

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 19, 2015 at 2:00 p.m.

1. 14-30206-A-13 STANLEY WOO MOTION TO
JPJ-3 DISMISS CASE
10-5-15 [104]

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

The debtor has failed to pay to the trustee more than \$33,000 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).

2. 12-37115-A-13 JOSEPH/ANGELA BIASI MOTION TO
JPJ-2 DISMISS CASE
9-11-15 [49]

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

The trustee's Notice of Filed Claims was filed and served on June 12, 2013. That notice advised the debtor that the IRS and the FTB had filed priority claims that were significantly higher than scheduled by the debtor and therefore could not be paid in full as required by the confirmed plan. The failure to provide payment in full of these claim violates 11 U.S.C. § 1322(a)(2).

The debtor failed to reconcile the plan with these claims, either by filing and serving a motion to modify the plan to provide for the claims, or by objecting to the claims. This is required by the plan at section 2.13 of the plan ("2.13. Class 5 consists of unsecured claims entitled to priority pursuant to 11 U.S.C. § 507. These claims will be paid in full except to the extent the claim holder has agreed to accept less or 11 U.S.C. § 1322(a)(4) is applicable . . . The failure to provide the foregoing treatment for a priority claim is a breach of this plan.") and Local Bankruptcy Rule 3007-1, 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 period to reconcile the claims to the plan has expired and the debtor has failed to either object to the claims or to provide for their payment in full. This

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material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c) (6) .

3. 11-35234-A-13 STEPHEN/HAZEL HUTCHINS MOTION TO
JPJ-1 DISMISS CASE
9-21-15 [34]

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

The trustee's Notice of Filed Claims was filed and served on June 11, 2012. That notice advised the debtor that Yuba County had filed a secured claim that was significantly higher than scheduled by the debtor and therefore could not be paid in full as required by the confirmed plan. The failure to provide payment in full of this claim violates 11 U.S.C. § 1325(a) (5) (B) .

The debtor failed to reconcile the plan with this claim, either by filing and serving a motion to modify the plan to provide for the claim, or by objecting to the claim. This is required by the plan at section 2.09(a) which requires that Class 2 secured claims, like the County's be paid in full as required by 11 U.S.C. § 1325(a) (5) (B) .

Local Bankruptcy Rule 3007-1 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 period to reconcile the claim to the plan has expired and the debtor has failed to either object to the claim or to provide for its payment in full. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c) (6) .

4. 15-26657-A-13 ROBERT/LEE-ANN MAHAN MOTION TO
JPJ-1 DISMISS CASE
9-21-15 [66]

Final Ruling: The motion will be dismissed as moot. The case was previously converted to one under chapter 7.

5. 11-40661-A-13 JASON HOLLINGSWORTH MOTION TO
JPJ-1 DISMISS CASE
9-24-15 [43]

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

The trustee's Notice of Filed Claims was filed and served on September 5, 2012. That notice advised the debtor that Shellpoint Mortgage had filed a secured claim that was significantly higher than scheduled by the debtor and therefore could not be paid in full as required by the confirmed plan. The failure to provide payment in full of this claim violates 11 U.S.C. § 1325(a) (5) (B) .

The debtor failed to reconcile the plan with this claim, either by filing and serving a motion to modify the plan to provide for the claim, or by objecting to the claim. This is required by the plan at section 2.09(a) which requires that Class 1 secured claims, like Shellpoint's be paid in full as required by 11 U.S.C. § 1325(a) (5) (B) .

Local Bankruptcy Rule 3007-1 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 period to reconcile the claim to the plan has expired and the debtor has failed to either object to the claim or to provide for its payment in full. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c) (6) .

6.	15-20484-A-13 CHRISTOPHER WEBB JPJ-2	MOTION TO DISMISS CASE 8-27-15 [59]
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Final Ruling: The opposition to the trustee's dismissal motion will be dismissed without prejudice. However, the deadline to oppose the trustee's motion is extended on the condition that the debtor reset the hearing on the correct calendar no later than November 9.

First, the debtor, not the trustee set this hearing on a calendar reserved for motions to dismiss set by the trustee. Counsel for the debtor should have set the hearing on a regular chapter 13 calendar.

Second, the notice of hearing does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the debtor has failed to establish that the matter on calendar was served on all necessary parties in interest.

Third, the notice of hearing required a written response 7 days prior to the hearing. Because less than 28 days' notice was given of the hearing, no written response was required. See Local Bankruptcy Rule 9014-1(f)(2). By erroneously informing the debtor that written opposition was required and was a condition to contesting the motion, the moving party may have deterred the debtor from appearing. Therefore, notice was materially deficient.

7. 15-26895-A-13 MICHAEL SCARZELLA
JPJ-1

MOTION TO
DISMISS CASE
9-25-15 [14]

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

This case was filed by the debtor while the debtor had another pending chapter 13 case in this court. One case at a time. And, while the court is aware there is a pending motion to dismiss the first case, this case will be dismissed whatever the outcome of that motion. This case was filed solely to frustrate and evade the court's order in the first case terminating the automatic stay in favor of a secured creditor. This case was filed in bad faith.