

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

November 29, 2022 at 2:00 p.m.

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1. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ CONTINUED NOTICE OF DEFAULT AND
 Peter Macaluso MOTION TO DISMISS CASE FOR
 FAILURE TO MAKE PLAN PAYMENTS
 9-9-22 [[63](#)]

Tentative Ruling:

The Motion was ordered by the court to be heard on November 8, 2022 at 1:30 p.m. Dkt. 75.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor is \$11,256.00 delinquent in plan payments. At the prior hearing, counsel for the debtor represented that the proceeds from the sale of the property would cure the default amount.

At the prior hearing, debtor's counsel represented that the house is up for sale, and proceeds from the sale will cure the default. The Chapter 13 trustee represented that the escrow company did not have the pay off amount for the HOA. Debtor's counsel represented that he would work with the HOA to get the pay off amount to the escrow company.

Failure to maintain plan payments constitute evidence of unreasonable delay by the debtor that is prejudicial to creditors.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Furthermore, the court finds that dismissal, and not conversion, is in the best interest of creditors and the Estate. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence,

November 29, 2022 at 2:00 p.m.

arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion to
Dismiss is granted, and the case is dismissed,
the court having found that dismissal, and not
conversion, is in the best interest of
creditors and the Estate.

2. [22-20928](#)-C-13 HENRY REED
[RDG](#)-1 Colby LaVelle

MOTION TO DISMISS CASE
11-10-22 [[63](#)]

Final Ruling: No appearance at the November 29, 2022 hearing is required.

The Motion is dismissed without prejudice.

On November 23, 2022, the Movant filed an Ex Parte Motion to Dismiss. Dckt. 75. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

The court finds withdrawal is warranted here. The Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The motion filed by The Chapter 13 Trustee having been presented to the court, the movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

3. [22-20471](#)-C-13 NATHANIEL JONES
[RDG](#)-3 Peter Macaluso

MOTION TO DISMISS CASE
11-9-22 [[72](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 75.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not filed an amended plan since the court denied confirmation of the Chapter 13 plan on October 11, 2022.

A review of the docket confirms the proposed Chapter 13 plan was denied confirmation, and no plan is set for confirmation hearing. Dkts. 70 & 71.

Failure to confirm a plan and maintain plan payments constitute evidence of unreasonable delay by the debtor that is prejudicial to creditors.

The Motion also argues debtor is \$800 delinquent in plan payments, which is supported by declaration. Dkt. 74.

Debtor filed an opposition representing contrary to the Trustee's declaration he has remitted timely payments to the Trustee each month. Debtor further asserts that he has negotiated a loan modification on the second mortgage and is negotiating a modification of the first mortgage. Debtor asserts an amended plan will be filed on or before January 10, 2023. Finally, debtor requests that the motion to dismiss be continued for 90 days.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Furthermore, the court finds that dismissal, and not conversion, is in the best interest of creditors and the Estate. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee, Russell
Greer, having been presented to the court, and
upon review of the pleadings, evidence,
arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed, the court having found that dismissal, and not conversion, is in the best interest of creditors and the Estate.