

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

May 16, 2016 at 2:00 p.m.

1.	14-21238-A-13 ANTHONY HOLLOWAY JPJ-2	MOTION TO DISMISS CASE 4-5-16 [34]
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The trustee's Notice of Filed Claims was filed and served on September 17, 2014 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 52 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 36 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) and former General Order 05-03 which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6). Nonetheless, the court notes that the debtor belatedly filed a motion to confirm a modified plan that addresses the above issue. It is set for hearing on June 6. Therefore, if the proposed modified plan is not confirmed at the June 6 hearing, the case will be dismissed on the trustee's ex parte application.

May 16, 2016 at 2:00 p.m.

2. 14-20453-A-13 ANTONIO TORRES AND MOTION TO
JPJ-4 VIRGINIA NORIEGA DISMISS CASE
4-27-16 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

In breach of section 5.02 of the plan, the debtor failed to cooperate timely with the trustee and produce financial records relating to the debtor's post petition taxes and wages/income. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

3. 12-32154-A-13 WILLIAM/GINA BAYLESS MOTION TO
JPJ-2 DISMISS CASE
4-27-16 [72]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

In breach of section 5.02 of the plan, the debtor failed to cooperate timely with the trustee and produce financial records relating to the debtor's post petition taxes and wages/income. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6). However, after the deadline set by the court, the documents were produced. No prejudice has been demonstrated due to the late production.

4. 13-24363-A-13 MICHAEL/DELENA SPONSLER MOTION TO
JPJ-4 DISMISS CASE
4-27-16 [97]

Final Ruling: The trustee has voluntarily dismissed the motion. The case will remain pending.

5. 12-20765-A-13 EMANUEL/LENIECE JOHNSON MOTION TO
JPJ-1 DISMISS CASE
4-5-16 [40]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The trustee's Notice of Filed Claims was filed and served on October 24, 2012 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 117 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) and former General Order 05-

03 which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

6. 16-20883-A-13 WALTER FLETSCHER MOTION TO
JPJ-2 DISMISS CASE
4-19-16 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

the debtor is eligible for chapter 13 relief. Schedules D and F shows that the debtor owes less than \$394,725 in noncontingent, liquidated unsecured debt. See 11 U.S.C. § 109(e). The trustee's argument that the debtor exceeds this limit is premised on inclusion of \$169,670, the amount on a second mortgage held by Bank of America that exceeds the value of the debtor's residence after deducting the senior mortgage held by Shellpoint. However, because the home has a value of \$300,000, and because Shellpoint's senior lien is only \$220,790, the \$249,000 owed to Bank of America is partially collateralized. Because Bank of America is partially collateralized, none of its debt can be stripped from the debtor's home. See 11 U.S.C. § 1322(b)(2); In re Smith, 419 B.R. 826, 832 (Bankr. C.D. Cal. 2009). Therefore, none of this debt is includable as unsecured debt for purposes of eligibility.

7. 13-28188-A-13 JANICE JACKSON MOTION TO
JPJ-1 DISMISS CASE
4-5-16 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The trustee's Notice of Filed Claims was filed and served on January 22, 2014 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 54 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 40 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) and former General Order 05-

03 which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

8. 14-28688-A-13 MARK KELLEY MOTION TO
JPJ-3 DISMISS CASE
4-12-16 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to pay to the trustee approximately \$4,500 as required by the 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).

9. 14-29593-A-13 ROBERT/SUSAN BALLARD MOTION TO
JPJ-3 DISMISS CASE
4-27-16 [36]

Final Ruling: The trustee has voluntarily dismissed the motion. The case will remain pending.

10. 15-29899-A-13 JUDITH LADEAUX MOTION TO
JPJ-3 DISMISS CASE
5-2-16 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to pay to the trustee approximately \$422 as required by the last plan proposed by the debtor. 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).

Second, the debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court's order denying confirmation was filed on March 15, 2016. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).