

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 24, 2015 at 2:00 p.m.

1. 15-24518-A-13 TERRI TAYLOR
JPJ-1

MOTION TO
DISMISS CASE
7-30-15 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency before the petition is filed. In this case, the certificate evidencing that briefing indicates that it was received after, not before, the petition was filed. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Second, the debtor has failed to commence making plan payments and has not paid approximately \$259.68 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).

Third, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Fourth, this case was filed on June 3 and a plan was filed timely on June 17. However, because it was not served by the debtor on the trustee as required by Local Bankruptcy Rule 3015-1(c)(2), the trustee was unable to serve the plan with the notice of commencement of case as required that Local Bankruptcy Rule. This meant that it is incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See Local Bankruptcy Rule 3015-1(c)(3) and (d)(1). A review of the docket reveals that the debtor has not filed a motion nor has the debtor served the plan. This will necessarily delay confirmation of a plan and prevent the conduct of a confirmation hearing within the time required by 11 U.S.C. § 1324. This delay, then, is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

August 24, 2015 at 2:00 p.m.

2. 15-20819-A-13 RAMON CRUZ
JPJ-2

MOTION TO
DISMISS CASE
7-30-15 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, this case was filed on December 22, 2014. 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 has failed to make \$844 of the payments required by the last plan filed by the debtor. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

3. 10-36328-A-13 DONNIE HALEY
JPJ-3

MOTION TO
DISMISS CASE
7-31-15 [91]

Final Ruling: This dismissal motion is advanced for hearing on the 1:30 p.m. calendar to be considered with a related motion.

4. 15-22941-A-13 EVELYN/JERRY GAUDITE
JPJ-2

MOTION TO
DISMISS CASE
7-9-15 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, this case was filed on April 10, 2015. 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 has failed to make \$800 of the payments required by the last plan filed by the debtor. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

5. 14-23786-A-13 CHRISTOPHER/MICHELLE
JPJ-2 AZEVEDO

MOTION TO
DISMISS CASE
7-30-15 [38]

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

6. 15-24188-A-13 FRANKIE/YVETTE GAMBOA MOTION TO
JPJ-2 DISMISS CASE
8-4-15 [32]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to pay to the trustee approximately \$5,812 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).

7. 15-23697-A-13 HOWARD THOMAS MOTION TO
JPJ-2 DISMISS CASE
7-30-15 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor failed to file a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file this document has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This is cause for dismissal.

Second, the debtor has failed to commence making plan payments and has not paid approximately \$3,890 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).

Third, this case was filed on May 5, 2015. 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).