49835](#)-B-13 RICK/SHERRI BERRY
JPJ-1 W. Steven Shumway

MOTION TO DISMISS CASE
3-22-16 [[32](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to continue the motion to May 10, 2016, at 1:00 p.m. to be heard in conjunction with the Debtors' motion to approve modified plan.

The Trustee moves to dismiss the case on the ground that the confirmed plan underestimates the amount of pre-petition arrears owed to Ocwen Loan Servicing. The Debtors did not timely file an objection to Ocwen's claim. The Trustee calculates that the confirmed plan will take a total of 78 months to complete, which is 18 months longer than the proposed commitment period of 60 months. 11 U.S.C. § 1325(b)(4).

In response, the Debtors state that they have filed a modified plan that increases payments to allow the plan to complete in 60 months. The Debtors request that the motion be denied or continued to the hearing date of the motion to approve modified plan.

The court will continue the matter to May 10, 2016, at 1:00 p.m.

7. [16-20570](#)-B-13 STEPHANIE RUSCIGNO
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-7-16 [[54](#)]

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 \$86.00 due March 9, 2016. The court's docket reflects that the default has not been cured.

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 Chapter 13 plan filed on March 21, 2016, was not included in the Notice of Chapter 13 Bankruptcy Case. The Debtor has not filed, set for hearing, and served a motion to confirm the plan as required pursuant to Local Bankr. R. 3015-1(c)(3) and 3015-1(d)(1). This is cause to dismiss the case pursuant to 11 U.S.C. § 1307(c)(1).

Second, the 45-day deadline set by 11 U.S.C. § 1324 to hold a confirmation hearing will expire on May 22, 2016. Because Fed. R. Bankr. P. 2002(b) and Local Bankr. R. 9014-1(f)(1)(B) combine to require 42 days' notice of a hearing to confirm a plan, the court cannot timely conduct a confirmation hearing. This is cause for dismissal of the case.

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

9. [16-20085](#)-B-13 ADRIAN PEREZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-14-16 [[26](#)]

DEBTOR DISMISSED: 04/03/2016

Final Ruling: No appearance at the April 26, 2016, hearing is required.

10. [15-29588](#)-B-13 BEVERLY BAKER HARRIS
JPJ-2 Matthew J. DeCaminada

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7, MOTION
TO DISMISS CASE
3-29-16 [[36](#)]

Final Ruling: No appearance at the April 26, 2016, hearing is required.

The Trustee's Motion of Convert Case to a Chapter 7 Proceeding or in the Alternative 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-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties 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 convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Jan P. Johnson ("Movant"), Chapter 13 Trustee. Movant asserts that the case should be converted based on the following grounds.

First, the Debtor has not prosecuted 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 was heard and sustained on February 1, 2016. The Debtor has not taken any further action to confirm a plan in this case.

Second, the Debtor is delinquent to the Trustee in the amount of \$15,000.00, which represents approximately 3 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$5,000.00 will also be due. The Debtor has not made any payments since this petition was filed on December 11, 2015. This is cause to dismiss the case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

Third, according to Schedules A, B, C, and D of the petition filed December 11, 2015, the total value of the non-exempt property in the estate is \$131,248.50. After accounting for the Chapter 7 Trustee fees estimated at \$9,812.42, the amount of non-exempt equity would be reduced to \$121,436.08. Conversion to a Chapter 7 proceeding would be in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing

facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has failed to prosecute this case, is delinquent in plan payments, and there is non-exempt property in the estate in the approximate amount of \$121,436.08 that is in the best interest of creditors and the estate. The motion is granted and the case is converted to a case under Chapter 7.

11. [16-21289](#)-B-13 CYNTHIA LEWIS
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-6-16 [[15](#)]

Final Ruling: No appearance at the April 26, 2016, 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 April 1, 2016. The court's docket reflects that the default was cured on April 7, 2016, by payments of \$300.00 and \$10.00. The payments constitute the final installment.

12. [16-21190](#)-B-13 ALLEN GRANADO
Thomas L. Amberg

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-4-16 [[20](#)]

Final Ruling: No appearance at the April 26, 2016, 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 March 30, 2016. The court's docket reflects that the default was cured on April 7, 2016, by payment of \$310.00. The payment was the final installment.

13. [12-36021](#)-B-13 ERNEST VALENTINE AND CONTINUED MOTION TO MODIFY PLAN
PGM-2 DIANE JOHNSON-VALENTINE 3-1-16 [[56](#)]
Peter G. Macaluso

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on March 1, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the modified plan.

The Debtors have listed a childcare expense in the amount of \$600.00 on Line 8 of amended Schedule J. The Debtors have provided a declaration to explain their obligation to their grandchildren and state that they have provided further documentation to the Trustee to support the expense of \$600.00. However, the Debtors cite no authority other than a "moral obligation" to justify this expenses. The matter was continued from April 5, 2016, and again from April 19, 2016, to provide the Debtors the opportunity to cite authority to justify the childcare costs.

The Debtors filed a supplemental reply on April 19, 2016, stating that the childcare costs for their granddaughters qualifies as "Other Necessary Expenses" that should be included in calculating their disposable income pursuant to 11 U.S.C. § 1325(b)(3) and § 707(b)(2)(A)(ii)(1). Other Necessary Expenses are expenses that meet the necessary expense test, which is defined as "expenses that are necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income." See Internal Revenue Manual § 5.15.1.7(1). The Debtors assert in their declaration that the \$600.00 childcare costs are necessary expenses to provide for their granddaughters' maintenance and daycare since the Debtors' son has no home to house his daughters or stable income to care for them.

Given the unique circumstances in this case, the court finds that the Debtors' childcare expenses are necessary to support their dependent granddaughters. The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.