

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime

Bankruptcy Judge

Sacramento, California

September 26, 2017 at 1:00 p.m.

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| 1. | <u>17-23902</u> -B-13 LUIS/FELICIA FLORES Michael O'Dowd Hays | ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-16-17 [<u>47</u>] |
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Final Ruling: No appearance at the September 26, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtors' failure to pay \$77.00 due August 11, 2017. The court's docket reflects that the default was cured on September 13, 2017. The payment constituted the final installment.

The court will enter an appropriate minute order.

September 26, 2017 at 1:00 p.m.

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2. [13-28712](#)-B-13 PETE/ERLINDA PELIMIANO MOTION TO DISMISS CASE
JPJ-1 Eric J. Gravel 8-8-17 [[23](#)]

Final Ruling: No appearance at the September 26, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

The court will enter an appropriate minute order.

3. [17-24414](#)-B-13 AMANDA VARGAS
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-6-17 [[22](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due September 1, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted based on the following grounds.

First, Debtor has not prosecuted this cause after his motion to confirm was heard and denied on August 1, 2017. To date, the Debtor has not taken further action to confirm a plan in this case. This is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtor is \$6,539.60 delinquent in plan payments, which represents 2.13 plan payments. By the date of this hearing, an additional plan payment of \$3,063.20 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

According to Debtor's Schedules A/B filed March 6, 2017, the total value of non-exempt equity in the estate is \$33,820.94 from the available equity in the Debtor's residence after 8% cost of sale and deduction of liens and exemptions, and a 2009 Ford Crown Victoria Police Intercep, minus 5% cost of sale.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since there is non-exempt equity in the estate. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

5. [17-24924](#)-B-13 ANITA VERGARA
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-31-17 [[19](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due August 28, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

6. [17-24426](#)-B-13 BALTASAR MARTINEZ
EGS-1 Pro Se
Thru #7

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY BAYVIEW
LOAN SERVICING, LLC
8-23-17 [[32](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to overrule the objection as moot for reasons stated at Item #7.

The court will enter an appropriate minute order.

7. [17-24426](#)-B-13 BALTASAR MARTINEZ
JPJ-1 Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-22-17 [[29](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to dismiss the case pursuant to 11 U.S.C. § 109(g)(1).

This matter was continued from September 12, 2017, so that the Debtor and any other parties in interest may file a response in support of or opposition to § 109(g)(1) dismissal by September 19, 2017, at 1:00 p.m. The Debtor has failed to file a response.

This is pro se debtor's fifth bankruptcy filed within the last two years.

The first case (no. 15-27215) was a chapter 7 filed September 14, 2015. Debtor received a discharge on December 16, 2015.

The second case (no. 16-22901), a chapter 7 filed May 4, 2016, was dismissed for failure to file documents timely. Dkt. 32.

The third case (no. 16-23797), a chapter 13 filed June 13, 2016, was dismissed for failure to appear at the § 341 meeting, failure to commence plan payments, failure to provide Trustee with tax return, failure to provide Trustee with financial records for business, and failure to provide Trustee with Class 1 checklist. Dkt. 28

The fourth case (no. 17-23645), a chapter 13 filed May 31, 2017, was dismissed for failure to file documents. Dkt. 19.

Finally, the present case was filed on July 5, 2017. Opposition to confirmation was filed by the Trustee and creditor Bayview Loan Servicing, LLC.

The Trustee objects on multiple grounds, but generally that the Debtor has filed incomplete schedules and an incomplete plan, and failed to submit proof of social security and file other required documents. Additionally, a review of the docket shows that the Debtor did not appear at the continued § 341 meeting held August 31, 2017. The Trustee also requests conditional dismissal of case.

Creditor Bayview Loan Servicing raises the same objections as those raised by the Trustee but also objects on grounds that the Debtor does not provide for full payment of creditor's pre-petition arrears. The creditor also requests that the court *sua sponte* dismiss the case under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors.

It appears to the court that the Debtor has been filing repeated bankruptcies in an effort to prevent Bayview's foreclosure on real property. Bayview is Debtor's only secured creditor and there are no unsecured creditors.

The court intends to dismiss this case pursuant to 11 U.S.C. § 109(g)(1) based on the Debtor's failure to appear in proper prosecution of this case.

The court will enter an appropriate minute order.

8. [17-24431](#)-B-13 MARY PITMAN
JPJ-1 Aubrey L. Jacobsen

MOTION TO DISMISS CASE
9-5-17 [[12](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court's decision is to dismiss the case.

The Debtor is delinquent to the Trustee in the amount of \$470.00, which represents approximately 1 plan payment. The Debtor has failed to make any plan payments since this petition was filed on July 5, 2017. There is case to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the September 26, 2017, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-BuTrk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to dismiss the case.

First, Debtor failed to appear at the duly noticed first meeting of creditors set for July 6, 2017, as required pursuant to 11 U.S.C. § 343. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Second, Debtor is delinquent to the Trustee in the amount of \$470.00, which represents approximately 1 plan payment. The Debtor has failed to make any plan payments since this petition was filed on July 5, 2017. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case.

Chapter 13 Trustee moves to dismiss this case on grounds that the confirmed plan understates the pre-petition arrears of Wells Fargo Bank, N.A. at \$24,000.00. The proof of claim filed by Wells Fargo Bank N.A. shows pre-petition arrears of \$25,153.68. The confirmed plan will take a total of 72 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 12 months longer than the proposed duration of 60 months. The Debtors did not object to the proof of claim within 60 calendar days after service of the Notice of Filed Claims. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Debtors have filed a response stating that they will file a modified plan and be current under the modified plan before the date of the hearing on this matter. A modified plan was filed September 19, 2017.

Provided that the Debtors are also current by the time of the hearing on this matter, cause does not exist to dismiss this case. The motion will be denied without prejudice.

The court will enter an appropriate minute order.

11. [17-23766](#)-B-13 JUDITH RANDEL
Justin K. Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-5-17 [[45](#)]

Final Ruling: No appearance at the September 26, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$73.00 due August 31, 2017. The court's docket reflects that the default was cured on September 14, 2017. The payment constituted the final installment.

The court will enter an appropriate minute order.

12. [17-23971](#)-B-13 CAROLYN HEMENES
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-18-17 [[38](#)]

DEBTOR DISMISSED: 08/31/2017

Final Ruling: No appearance at the September 26, 2017, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot with no sanctions ordered.

The court will enter an appropriate minute order.

13. [17-24079](#)-B-13 MARK TARASOV
Mark Shmorgon

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-24-17 [[26](#)]

Final Ruling: No appearance at the September 26, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due August 21, 2017. The court's docket reflects that the default was cured on August 24, 2017. An additional payment on August 28, 2017, constituted the final installment.

The court will enter an appropriate minute order.

14. [17-23780](#)-B-13 MELANIE PAULY MONTERROSA ORDER TO SHOW CAUSE - FAILURE
W. Scott de Bie TO PAY FEES
9-8-17 [[90](#)]

Final Ruling: No appearance at the September 26, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due September 5, 2017. The court's docket reflects that the default was cured on September 12, 2017. The payment constituted the final installment.

The court will enter an appropriate minute order.