

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 25, 2017 at 2:00 p.m.

1. 13-28449-A-13 OSCAR CARDOZA MOTION TO
JPJ-1 DISMISS CASE
8-8-17 [23]

- ☐ 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 February 5, 2014 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 99 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 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). This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

Nonetheless, because the plan is in its 51st month, nine months remain within which the debtor may be able to modify the plan and increase the plan payment in order to pay claims. Therefore, on condition that the debtor modify the plan within 60 days, the case shall remain pending. If a modified plan is not approved, the case may be dismissed on the trustee's ex parte application.

September 25, 2017 at 2:00 p.m.

2. 17-23161-A-13 FELIPE/AVELINA MIGUEL MOTION TO
JPJ-2 DISMISS CASE
9-5-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was filed on May 9, 2017. 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 July 31. 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).

3. 17-24461-A-13 SERGEY YANOVSKIY MOTION TO
JPJ-1 DISMISS CASE
8-15-17 [19]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on August 31.

4. 17-23362-A-13 LINDA TRA MOTION TO
JPJ-2 DISMISS CASE
9-5-17 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was filed on May 17, 2017. 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 July 30. 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).

5. 17-23166-A-13 ROBERT GODFREY MOTION TO
JPJ-2 DISMISS CASE
9-5-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was filed on May 9, 2017. 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 August 2. 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).

6. 13-31071-A-13 ILON GRIFFIN
JPJ-2

MOTION TO
DISMISS CASE
9-6-17 [65]

- ☐ 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 April 16, 2014 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 115 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).

7. 16-28073-A-13 JEFFREY/YELENA MAYHEW
JPJ-3

MOTION TO
DISMISS CASE
9-6-17 [98]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was filed on December 18, 2016. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The debtor twice moved to confirm modified plans. Both motions were denied. The debtor has failed to propose and confirm a plan despite having the time and opportunity to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

8. 17-25691-A-13 CRAWFORD JOHNSON
JPJ-1

MOTION TO
DISMISS CASE
9-11-17 [15]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on September 15.

9. 13-29094-A-13 THEODORE SCOTT
JPJ-5

MOTION TO
DISMISS CASE
8-8-17 [72]

- ☐ 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 February 12, 2014 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 89 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 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). This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

Nonetheless, because the plan is in its 50th month, ten months remain within which the debtor may be able to modify the plan and increase the plan payment in order to pay claims. Therefore, on condition that the debtor modify the plan within 60 days, the case shall remain pending. If a modified plan is not approved, the case may be dismissed on the trustee's ex parte application.

10. 17-22996-A-13 ANGELINA ROBINSON
JPJ-2

MOTION TO
DISMISS CASE
8-8-17 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

This case was filed on May 1, 2017. 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 August 7. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. If the debtor does not intend to confirm a plan, this is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this dismissal motion was filed, the debtor filed, served, and

set for hearing a motion to confirm a modified plan. The motion will be heard on October 23, 2017. On condition that the debtor's motion is granted and the modified plan is confirmed at the hearing on October 23, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a plan within a reasonable time after filing the petition has caused delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

11. 13-29897-A-13 MARIA GRANADOS MOTION TO
JPJ-2 DISMISS CASE
8-8-17 [29]

- ☐ 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 March 19, 2014 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 89 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 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). This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

Nonetheless, because the plan is in its 50th month, ten months remain within which the debtor may be able to modify the plan and increase the plan payment in order to pay claims. Therefore, on condition that the debtor modify the plan within 60 days, the case shall remain pending. If a modified plan is not approved, the case may be dismissed on the trustee's ex parte application.