

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 11, 2016 at 2:00 p.m.

-
1. 16-21203-A-13 RAYMOND/CHRISTINE BELCHER MOTION TO
JPJ-3 DISMISS CASE
6-1-16 [57]

- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

The court denied confirmation of the plan proposed by the debtor in May. Since then, no modified plan has been proposed and confirmed despite sufficient time to do so. Further, under the terms of the plan not confirmed by the court, the debtor has failed to make \$4,478 in payments. This suggests to the court no plan will be feasible. See 11 U.S.C. § 1325(a)(6).

While opposition was filed, it fails to address the basic point that the debtor has not timely confirmed a plan and has failed to make a plan payment each month the case has been pending.

2. 15-28204-A-13 REGINA PAGE MOTION TO
JPJ-2 DISMISS CASE
6-22-16 [26]

- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

First, the debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained the trustee's objection to confirmation on December 14, 2015. 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).

Second, the debtor has failed to pay to the trustee approximately \$775 as required by the only 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).

Third, in breach of section 5.02 of the proposed plan and in violation of the duties imposed by 11 U.S.C. § 521(a)(3), the debtor failed to cooperate timely with the trustee and produce financial records relating to the debtor's 2015 taxes and wages/income. This is cause for dismissal. See 11 U.S.C. §

July 11, 2016 at 2:00 p.m.

1307(c)(1), (c)(6).

3. 14-29113-A-13 SIMONE MUNGUIA MOTION TO
JPJ-2 DISMISS CASE
6-1-16 [66]
- ☐ 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 \$768 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).

4. 14-24342-A-13 MARK/DAWN THOMSEN MOTION TO
JPJ-4 DISMISS CASE
6-23-16 [58]
- ☐ 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 \$17,226 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).

5. 16-21345-A-13 MONICA IVIE MOTION TO
JPJ-3 DISMISS CASE
6-1-16 [42]
- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

First, the debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained the trustee's objection to confirmation. 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).

Second, the debtor failed to appear at the meeting of creditors on May 5 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).

Third, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The debtor failed to provide the trustee with a copy of this return. This failure, and

the debtor's inability to demonstrate that the failure to provide the copy to the trustee was due to circumstances beyond the control of the debtor, requires that the case be dismissed.

Fourth, the debtor did not file all income tax returns for all applicable tax periods during the 4-year period ending on the date of the filing of the petition. Specifically, the debtor failed to file federal income tax returns for 2012, 2013, 2014, and 2015.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor had not filed pre-petition tax returns, the trustee might object to the plan on the ground of a lack of feasibility or because the plan had not been proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was concluded on May 5. And, while it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee must hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is now impossible for the debtor to comply with section 1308.

The failure to file these tax returns is cause for dismissal. See 11 U.S.C. § 1307(e).

Fifth, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

6.	16-22058-A-13 JOSE HERNANDEZ JPJ-2	MOTION TO DISMISS CASE 6-1-16 [19]
----	--	--

Final Ruling: This motion to dismiss the case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the the debtor 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$7,340 as required by the 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).

7. 12-25359-A-13 JOSHUA/STEPHANIE MOTION TO
JPJ-1 BOLLINGER DISMISS CASE
6-6-16 [25]

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

The debtor has failed to pay to the trustee approximately \$1,247.59 as required by the 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).

Further, even if payments were current, there is another reason to dismiss the case. The trustee's Notice of Filed Claims was filed and served on January 16, 2013 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 104 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) 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. 12-27078-A-13 DWAYNE COOKS MOTION TO
JPJ-1 DISMISS CASE
6-16-16 [31]

- ☐ 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 25, 2013 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 74 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) 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).

9. 14-30879-A-13 ROBERT/JESSICA RODGERS MOTION TO
JPJ-2 DISMISS CASE
6-16-16 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

10. 15-20379-A-13 ALBERTO/KATHARINE OBREGON MOTION TO
JPJ-2 DISMISS CASE
6-16-16 [142]

- ☐ 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 proposed plan and in violation of the duties imposed by 11 U.S.C. § 521(a)(3), the debtor failed to cooperate timely with the trustee and produce financial records relating to the debtor's 2015 taxes and wages/income. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

11. 14-20086-A-13 DANETTE PALLADINO MOTION TO
JPJ-6 DISMISS CASE
6-1-16 [76]

Final Ruling: This motion to dismiss the case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the the debtor 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The opposition filed July 1 is untimely. As it fails to give any excuse for its late filing, it will not be considered by the court.

The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$450 as required by the 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).

12. 12-29787-A-13 ROSS/DONNA HOLCOMB
JPJ-2

MOTION TO
DISMISS CASE
6-10-16 [52]

Final Ruling: This motion to dismiss the case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the the debtor 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$3,769 as required by the 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).