

11 USC §1307(c)
Dismissal

In Re Gregg BAP No. OR-89-1693-RVAs
Bk. Case No. 389-30094

3/30/90 BAP (Affirming J. Hess) Unpublished

The bankruptcy court denied confirmation of the debtor's original chapter 13 plan and granted thirty days to file an amended plan. After five months, the debtor still had not filed an amended plan, nor offered any excuse for failing to do so. The court dismissed the case.

The BAP affirmed, holding that "[w]here the debtor has been granted additional time and fails to file documents within five months of filing a Chapter 13 petition, dismissal of the case pursuant to 11 U.S.C. Section 1307(c) is not an abuse of discretion."

P90-18 (5)

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NOT FOR PUBLICATION

FILED

MAR 30 1990

Jed G. Weintraub, Clerk
U.S. BKCY. APP. PANEL
OF THE NINTH CIR.

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re)
MURLIN E. GREGG,)
Debtor.)
MURLIN E. GREGG,)
Appellant)
v.)
ROBERT M. TAGUE, et al.,)
Appellee.)

BAP No. OR-89-1693-RVAS
BK. No. 389-30094 H13

MEMORANDUM

Argued and Submitted on

January 19, 1990, at Portland, Oregon

Filed - MAR 30 1990

Appeal from the United States Bankruptcy Court
For the District of Oregon

Honorable Henry L. Hess, Bankruptcy Judge, Presiding

Before: RUSSELL, VOLINN, ASHLAND, Bankruptcy Judges

P90-18(5)

1 The debtor appeals from an order of the bankruptcy court
2 dismissing his Chapter 13 case for failure to file documents. We
3 AFFIRM.

4 I.

5 FACTS

6 The appellees, Pacific First Bank (Pacific First) and
7 Robert M. Tague (Tague), hold first and second mortgages,
8 respectively, on Murlin E. Gregg's (debtor) residential real
9 property in Clackamas County, Oregon. On February 2, 1988, Tague
10 obtained a judgment and decree of foreclosure against the debtor.
11 Pacific First also obtained a judgment and decree of foreclosure
12 on May 16, 1988. In an effort to prevent foreclosure, the debtor
13 or his wife filed four Chapter 13 cases during the period from
14 May 9, 1988 to May 30, 1989. All of the Chapter 13 cases were
15 dismissed for failure to file documents.

16 This appeal arises out of the June 20, 1989 order dismissing
17 the debtor's January 9, 1989 Chapter 13 case. The bankruptcy
18 court stated in its order:

19 The court previously entered an order granting the
20 debtor(s) additional time to file one or more of the
21 following: a chapter 13 statement, chapter 13 plan,
22 amended or modified chapter 13 plan, property claimed
23 exempt, case cover sheet, or attorney's disclosure
24 statement and the debtor's failed to comply with such
25 order. The court notified the debtor(s) and their
26 attorney, if any, of the proposed dismissal of this case
and no request for a hearing was filed.

24 The debtor timely filed a notice of appeal on July 3, 1989.
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1 II.

2 ISSUE

3 Whether dismissal of the debtor's Chapter 13 case is an
4 abuse of discretion where the debtor had failed to file documents
5 more than five months after the filing date.

6 III.

7 STANDARD OF REVIEW

8 The bankruptcy court's dismissal of a Chapter 13 case under
9 11 U.S.C. Section 1307(c) is reviewed for an abuse of discretion.
10 See In re Green, 64 Bankr. 530, 530-31 (9th Cir. BAP 1986);
11 Matter of Welling, 102 Bankr. 720, 721 (Bankr. S.D. Iowa 1989);
12 In re McConnell, 60 Bankr. 310, 311 (Bankr. W.D. Va 1986).

13 IV.

14 DISCUSSION

15 Initially, this Panel notes that the debtor may also be
16 appealing the order granting relief from the automatic stay.
17 This issue is addressed by the appellees' briefs. However, the
18 order granting Tague relief from the automatic stay was entered
19 on April 13, 1989 and the debtor's notice of appeal was filed on
20 July 3, 1989. Since there was no timely notice of appeal from
21 that order, this issue is not before the Panel.

22 The debtor must file a Chapter 13 plan either with the
23 petition or within 15 days thereafter. Bankr. R. 3015. The
24 court may grant an extension only for cause shown and upon
25 notice. Id. Dismissal of a Chapter 13 case is governed by 11
26 U.S.C.

1 Section 1307. Subsection (c) provides that :

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3 Except as provided in subsection (e) of
4 this section, on request of a party in
5 interest or the United States trustee and
6 after notice and a hearing, the court may
7 convert a case under this chapter to a case
8 under chapter 7 of this title, or may
9 dismiss a case under this chapter,
10 whichever is in the best interests of
11 creditors and the estate, for cause,
12 including--

13 (1) unreasonable delay by the debtor that is
14 prejudicial to the creditors; . . .
15 (3) failure to file a plan timely under section
16 1321 of this title

17 Failure to timely file a Chapter 13 plan is cause for
18 dismissal of the case. Matter of Welling, 102 Bankr. 720, 721-
19 22 (Bankr. S. D. Iowa 1989); In re Martin-Trigona, 35 Bankr. 596,
20 601 (Bankr. S.D.N.Y. 1983).

21 The debtor filed his Chapter 13 petition on January 1, 1989.
22 On March 23, 1989, the court denied confirmation of the debtor's
23 plan because it did not address an outstanding tax debt or a
24 mortgage foreclosure judgment that Tague had obtained. The
25 debtor was given an extension until April 20, 1989 to file an
26 amended plan. The debtor did not file an amended plan. The
debtor offers no explanation for his failure to file an amended
plan or to respond to the notice of pending dismissal. The June
19, 1989 dismissal was preceded by two other dismissals for
failure to file documents. "Serious and repeated defaults, of
course, may very well warrant dismissal or conversion,

1 particularly where it appears that the plan is unworkable or that
2 the case has no bona fide intention of proceeding." 5 Collier on
3 Bankruptcy, ¶ 1307.01 at 1307-8 (15th ed. 1988).

4 The bankruptcy court allowed the debtor additional time to
5 file documents. Over five months later, the debtor had still
6 failed to file documents required under Rule 3015. The debtor
7 was given notice of the pending dismissal and did not file a
8 request for a hearing. Under these circumstances we cannot find
9 that dismissing this case was an abuse of discretion.

10 V.

11 CONCLUSION

12 Where a debtor has been granted additional time and fails
13 to file documents within five months of filing a Chapter 13
14 petition, dismissal of the case pursuant to 11 U.S.C. Section
15 1307(c) is not an abuse of discretion. We AFFIRM.