

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 21, 2015 at 2:00 p.m.

1. 15-25312-A-13 LA KEISHA MATLOCK JPJ-2	MOTION TO DISMISS CASE 8-20-15 [24]
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Tentative Ruling: The motion will be granted and the case will be dismissed.

First, this is the eighth bankruptcy petition filed by the debtor since 2008. Case No. 14-32311, a chapter 13 petition, was dismissed on May 17, 2015 because the debtor was unable to confirm a plan within a reasonable period of time. Case No. 14-23581, a chapter 13 petition, was dismissed on November 10, 2014, because the debtor failed to make all required plan payments.

The two earliest cases filed by the debtor, both chapter 13 cases, were dismissed because the debtor failed to make plan payments. The debtor received a chapter 7 discharge in a case filed on July 19, 2010. Thereafter the debtor filed four chapter 13 cases all of which were dismissed due to the debtor's failure to make plan payments and/or confirm a chapter 13 plan.

Second, the court has denied confirmation of the debtor's proposed plan. An order was entered on September 8. The debtor has not proposed a modified plan. And, there are other problems that convince the court a plan is not likely to be confirmed in this case:

- the debtor has not filed valuation motions concerning the collateral of Capital One and the IRS even though the feasibility of the debtor's original plan depends on her ability to "strip down" their claims pursuant to 11 U.S.C. § 506(a).
- the debtor has failed to comply with the installment schedule for the payment of the case filing fee.
- 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 by the deadline. 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.
- in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition seven days prior to the date first set for the meeting of creditors. The withholding of this financial

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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).

- 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.

- the debtor failed to list a Mercedes on Schedule B.

- Because the debtor filed two prior cases that were dismissed within the year before the filing of this case, there is no automatic stay in this case. See 11 U.S.C. § 362(c)(4). Therefore, even though the debtor wishes to reorganize the secured claims of the IRS, Capital One, and Americredit, those creditors are not prohibited from seizing their collateral and selling it. A reorganization is not in prospect.

Therefore, there is cause for dismissal or conversion to chapter 7. The later will not benefit the debtor because she has received a chapter 7 discharge in a case filed within the prior eight years. Nor will a chapter 7 case benefit unsecured creditors because the debtor has no significant assets that can be sold for amounts in excess of secured debt and exemptions. The case will be dismissed pursuant to 11 U.S.C. § 1307(c)(1), (2), (5) and because the debtor is not eligible for bankruptcy relief.