

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

June 15, 2017 at 2:00 p.m.

1. 14-22621-A-13 MIKE/SANDRA HANSBROUGH MOTION TO
JPJ-2 DISMISS CASE
4-26-17 [68]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

In March 2017, the chapter 13 trustee made a written request to the debtor for a copy of the debtor's 2016 tax returns, 2016 W-2 statements, bank account statements for January through March 2017, pay advices for January through March 2017, and information concerning inheritances, life insurance benefits, lawsuits and claims, and gambling winnings. The debtor failed to respond to the trustee's request for information.

11 U.S.C. § 521(f)(1)-(3) provides that at the request of the trustee, an individual debtor shall file with the court current year tax returns, past due tax returns, amendments to prior year tax returns that are filed while the case is pending. Additionally, annually after the confirmation of a plan, an individual debt must file a statement under penalty of perjury of income and expenditures for the prior year, as well as a statement of the debtor's monthly income. See 11 U.S.C. § 521(f)(4).

The plan similarly provides at section 5.02: "In addition to the duties imposed upon Debtor by the Bankruptcy Code, the Bankruptcy Rules, and applicable nonbankruptcy law, the court's Local Bankruptcy Rules impose additional duties on Debtor, including without limitation, . . . providing Trustee copies of tax returns, W-2 forms, 1099 forms, and quarterly financial information regarding Debtor's business or financial affairs"

Finally, Local Bankruptcy Rule 3015-1(b)(4) requires a chapter 13 debtor to provide a chapter 13 trustee with a copy of any tax return, W-2 form, and 1099 form filed or received while the case is pending, and furnish the trustee with periodic financial information regarding the debtor's business or financial affairs.

Hence, despite the fact that the plan, the Bankruptcy Code, and this court's local rules obligated the debtor to provide to the trustee the information he requested, it was not provided. Because the debtor has had sufficient time to provide the information and documents, this is a material breach of the plan and the applicable law and court rules warranting dismissal of the case. See 11 U.S.C. § 1307(c)(1), (c)(6).

June 15, 2017 at 2:00 p.m.

2. 17-21428-A-13 ROBERT/VALERIE KUSHNER MOTION TO
JPJ-1 DISMISS CASE
5-25-17 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case dismissed as to Valerie Kushner only.

Despite being given three opportunities to appear, debtor Valerie Kushner 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).

3. 16-25935-A-13 DOUGLAS/KIM JACOBS MOTION TO
JPJ-2 DISMISS CASE
5-26-17 [125]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to commence making plan payments and has not paid approximately \$9,970 to the trustee as required by the proposed plan. This 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) & (c)(4).

4. 13-26465-A-13 DARREN COCREHAM MOTION TO
JPJ-3 DISMISS CASE
5-31-17 [87]

- ☐ 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 December 13, 2013 as required by Local Bankruptcy Rule 3007-1(d). That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 87 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months, the maximum plan duration permitted 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) 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 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) has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

5. 16-23077-A-13 ADRIAN/VICTORIA OLDHAM MOTION TO
JPJ-2 DISMISS CASE
5-10-17 [48]

- ☐ 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 December 9, 2016 as required by Local Bankruptcy Rule 3007-1(d). That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 76 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months, the maximum plan duration permitted 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) 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 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) has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

6. 17-21188-A-13 TANISHA MAVY MOTION TO
JPJ-1 DISMISS CASE
5-2-17 [43]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed an initial plan within the time required by Fed. R. Bankr. P. 3015(b) but did not confirm it. The debtor thereafter proposed a modified plan but failed to set it for a confirmation hearing. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Nonetheless, after the motion was filed, the debtor filed yet another modified plan, the amended schedules and statements requested by the trustee, motions to value collateral, and a motion to confirm the modified plan. The case will remain pending on the condition the modified plan is confirmed at the hearing

on July 3. If not, the case will be dismissed on the trustee's ex parte application.

7. 16-22196-A-13 TAMELA BUNCH
JPJ-1

MOTION TO
DISMISS CASE
4-27-17 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

In March 2017, the chapter 13 trustee made a written request to the debtor for a copy of the debtor's 2016 tax returns, 2016 W-2 statements, bank account statements for January through March 2017, pay advices for January through March 2017, and information concerning inheritances, life insurance benefits, lawsuits and claims, and gambling winnings. The debtor failed to respond to the trustee's request for information.

11 U.S.C. § 521(f)(1)-(3) provides that at the request of the trustee, an individual debtor shall file with the court current year tax returns, past due tax returns, amendments to prior year tax returns that are filed while the case is pending. Additionally, annually after the confirmation of a plan, an individual debt must file a statement under penalty of perjury of income and expenditures for the prior year, as well as a statement of the debtor's monthly income. See 11 U.S.C. § 521(f)(4).

The plan similarly provides at section 5.02: "In addition to the duties imposed upon Debtor by the Bankruptcy Code, the Bankruptcy Rules, and applicable nonbankruptcy law, the court's Local Bankruptcy Rules impose additional duties on Debtor, including without limitation, . . . providing Trustee copies of tax returns, W-2 forms, 1099 forms, and quarterly financial information regarding Debtor's business or financial affairs"

Finally, Local Bankruptcy Rule 3015-1(b)(4) requires a chapter 13 debtor to provide a chapter 13 trustee with a copy of any tax return, W-2 form, and 1099 form filed or received while the case is pending, and furnish the trustee with periodic financial information regarding the debtor's business or financial affairs.

Hence, despite the fact that the plan, the Bankruptcy Code, and this court's local rules obligated the debtor to provide to the trustee the information he requested, it was not provided. Because the debtor has had sufficient time to provide the information and documents, this is a material breach of the plan and the applicable law and court rules warranting dismissal of the case. See 11 U.S.C. § 1307(c)(1), (c)(6).