

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 31, 2017 at 1:00 p.m.

1.	17-25509 -B-13	DONNETTE DESANTIS	ORDER TO SHOW CAUSE - FAILURE
		Richard L. Jare	TO PAY FEES
			9-25-17 [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 September 20, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

October 31, 2017 at 1:00 p.m.

2. [17-24924](#)-B-13 ANITA VERGARA
[JPJ](#)-2 Pro Se

MOTION TO DISMISS CASE
9-21-17 [[25](#)]

DEBTOR DISMISSED: 09/29/2017

Final Ruling: No appearance at the September 29, 2017, hearing is required.

The case having previously been dismissed, the motion is dismissed as moot.

The court will enter an appropriate minute order.

3. [17-25325](#)-B-13 JONATHAN GARCIA ORDER TO SHOW CAUSE - FAILURE
Thru #5 Richard L. Jare TO PAY FEES
10-16-17 [[43](#)]

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 overrule the Order to Show Cause as moot. The case is dismissed for reasons stated at Item #5.

The court will enter an appropriate minute order.

4. [17-25325](#)-B-13 JONATHAN GARCIA ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
9-15-17 [[32](#)]

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 overrule the Order to Show Cause as moot. The case is dismissed for reasons stated at Item #5.

The court will enter an appropriate minute order.

5. [17-25325](#)-B-13 JONATHAN GARCIA MOTION TO DISMISS CASE
JPJ-2 Richard L. Jare 9-28-17 [[38](#)]

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 dismiss the case.

First, the Debtor did not appear at the meeting of creditors set for September 21, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$250.00, which represents approximately 1 plan payment. By the time this motion is heard, an additional plan payment in the amount of \$250.000 will also be due. The Debtor has not made any plan payments since the petition was filed on August 11, 2017. There is cause to dismiss the case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

Third, Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

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

The court will enter an appropriate minute order.

6. [17-25233](#)-B-13 NICOLE SADLER
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-12-17 [[22](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on October 10, 2017. While the delinquent installment was paid on October 16, 2017, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

Tentative Ruling: This matter was continued from October 17, 2017, to allow the parties to file supplemental evidence to support valuation. Because less than 28 days' notice of the hearing was originally given, the motion was 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to value the secured claim of Schools Financial Credit Union at \$21,945.82.

Debtors' motion to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by the Declaration of David Heaton. Debtors are the owners of a 2008 Toyota Tundra ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$8,500.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtors also contend that the debt owed to Creditor is comprised of negative equity in the amount of \$9,340.71 and that Creditor's present claim amount is \$26,279.27. With these numbers, Debtors calculate the difference to be Creditor's secured claim in the amount of \$16,938.56.

Creditor objects to the amount of negative equity and contends that it was only \$5,170.00. Creditor reaches this calculation by subtracting the cash down payment of \$4,170.71 from the net trade-in value of \$9,340.71. The Declaration of Robin Boyce states that the \$5,170.00 in negative equity was set forth in two separate documents signed by the Debtors. Creditor states that the original amount financed was \$31,357.65 and that the \$5,170.00 negative equity was 16.49% of the amount financed.

According to Claim No. 1-1 filed by Schools Financial Credit Union, the unpaid contract balance on the date of the filing of the petition was \$26,279.27 and that 16.49% of this amount is \$4,333.45. When \$4,333.45 is subtracted from \$26,278.27, the balance is \$21,945.82. Creditor contends that \$21,945.82 is the amount of its secured claim.

Debtor has filed a response agreeing to a secured claim of \$21,945.82.

Discussion

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

Here, the Debtors do not argue that the vehicle is collateral outside the scope of the hanging paragraph. Instead, the Debtors argue that only a portion of the creditor's claim, secured by the subject collateral described as a 2008 Toyota Tundra, is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded-in at the time of the Debtors' purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle

purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI). Thus, negative equity debt is not protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to creditor on its claim. The product is the amount of the present claim that is secured by a PMSI and protected by the hanging paragraph of § 1325(a). The non-PMSI portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

The total amount of the original financing for the subject collateral was \$31,357.65. The portion of the amount that financed negative equity was \$5,170.00. It follows that 16.49% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 16.49% by the present claim amount of \$26,279.27 equals \$4,333.45, which is the negative equity portion of the present claim that is not protected by the hanging paragraph and, as a result, may be treated as an unsecured claim if it is uncollateralized. Thus, the PMSI-portion of the present claim held by creditor is \$21,945.82.

The Debtor has offered evidence that the vehicle is worth \$8,500.00.

The vehicle's value is less than the PMSI-portion of the creditor's claim. The entire PMSI portion of this claim is protected by the hanging paragraph. The entire non-PMSI portion of this claim (negative-equity financing) is unsupported by the collateral's value. The creditor has a secured claim equal to \$21,945.82 and an unsecured claim for the balance of the claim.

The court will enter an appropriate minute order.

Final 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).

The court's decision is to continue the hearing on the Trustee's motion.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$350.00, which represents the final plan payment. The Debtor states in her declaration that she has worked hard to complete the terms of her confirmed plan and the docket does not reflect any other motion to dismiss during the Debtor's five year repayment term. The petition was filed on June 7, 2012, and the case is in month 64.

Local Rule 9014-1(f)(2) states that if an opposition is "presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs." Consistent with the Local Rule, the court will exercise its discretion to continue the hearing on the Trustee's motion to Tuesday, November 21, 2017, at 1:00 p.m.

If the Debtor's final plan payment of \$350.00 is not received at the Trustee's office by 3:00 p.m. on Monday, November 20, 2017, the court will consider the Trustee's motion to dismiss at the continued hearing, which will be a final hearing. In order to ensure that the Debtor's final plan payment is timely received by the Trustee, the Debtor is strongly encouraged to hand-deliver that final plan payment. If the Debtor's final plan payment is timely received by the Trustee, the Trustee's motion to dismiss will be dismissed as moot as all plan payments will have been completed. The Trustee may file a reply by November 14, 2017.

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 dismiss the case.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,650.00, which represents approximately 3 plan payments. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, an objection to confirmation filed by Bank of America, N.A. was heard and sustained on August 7, 2017. To date, the Debtor has failed to take further action to confirm a plan. This is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Although the Debtor has filed a response stating that an amended plan would be filed prior to the date of this hearing, none has been filed.

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

The court will enter an appropriate minute order.

10. [17-26193](#)-B-13 JOHN/HELENA MOEHRING ORDER TO SHOW CAUSE - FAILURE
Peter G. Macaluso TO PAY FEES
10-2-17 [[15](#)]

Final Ruling: No appearance at the October 31, 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 the \$310.00 filing fee. The court's docket reflects that the default was cured on October 5, 2017. The payment constituted the final installment.

The court will enter an appropriate minute order.

11. [17-25161](#)-B-13 PETER JACOWAY
[AP-1](#) Mark A. Wolff

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.
BANK, N.A.
9-14-17 [[15](#)]

Final Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

U.S. Bank, N.A.'s objection will be deemed withdrawn, Debtor's plan will be confirmed, and this matter will be removed from calendar. No appearance is required on October 31, 2017, at 1:00 p.m.

This matter was continued from October 24, 2017. Debtor's counsel represented at the October 24, 2017, hearing in open court and with Creditor's attorney present telephonically that the Debtor and Creditor have reached an agreement that resolves Creditor's objection to confirmation of Debtor's plan. The court authorized the parties to include their agreement in the confirmation order.

Based on the parties' representations that Creditor's objection is resolved and that the parties' agreement will be included in the confirmation order, this objection is deemed withdrawn and the Debtor's plan will be confirmed. Debtor's counsel shall prepare an appropriate confirmation order, which includes the terms of the parties' settlement, and shall transmit the confirmation order to the Trustee for review and approval.

The court will enter an appropriate minute order.