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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In the Matter of)	Bankruptcy No. 03-41775
)	
JOHN L. MERZLOCK,)	MOTION TO DISMISS
)	
Debtor.)	
_____)	

COMES NOW Citizens Community Bank, (hereinafter "Citizens"), a creditor in the above referenced proceeding, by and through Craig W. Christensen, its attorney of record, and moves the Court for an Order pursuant to 11 U.S.C. 109(e) and 1307(c) to dismiss the pending Chapter 13 reorganization proceeding of Debtor based upon the following:

1. That Debtor, John L. Merzlock, a married person, filed his petition under Chapter 13 of Title 11 of the United States Code on or about August 22, 2003, as bankruptcy case number 03-41775.

2. That pursuant to the terms and provisions of 11 U.S.C. 109(e):

"Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$290,525.00 and

MOTION TO DISMISS

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noncontingent, liquidated, secured debts of less than \$871,550.00 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$290,525.00 and noncontingent, liquidated, secured debts of less than \$871,550.00 may be a debtor under chapter 13 of this title."

3. That Debtor, John L. Merzlock, does not qualify as "an individual with regular income that owes on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$290,525.00 and noncontingent, liquidated, secured debts of less than \$871,550.00.

4. 11 U.S.C. 101(30) provides:

"individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker."

5. That Debtor, John L. Merzlock, does not qualify as an "individual with regular income" as defined by 11 U.S.C. 101(30).

6. Rule 3015(b) of the Rules of Bankruptcy Procedure provide in part as follows:

"(b) Chapter 13 Plan. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct..."

7. That Debtor, John L. Merzlock, did not file his Chapter 13 Plan with his petition on August 25, 2003.

8. Rule 1007. Lists, Schedules and Statements; Time Limits. of the Rules of Bankruptcy Procedure provide in part as follows:

"(a) List of Creditors and Equity Security Holders.

(1) Voluntary Case. In a voluntary case, the debtor shall file with the petition a list containing the name and address of each creditor unless the petition is accompanied by a schedule of liabilities.

(2), (3) *****

(4) Extension of Time. Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code, or other party as the court may direct.

(b) Schedules and Statements Required.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms.

(c) Time Limits. The schedules and statements, other than the statement of intention, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), and (h) of this rule.... Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to the United States trustee and to any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

9. That Debtor, John L. Merzlock, did not file Schedules A through J or his Statement of Financial Affairs with his petition on August 25, 2003.

10. On or about September 8, 2003, Debtor, John L. Merzlock, filed his Motion For Extension Of Time To File Documents requesting an extension of time to file Schedules A through J, Statement of Financial Affairs, and Chapter 13 Plan, until on or before September 15, 2003. The Debtor, John L. Merzlock mailed a copy of the Motion

For Extension Of Time To File Documents to L.D. Fitzgerald, Trustee and the U.S. Trustee, but failed to submit copies of said Motion to parties in interest.

11. In checking and reviewing the Court Docket Sheet on September 17, 2003, the required Schedules A through J, Statement of Financial Affairs, and Chapter 13 Plan did not reflect as having been filed with the Court on or before September 15, 2003.

WHEREFORE, Citizens Community Bank moves the Court to issue an Order against the Debtor, John L. Merzlock, dismissing the pending Chapter 13 bankruptcy proceeding and pursuant to 11 U.S.C. 109(g) precluding him from filing any further proceedings or petitions based upon his wilful failure to abide by Orders of the Court.

DATED This 17th day of September, 2003.

CRAIG W. CHRISTENSEN, CHARTERED

By


Attorneys for Citizens Community Bank