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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (ALEXANDRIA)

)	Case No. 14-12420-BFK
In re)	Alexandria, Virginia
)	
PAUL A. LEITNER-WISE,)	
)	December 4, 2014
Debtor.)	4:25 PM
)	
)	

TRANSCRIPT OF HEARING
DEBTOR'S MOTION TO VACATE ORDER DISMISSING CASE
BEFORE THE HONORABLE BRIAN F. KENNEY,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:	TETIANA ZHMACHENKO, ESQ. ANDREWS LAW FIRM f/k/a Tommy Andrews, Jr. P.C. 122 North Alfred Street Alexandria, VA 22314
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Chapter 13 Trustee:	THOMAS P. GORMAN, ESQ. 300 N. Washington Street Suite 400 Alexandria, VA 22314
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1 THE CLERK: We have case item 138, Paul A. Leitner-
2 Wise, case 14-12420.

3 THE COURT: Good afternoon.

4 THE DEBTOR: Good afternoon, Your Honor.

5 MS. ZHMACHENKO: Tetiana Zhmachenko for the debtor.

6 This comes from the motion to vacate dismissal of the
7 case. And the hearing on this motion was continued several
8 times, essentially, waiting for availability of the debtor to
9 come to the hearing. He was on some business trips and
10 couldn't come earlier.

11 The case was dismissed due to the failure to make
12 plan payments. Since then, the debtor cured delinquency on
13 the plan payments and he is willing to proceed with the case.
14 And his purpose of this case to, essentially, to try to keep
15 the house. And he is trying. He believes that he has equity
16 in the house, and he wants to refinance it. And, in turn, he
17 has some refinancing currently in the works, so he is looking
18 to refinance the house, like, within the next several months.
19 And he believes that from the process of this refinancing he
20 will be able to pay, essentially, his original mortgage and to
21 all his creditors a hundred percent.

22 For now, he signed an amended plan that will be filed
23 if the case actually -- if dismissal will be vacated, he
24 signed an amended plan that's showing actual positive
25 disposable income on Schedule I and J, and that proposes to

1 pay a hundred percent to the creditors.

2 So to continue with the case is in the best interests
3 of the debtor, and I request to grant our motion and to vacate
4 dismissal of the case and let him continue with the case and
5 with his effort to keep the house.

6 THE COURT: Okay. Thank you. Mr. Gorman?

7 MR. GORMAN: I'm opposing the motion for the reasons
8 set forth in my objection. I'll reserve argument till after
9 testimony.

10 THE COURT: Okay.

11 MS. ZHMACHENKO: Debtor is present to testify.

12 THE COURT: Okay. Would you step forward, please,
13 sir, and raise your right hand?

14 (Witness sworn)

15 THE COURT: And to our witness stand, please, to your
16 right.

17 THE WITNESS: Thank you, sir. Okay.

18 DIRECT EXAMINATION

19 BY TETIANA ZHMACHENKO:

20 Q. State your name.

21 A. Paul Leitner-Wise.

22 Q. Mr. Leitner-Wise, why did you file this bankruptcy case?

23 A. Because the mortgage we had with the existing lender was
24 not affordable. The interest rate was too high, and the
25 existing lender was not interested in modifying the loan.

1 Q. Did you have foreclosure pending on the house?

2 A. Yes. Pending foreclosure.

3 Q. And what is the approximate mortgage balance on your
4 house?

5 A. Around -- just over 600,000, I believe, something, with
6 arrears.

7 Q. How much do you think your house is worth?

8 A. It was appraised at 800,000.

9 Q. Do you believe you have equity in the house?

10 A. I do believe we have equity in the house.

11 Q. So what are you planning to do?

12 A. Refinance. We've established -- found a lender that is
13 prepared -- there are special circumstances surrounding my
14 case. There -- we've found a lender that's prepared to work
15 with us and is moving forward on refinancing the home at the
16 moment.

17 Q. Okay. As far as your plan payments are concerned, your
18 previous case was dismissed due to a failure to maintain plan
19 payments. And you filed this new case, and you fell behind on
20 the payments in this new case. Do you think you can afford
21 plan payments moving forward?

22 A. Yes. The -- firstly, my income has increased since the
23 original plan was submitted, and that's the first thing.
24 Secondly, we're anticipating my income will increase again in
25 February when my Department of Labor certification comes

1 through, which will enable the company to hire me as an
2 employee as opposed to a contractor.

3 Q. And what you do?

4 A. I'm sorry?

5 Q. What do you do for a living?

6 A. I'm a designer. I design firearms. I design weapon
7 systems for the United States government.

8 Q. And what is your monthly income?

9 A. Currently I earn 6,000 dollars a month from the 1 position
10 and then 2,100 dollars a month from another. So that's 8,100
11 dollars a month. But that will increase to an annual salary
12 of 160,000 dollars.

13 Q. Okay. And what, approximately, is your wife's income

14 A. Hers is around 4,000-4,500 dollars a month.

15 Q. Okay. And your plan, in amended plan that you signed that
16 we going to file it provides for payments of 100 dollars a
17 month for first 6 months and then it goes to 945 a month.

18 That's actually from January --

19 A. Yes.

20 Q. -- for fifty-four months, and then it has reservation
21 that you will need to refinance your property. Do you think
22 you can afford 945 dollars payments --

23 A. Yes, I do.

24 Q. -- from January?

25 A. Yes.

1 Q. And then I looked at trustee ledger, and I didn't see your
2 November and December payments to trustee. Did you make your
3 November and December payments?

4 A. The November payment was made. For some reason -- that
5 was sent priority mail. I have the tracking information. For
6 some reason it didn't start tracking until the 6th. I have no
7 idea why.

8 The December payment was made early. All future payments
9 will be made early. I have the proof of payment for December
10 as well being posted today -- actually mailed today.

11 Q. Okay. So thank you. Thank you.

12 MS. ZHMACHENKO: I don't have any further questions.

13 THE COURT: Okay. Thank you. Mr. Gorman?

14 CROSS-EXAMINATION

15 BY MR. GORMAN:

16 Q. Afternoon, Mr. Leitner-Wise.

17 A. Good afternoon, Mr. Gorman.

18 Q. Now, I'm showing that five payments have come due, and I
19 only show four received. Do you have receipts for more than
20 four payments?

21 A. I don't understand receipts.

22 Q. I'm showing that your first payment was received, posted
23 by my bank on September 5, 2014 for 200 dollars. Was your
24 first payment to me 200 dollars?

25 A. Yes, because a hundred dollars went missing. A hundred

1 dollars was mailed prior to that, so that was 2 payments were
2 made with that 200 dollar check.

3 Q. All right. So the first -- the mailed -- the payment you
4 say was mailed, do you have a cancelled check for that?

5 A. Yes, I do, sir.

6 Q. All right. Show me all the cancelled checks you have,
7 sir.

8 A. I don't have them on me.

9 Q. All right. I thought you were pointing to the table.

10 A. No, no. That --

11 Q. Okay.

12 A. -- just relates to mailing, a proof of mailing.

13 Q. Okay. Well, sir, your first payment of a hundred
14 dollars --

15 MR. GORMAN: Strike that. Let's go back.

16 Q. This is your second bankruptcy, is it not?

17 A. That is correct, sir.

18 Q. And your prior case was dismissed when you failed to make
19 plan payments. Isn't that correct?

20 A. That is correct, sir.

21 Q. All right. Your plan payments started low and then went
22 up at a certain point.

23 A. Yes, they did.

24 Q. And when the plan payments went up you were not able to
25 make them. Is that fair?

1 A. That is correct. They went substantially higher.

2 Q. Right. Because your mortgage arrearage is so large.

3 A. Yes, in essence, and we were having trouble refinancing at
4 that time.

5 Q. Right.

6 A. Plus my income was so low.

7 Q. Right. Forget the refinance for the moment. Let's just
8 focus on the present day.

9 A. Right.

10 Q. Your mortgage arrearage was 80,000 dollars when you filed
11 that last case.

12 A. Um-hum.

13 Q. Correct?

14 A. Correct, sir. Yes.

15 Q. Right. And you haven't been making mortgage payments
16 since then, have you?

17 A. Under instruction -- we made some mortgage payments, but
18 under instruction from the mortgage lender we have not been
19 making payments at this time.

20 Q. Focus on my question.

21 A. Sure.

22 Q. Your counsel will get to do any explanation. You have not
23 been making your mortgage payments since the time of that
24 first bankruptcy. Isn't that correct, sir?

25 A. I honestly cannot answer that. I would say no, but I may

1 have made some payments.

2 Q. Right. And isn't it correct, sir, that the amount of the
3 arrearage owed to the mortgage company right now is in the
4 neighborhood of 160,000 dollars?

5 A. That is correct.

6 Q. All right. And you don't have any economic ability to pay
7 that 160,000 dollars within 5 years, do you?

8 A. Yes, I do.

9 Q. Both the plan you've proposed and the plan you were just
10 talking about, none of them propose to pay 160 grand, do they?

11 A. No, they don't.

12 Q. Right. In fact, it's all contingent on a refinance.

13 Isn't that correct?

14 A. That's one of the contingencies, sir.

15 Q. But you cannot make this -- reorganize or make a plan work
16 without a lender either refinancing or forgiving the debt.

17 You just don't have the ability to pay the 160,000.

18 A. Not at this present day.

19 Q. Right.

20 A. Over the course of the five years, yes.

21 Q. But none of your plans have proposed to pay 160,000 over 5
22 years, have they?

23 A. I don't believe so.

24 Q. All right. So, now, in terms of your payment -- plan
25 payments to date. You had the experience from your first

1 case. You knew the payments were due every month. Isn't that
2 right?

3 A. That is correct, sir.

4 Q. And you called your creditors' meeting in this case, this
5 second case, on July 29th.

6 A. That is correct, sir.

7 Q. Didn't we discuss that first payment at that time?

8 A. Yes, you did.

9 Q. Weren't you told, like all debtors, your first payment was
10 due in thirty days of the filing?

11 A. That is correct.

12 Q. That first payment did not get made, did it?

13 A. Yes, it did. It wasn't received by you, but it was mailed
14 by us.

15 Q. All right. Your first payment, in fact, was 200 dollars
16 that you made at the end of August or early September. Isn't
17 that correct?

18 A. That is correct.

19 Q. Right.

20 A. As soon as we found you hadn't received the first payment,
21 we made two payments.

22 Q. When you say I hadn't received it, that's what I'm asking
23 for. Do you have a cancelled check to show you made any
24 payment prior to that first 200 dollars?

25 A. I can provide you with that, sir.

1 Q. Today's your chance, sir.

2 A. I -- I was not advised that I needed to bring it with me.

3 I do not have that. It's company -- it's a company checkbook.

4 I do not have access to the company checkbook. I will have to
5 ask the company to provide me with that.

6 Q. The company is, in fact, your company, isn't it?

7 A. No, it's not.

8 Q. All your checks that you've ever made in both of your
9 bankruptcies have come from Leitner-Wise Manufacturing.

10 A. Yes. I am not an owner of that company.

11 Q. The Leitner would suggest that you have some familiarity
12 with the ownership.

13 A. I'm very good at what I do. My name is a brand name. The
14 company uses my brand name under license. I am not an owner
15 of the company.

16 Q. You have no control over it?

17 A. I have no control over that company whatsoever.

18 Q. So if you need a copy of a cancelled check -- you're
19 asking the Court today to reinstate your case. The case was
20 dismissed because you didn't make payment. Are you saying
21 you're unable to show your payment, because you're limited
22 from the books and records of Leitner-Wise Manufacturing?

23 A. I would have to -- I would have to ask the comp -- I can't
24 walk in and obtain record, just take records from a company.

25 Q. How long would it take you to get a copy of a cance --

1 A. Twenty-four hours.

2 Q. All right. So this -- my opposition to this was filed
3 many, many weeks ago.

4 A. Um-hum.

5 Q. So you've had more than a number of twenty-four hour
6 increments you could have gone and gotten cancelled checks.

7 A. With the greatest respect, if someone had told me they
8 needed a cancelled check I would have provided one. Nobody
9 told me that.

10 Q. Sir, I'm showing right now you've paid a grand total of
11 400 dollars. The first was a 200 dollar check received
12 September 5th, then a 100 dollar check received October 9th,
13 and a 100 dollar check received October 31st. Is that
14 consistent with your recollections?

15 A. I can't tell you the received dates, but, yes.

16 Q. Four hundred dollars has been paid so far.

17 A. Plus an additional hundred dollars for November and a
18 hundred dollars for December.

19 Q. Okay. The hundred dollars for December, is that the check
20 you mailed today?

21 A. That is correct.

22 Q. All right. That would bring you current through November.

23 A. What about the check from November?

24 Q. Okay. Sir, I'm showing 400 dollars of checks of
25 finance --

1 A. Right.

2 Q. Can you give any piece of paper today to show you've paid
3 more than 400 dollars so far in this case?

4 A. If by that you mean a cancelled check, I do not have that
5 information on me.

6 Q. Right.

7 A. If you mean a receipt of mailing, then I have two of those
8 here.

9 Q. Well, let me see those, please.

10 A. They're --

11 MR. GORMAN: If counsel can hand them to me?

12 Q. All right. Now, counsel's handed me -- one is a receipt
13 dated December 4th. That would be today?

14 A. That would be today.

15 Q. So, in other words, this morning, or sometime today,
16 rather than bringing a check to court you put one in the mail?

17 A. Yes, sir.

18 Q. All right. And the other one was mailed December 2nd.

19 A. No, sir. It was mailed on the 25th.

20 Q. All right. Can I hand up the --

21 A. But it's not actually tracking until December 2nd, if you
22 notice. It starts tracking December 2nd.

23 Q. I don't see -- and I don't see -- it says --

24 A. Well, it says Merrifield, Virginia.

25 Q. I understand that.

1 A. December 2nd.

2 Q. Just tell me where it show -- look at your own document,
3 and show me where it has some November date.

4 A. I don't know. This was printed out today.

5 Q. No, it says it was printed December 1 up in the top right.

6 A. Oh, right. Yes. But this was printed today. I don't
7 know why it says December --

8 Q. Yes. And that says -- doesn't it say that you mailed it
9 December 2nd?

10 A. No, it says it's accepted at UPS facility December 2nd.

11 Q. Right.

12 A. In Merrifield. Not in Alexandria.

13 Q. Okay. But show me where it says on there any -- that you
14 mailed it anywhere before December 2nd.

15 A. It doesn't say it. Well, it says December 1st print date,
16 but I don't know what that means.

17 Q. Right.

18 A. I don't know why it's recording the mailed date.

19 Q. So those are your two receipts?

20 A. Those are the two receipts.

21 MR. GORMAN: I'd ask to have them marked and admitted
22 into evidence, Your Honor.

23 THE COURT: Is there any objection? Ms. Zhmachenko,
24 is there any objection?

25 MS. ZHMACHENKO: No. I don't have any objection.

1 THE COURT: All right. Let's mark them as -- we'll
2 have a two-page exhibit 1, Trustee's Exhibit 1. It will be
3 admitted.

4 (Two mailing receipts were hereby marked for identification
5 and received into evidence as Trustee's Exhibit 1, as of this
6 date.)

7 Q. Now, on your Schedule I in this case, where you put your
8 employment, you've described yourself as self-employed.

9 A. That is correct.

10 Q. And you said you're self-employed with Leitner --

11 A. Leitner-Wise Manufacturing.

12 Q. But you're saying that you're not self-employed. You're
13 truly just a W-2 powerless employee of that company.

14 A. I'm a consultant to that company. And there's a very good
15 reason why I'm a consultant, if you'd like to know, sir.

16 Q. I'm sorry. I'm just trying to figure out the -- I'm
17 questioning, frankly, the veracity of your statement that
18 you're unable to get documents from Leitner --

19 A. I didn't say I was unable. I said I can't walk in and
20 take them without permission. I need to speak to an officer
21 of the company.

22 Now, I'm sure they will allow me to go there and provide a
23 copy of a cancelled check.

24 Q. You testified, if I recall, that you're not an owner of
25 Leitner-Wise.

1 A. That is correct.

2 Q. You know you filed schedules in this case that says you
3 own at least five percent of that company.

4 A. When?

5 Q. At the time you filed the petition. I'm looking at your
6 statement of affairs dated July 22, 2004, question 18.

7 A. 2004?

8 Q. July 22, 2014.

9 A. '14.

10 Q. Question 18 asked you to identify any corporations in
11 which you had been -- in which you owned five percent or more
12 of the voting securities, and you identified Leitner-Wise
13 Manufacturing, LLC, weapons design, February, 2012 to the
14 present. And I can show you this document.

15 A. All right. Right. I accept your --

16 Q. Are you saying that statement that you own five percent or
17 more of the stock in Leitner-Wise was not correct?

18 A. That hasn't -- that's -- that ownership has not been
19 granted yet, and that ownership is subject to my certification
20 from the Department of Labor. It would be illegal under
21 United States law for me to own that company prior to that
22 certification.

23 Q. And, again, I'm trying to focus on the issue. I'm trying
24 to figure out --

25 A. Right.

1 Q. -- which is inaccurate. Was is the schedules --

2 A. That -- the --

3 Q. Well, let me finish my question.

4 A. Yeah.

5 Q. Were the schedules you filed July 22nd that said you owned
6 five percent, were they inaccurate, or was your testimony
7 today that you have no ownership at all in -- I'm trying to
8 reconcile the two.

9 A. Okay.

10 Q. Which is --

11 A. The schedule is inaccurate. That was in anticipation --

12 Q. Thank you. That's the end of my question.

13 All right. Now, in terms of your refinance. You haven't
14 gotten a refinance, have you?

15 A. Not yet, sir.

16 Q. All right. Who have you applied to?

17 A. I've applied to a number of companies. The biggest
18 problem is my immigration issue. I've finally found a company
19 that will and has approved my application.

20 Q. Has approved it.

21 A. Has approved it. Subject to receiving information from
22 the lender.

23 Q. And when did they approve it, sir?

24 A. Well, they approved it last week.

25 Q. Last week. All right. I'm going to show you a

1 document -- let me show it to counsel first.

2 You know there have been inquiring of your attorneys of
3 the status of your refinance attempts.

4 A. The first thing I notice I received information on was
5 last week.

6 Q. Right. So I've made an inquiry after you told me the
7 status of it. I asked your attorneys to let me know the
8 status --

9 A. Right.

10 Q. -- of your alleged refinance attempts. And are you aware
11 of their response?

12 A. No, I am not.

13 Q. All right. Take a look at that document. And I'll
14 represent to you -- let me hand it out with a copy of --

15 THE COURT: Right. Do you want this marked as
16 Trustee number 2?

17 MR. GORMAN: Yes, sir.

18 THE COURT: Let's have that marked as Trustee number
19 2, please.

20 (Document showing status of refinance attempts was hereby
21 marked for identification as Trustee's Exhibit 2, as of this
22 date.)

23 Q. Do you see that document, sir?

24 A. Yes, sir.

25 Q. Did you see that at the time counsel sent it?

1 A. I haven't seen this. This is the first time I've seen
2 this document.

3 Q. All right. Is counsel's statement about the status of
4 your refinance attempts, is that an accurate summary?

5 A. Reasonably accurate, yes.

6 Q. All right. My point is your refinance isn't going
7 anywhere, at least short-term, is it?

8 A. Yes, it is.

9 Q. All right.

10 A. Well, I have a -- I believe counsel received a e-mail from
11 the lender confirming it.

12 Q. You're saying it got approved last week, the --

13 A. Well, no. It had been working some time. I got
14 notification of approval.

15 Q. Last week?

16 A. Last week.

17 Q. Then why would your attorney tell me two days ago that
18 your existing lender, things weren't working out because of
19 communication problems, and you were seeking a new lender if,
20 in fact, you had financing approved last week?

21 A. Well, it's semantics. Existing lender refers to Green
22 Tree Loan Servicing. The exist -- there -- I'm not getting
23 anywhere with them.

24 Q. And that's what that e-mail says.

25 A. No. This is a -- this is a -- this applies to an e-mail

1 that I believe counsel received from the new lender confirming
2 that they were prepared to loan on the property but saying
3 they were having communication difficulties with the existing
4 lender.

5 Q. Again, I'm going to repeat my question. Why would he send
6 me that e-mail if, in fact, you had an approved refinance last
7 week?

8 A. I don't understand the question, sir. I cannot tell you
9 why my attorney would send you an e-mail. I have no idea.

10 Q. Well, he communicated to you that I was asking about the
11 status of your refinance attempts, I assume. You said you
12 knew --

13 A. Yes, I received an e-mail that you were asking about that.

14 Q. And did you -- without giving the particulars of your
15 conversation with him, did you --

16 A. I didn't have a conversation with him.

17 Q. Did you have a conversation with anyone at the law firm?

18 A. I didn't have a conversation with anyone at the law firm.

19 Q. Did you have any communications at all, electronic --

20 A. I contacted the lender, the new lender, and they sent an
21 e-mail to the law firm confirming the status.

22 Q. So you got my communication asking about the status of
23 your refinance and refinance attempts.

24 A. No, I didn't get your communication. I received an e-mail
25 from my attorney saying you had inquired as to the status.

1 Q. What did you do next?

2 A. I contacted the lender.

3 Q. Which lender?

4 A. Rich Caviar, LLC.

5 Q. Who?

6 A. Rich Caviar, LLC.

7 Q. Rich Caviar, like the food?

8 A. Yes, like the food.

9 Q. And Rich like wealthy?

10 A. Rich like wealthy.

11 Q. Rich Caviar, LLC.

12 A. Correct.

13 Q. You contacted them.

14 A. I contacted the loan officer.

15 Q. And what happened from there?

16 A. I explained the situation. I gave the e-mail addresses of
17 my attorneys, and they said they would write to the attorneys
18 and confirm that they were -- they had approved the loan in
19 principle, and they were waiting on communications from the
20 Green Tree Servicing, loan servicing.

21 Q. But that's not what the e-mail says, is it?

22 A. I have no control over a third party e-mail, sir.

23 THE COURT: You'll be entitled to any redirect you
24 like. I'm not going to interrupt Mr. Gorman's examination at
25 this time.

1 Q. I'm sorry. I forget what the question was. We'll go back
2 to your sequence. You contacted Rich Caviar.

3 A. Right.

4 Q. And then they did what?

5 A. They contacted the attorneys, and --

6 Q. How do you know that?

7 A. Because I received a copy of the e-mail.

8 Q. All right. And what did that e-mail say?

9 A. It stated that they had approved. I mean, I'm
10 paraphrasing here, but essentially they approved my
11 application and would proceed, you know, they wanted to
12 proceed and close the loan but were having difficulties with
13 communicating with the existing lender. That's my
14 understanding of it. It might not --

15 Q. Your testimony, though, is that they have approved a loan?

16 A. That is what they have told me.

17 Q. All right. Your counsel just handed me a letter or an e-
18 mail. I'm going to hand that to you and see if that refreshes
19 your recollection on this approved loan.

20 THE COURT: You want that marked as Trustee 3?

21 MR. GORMAN: Please. Please. I'm sorry, Your Honor.

22 THE COURT: That's fine.

23 MR. GORMAN: I would blame my lameness on the
24 lateness of the day, but I'm afraid it's just me.

25 THE COURT: Not a problem. We'll have it marked as

1 number 3.

2 (E-mail about loan was hereby marked for identification as
3 Trustee's Exhibit 3, as of this date.)

4 Q. Is that the e-mail you're referring to, that you got
5 copied on?

6 A. Yes. Yes, sir.

7 Q. It doesn't say you've been approved (indiscernible -
8 coughing), does it?

9 A. It says, "We have received his refining (sic) application
10 and approved it, subject to information being received from
11 the current lender. The current lender has proved to be
12 difficult to communicate with, but, notwithstanding, we would
13 expect to have this process finished within the next forty-
14 five to sixty days."

15 Q. All right.

16 MR. GORMAN: I'd move admission of both numbers 2 and
17 3.

18 THE COURT: Any objection?

19 MS. ZHMACHENKO: No --

20 THE COURT: They'll be admitted.

21 (Document showing status of refinance attempts was hereby
22 received into evidence as Trustee's Exhibit 2, as of this
23 date.)

24 (E-mail about loan was hereby received into evidence as
25 Trustee's Exhibit 3, as of this date.)

1 MR. GORMAN: I have nothing further, Your Honor.

2 THE COURT: Any redirect?

3 MS. ZHMACHENKO: No. Nothing.

4 THE COURT: Okay. Before you leave the witness
5 stand --

6 THE WITNESS: Yes, Your Honor. .

7 THE COURT: How much is -- is it your understanding,
8 how much has Rich Caviar approved you for?

9 THE WITNESS: Seven hundred thousand dollars.

10 THE COURT: All right. So 700,000. And the current
11 mortgage is --

12 THE WITNESS: Yes.

13 THE COURT: With Green Tree is 600,000 plus 160 in --

14 THE WITNESS: No, no, no. It's 440,000 plus 160 in
15 arrears. So it's 600,000, Your Honor. They've approved me up
16 to 700,000.

17 THE COURT: What is it that, in your understanding --
18 what is it that Rich Caviar needs from Green Tree? I mean,
19 don't they just --

20 THE WITNESS: Oh, they just need the settlement
21 details.

22 THE COURT: Payoff statement?

23 THE WITNESS: Payoff statement. That's what they're
24 waiting on.

25 THE COURT: Okay. Mr. Gorman, do you have any

1 questions based on the Court's questions? Any further
2 questions from --

3 MS. ZHMACHENKO: (Inaudible response).

4 THE COURT: Okay. Thank you. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Would you hand up number 3, please,
7 Trustee number 3? Thank you. 2 and 3 are admitted, as is 1.

8 Ms. Zhmachenko, do you have any further evidence?

9 MS. ZHMACHENKO: No thanks.

10 THE COURT: Mr. Gorman, do you have any further
11 evidence?

12 MR. GORMAN: Yes, sir. I have a copy of my payment
13 ledger. I'd proffer it into evidence if counsel can't -- I
14 can get up and testify or Ms. Choi can authenticate it, but
15 for right now I'd proffer it as evidence.

16 THE COURT: All right. Let's mark that as Trustee
17 number 4, please. Any objection to it?

18 MS. ZHMACHENKO: No. Thank you.

19 THE COURT: All right. It will be admitted.

20 (Mr. Gorman's payment ledger was hereby marked for
21 identification and received into evidence as Trustee's Exhibit
22 4, as of this date.)

23 MR. GORMAN: And with that I have no further
24 evidence.

25 THE COURT: Okay. Thank you.

1 (Pause)

2 THE COURT: Okay. Well, it's the debtor's motion.
3 Let me hear from debtor's counsel first, please.

4 MS. ZHMACHENKO: Just so I -- I request my request
5 to, essentially, to grant our motion to let him stay in the
6 case and then proceed with his refinancing that he is trying
7 to do.

8 THE COURT: Okay. Thank you.

9 Mr. Gorman?

10 MR. GORMAN: Thank you. The case was dismissed under
11 Local Rule 3070 for debtor's failure to make the first plan
12 payment. The evidence before the Court of my payment records
13 show the date the first payment was made. It was made
14 September 2nd, which is, I believe, a full -- I forget when
15 the petition date was -- his first plan payment was due July
16 27th. It didn't come in for a full five weeks thereafter.

17 So the payment was late. The dismissal was proper.
18 Nothing has been shown to warrant vacating the dismissal.
19 He's required to make the first plan payment. He failed to do
20 so on time.

21 We've got his prior case, which was dismissed for
22 payment default. So I think that's a factor. This debtor
23 knows when the payments are due. He's been in the system
24 before. And he's had payment problems before. So he didn't
25 make the first payment; the case was properly dismissed.

1 He is in default right now, even if the case were
2 reinstated. We've got some evidence there's a check in the
3 mail, but that hasn't posted. It befuddles me why somebody
4 who knew he was in court today, where payment was an issue and
5 knew he had a payment to make, would put it in the mail
6 instead of just bringing it to court. It's suggestive to me
7 that that check isn't good and he needs time for it to clear.
8 But the dismissal should stand.

9 The reason I'm fighting this one --

10 THE COURT: I was shaking my head to the left and
11 right saying no, because Mr. Leitner-Wise was raising his hand
12 as though he wanted to interrupt you during your presentation.
13 I wasn't saying --

14 MR. GORMAN: I apologize.

15 THE COURT: -- no to you. I was saying no to any
16 interruptions during your argument.

17 Now, I've interrupted your argument, so there you go.

18 MR. GORMAN: That's all right. But the reason I'm
19 pushing back on this one, besides that we can't let every
20 single case get reinstated when the debtors don't do what
21 they're supposed to, this one -- the last plan was a -- it
22 probably shouldn't have been confirmed. Maybe I shouldn't
23 have let that one go through. It was a step plan. Payment
24 was 200 dollars, and then a huge step, because the debtor, the
25 theory then was he was going to refi or modify. It didn't

1 happen. He didn't make the step. The case got continued with
2 all kinds of promises. None of them came through. So I look
3 at this case when it comes in with skepticism.

4 My skepticism is supported by the no first payment,
5 and when I asked at the 341 about the arrearage, we're not
6 even pretending there's -- this notion today that he could pay
7 it with this income, that is a new position. Both the plan
8 that is before the Court and the one that was e-mailed to me
9 yesterday that they're planning to file, none of them term out
10 that 160 grand. They all are completely dependent on an
11 outside refinance. They are all contingent. There would be
12 feasibility issues. I don't know what kind of Kafkaesque
13 world I'm in where the lender is named Rich Caviar, LLC, but,
14 putting that aside, we've got the debtor's confidence, but
15 this debtor, with all due respect, has some integrity issues.

16 He says he can't get documents because the company --
17 he worked for a company and doesn't have any control, but his
18 own filed schedule says he's a five percent owner. He now
19 disavows that and says that's not accurate. So we're being --
20 you're being asked to reinstate a case where the debtor has
21 now said that the schedules that were filed aren't accurate.

22 This case doesn't feel right. This doesn't warrant
23 the extraordinary relief of vacating an already entered
24 dismissal order and allow it to go forward in the hopes that
25 he can make these modest hundred dollar payments, which are

1 meaningless. In the scope of a 160,000 dollar mortgage,
2 you're being asked to reinstate a case to allow the automatic
3 stay go in, solely for the purpose of going through the
4 motions of a refinance. He can do that outside of bankruptcy.

5 I also don't accept that there's some mysterious
6 information needed from Green Tree. They're required to give
7 a payoff. A new lender can figure out a payoff with some
8 certainty, because we have a proof of claim from the first
9 case, a debtor who hasn't made payment since. You may not be
10 able to get an exact number, but you can do with pretty
11 certain math know how much is due.

12 You have their sworn statement from a couple of years
13 ago and no payments since then. A new lender can extrapolate
14 about what's -- and the debtor knows about what's needed to
15 take him. That's about 740 to 800. You've got a principal
16 balance. That hasn't changed from the last case. And
17 arrearages. So --

18 THE COURT: Well, you say 740 to 800, but I was
19 confused, and the debtor, in response to my question, said no,
20 it's 440 plus 160 in arrearages, for a total of 600.

21 MR. GORMAN: I'll tell you what I --

22 THE COURT: I thought at first it was 600 plus 160 --

23 MR. GORMAN: No, I think --

24 THE COURT: -- but he corrected me on that.

25 MR. GORMAN: I think it's the 540 -- well, let me --

1 the last case, claim number 1 filed in case number 13-10713,
2 at that time claimed a total of 542,689.

3 THE COURT: All right. But that was 540 plus, say,
4 80 in -- excuse me. 440 plus 80 in arrearages would be, like,
5 520.

6 MR. GORMAN: It --

7 THE COURT: Right?

8 MR. GORMAN: No, it was 542 inclusive of the 80 of
9 arrearages.

10 THE COURT: All right. Okay.

11 MR. GORMAN: So I think right now we're probably up
12 to about 620 and growing.

13 THE COURT: Okay.

14 MR. GORMAN: We had 540 then. Assuming another 80 of
15 arrearages since then, so it's about --

16 THE COURT: But it's not 800, right?

17 MR. GORMAN: You're right. But my point, though, is
18 we -- it's not some mystery as to what it's going to take to
19 take out the existing lender, so I think this refinance is
20 uncertain and speculative, as many of them are.

21 Refinance, as opposed to loan modification, is highly
22 unusual in Chapter 13s. I think it's happened twice in my six
23 years. Modifications have become very common, but the idea of
24 an outside lender coming in and taking out a loan and making a
25 new loan to someone in bankruptcy, and someone who's now been

1 in bankruptcy twice, I'm not saying it doesn't happen, but
2 it's very unusual. Refinances are tricky anyway, but in
3 bankruptcy it's virtually unheard of.

4 And that's what you're being asked to do is put the
5 case back in place, leave the stay, I'll pay a hundred bucks a
6 month when I can, and hopefully get a refi somewhere, someday.
7 I just don't think that's realistic enough or feasible enough
8 to even get a plan confirmed.

9 But here we're just, we're asking to have an order of
10 dismissal that's been in place now for several months vacated
11 for this purpose. I don't think it's appropriate, and I would
12 oppose it. Thank you.

13 THE COURT: Okay. Thank you. Rebuttal argument?

14 MS. ZHMACHENKO: No.

15 THE COURT: Oh, okay. Thank you.

16 All right. The matter is before the Court on the
17 debtor's motion to vacate an order dismissing the case. The
18 debtor's plan called for payments of -- as then filed, called
19 for payments of 100 dollars a month, and then called for a
20 lump sum payment of 45,000 dollars, which was to come from a
21 refinancing of his home.

22 The currently proposed plan -- I don't know that it's
23 been filed, because the case was dismissed -- but the proffer
24 of the proposed plan is that the plan would be 100 dollars a
25 month for 6 months, and then the plan would increase to, I

1 think, 155 dollars, if I'm not mistaken. But, in any event,
2 would still require a refinancing of the property.

3 There was a fair amount of testimony and discussion
4 about whether the debtor has made his plan payments. The
5 trustee's accounting, which is Exhibit number 4, indicates
6 that there's been a total of 400 dollars paid, which leaves
7 the debtor either, depending on whether we accept the debtor's
8 testimony that this latest payment was mailed yesterday,
9 leaves him either 1 month or 2 months behind. But, it,
10 honestly, at one hundred dollars a month, the Court doesn't
11 view that particular controversy as being determinative here.

12 The big issue is has the debtor proposed a
13 confirmable plan. And, of course, the requirements for
14 confirmation of a plan include that of feasibility. In other
15 words, does the plan work, or are we at risk for a plan
16 default which is either likely to happen or predictable within
17 the life of the plan. And certainly the Court is mindful that
18 the debtor bears the burden of proof on all issues relating to
19 confirmation of the plan. It's not the Chapter 13 trustee's
20 burden to show that a plan isn't feasible. It is the debtor's
21 burden to show that the plan is feasible.

22 As I say, this plan, the newly proffered plan as well
23 as the old plan, depends upon a refinance of the debtor's
24 home. Now, this Court routinely denies confirmation of plans
25 where the plan simply says in Section 11, which is the, sort

1 of, any other catchall provision of a Chapter 13 plan, the
2 Court routinely denies confirmation of plans that say we will
3 refinance our home. That's not a feasible plan. We don't
4 know that a refinance is achievable. And so the Court
5 routinely denies confirmation of that kind of plan as not
6 being feasible.

7 The debtor has testified that he has a lender who is
8 willing to make a loan, identified as Rich Caviar. And I'm
9 just chuckling, because I have not heard that name before, and
10 it has some unusualness to it. But the debtor proffered, and
11 it has been entered into evidence as Trustee's number 3, an e-
12 mail from richcaviar@gmail.com dated December 3rd of 2014 at
13 5:30 p.m.

14 The Court is surprised that a lender, presumably a
15 residential loan operation, would be using Gmail as its
16 primary e-mail account, that they don't have a richcaviar.com,
17 they don't have their own domain name, and they're using --
18 but that's possible, and that's not determinative either.

19 But the e-mail itself is not a loan commitment. It's
20 suggestive that there may be a loan commitment, but if Rich
21 Caviar, in fact, has committed to this loan they would issue a
22 standard loan commitment letter. Here's the amount that we're
23 willing to finance. We have to close by a certain date. And
24 often they'll have an attachment to the loan commitment
25 letter; these are the things you must provide us in order to

1 close this loan. This e-mail is not a loan commitment letter
2 by any stretch.

3 And the Court also notes, and I think this is
4 important, that it says subject to information being received
5 from the current lender, and Mr. Leitner-Wise testifies that
6 what they need is a payoff figure. Well, Rich Caviar doesn't
7 need a confirmed payoff figure from Green Tree in order to
8 make the loan commitment. They need a payoff statement to
9 close the loan. But it's not unusual, and I would say it is
10 the usual practice, to say from a refinance lender we need
11 your last mortgage statement. And you can go online, and you
12 can go to greentree.com, and you can download your last
13 mortgage statement, and you e-mail it to Rich Caviar, and it
14 will tell you the principal amount. It will tell you when the
15 last loan payment was made. And it will tell you what the
16 arrearages are and any outstanding fees for late fees,
17 appraisal, and the like. And that's easily obtained by the
18 debtor.

19 And the refinance lender, in the Court's view, needs
20 a payoff statement to close, but they don't need a confirmed
21 payoff statement to make a loan commitment. They need simply
22 the last mortgage statement to confirm the amounts that will
23 be due at closing to Green Tree, in this example, being taken
24 out of the loan.

25 So it is very surprising to the Court that Rich

1 Caviar is making its loan commitment contingent on
2 communications from Green Tree, particularly when, as I say,
3 that information is available, readily available, to the
4 debtor in terms of the amounts that are due on the loan in the
5 form of a monthly mortgage statement.

6 So the Court finds that -- putting aside the whole
7 controversy about how many payments have been made. As I
8 said, I don't really think that that's determinative here.
9 But the Court finds that the debtor's evidence on the loan
10 commitment has fallen short and does not meet the Court's
11 standards for feasibility of a plan.

12 If a plan were proposed in this case, and we heard
13 the same evidence that we heard today, I would certainly deny
14 confirmation of that plan, and I would say it's not feasible,
15 because simply an e-mail from Rich Caviar, LLC is not
16 sufficient. And so the Court finds that the debtor's
17 evidence -- it is the debtor's burden on this motion to vacate
18 to prove to the Court's satisfaction that there is a workable,
19 a feasible plan here. And I just find that the evidence falls
20 short of that, as presented to the Court here today.

21 So for the foregoing reasons I'm going to deny the
22 debtor's motion to vacate.

23 Mr. Gorman, you'll prepare the order, please.

24 MR. GORMAN: Yes, sir. I'll send it to counsel for
25 endorsement and then upload it.

1 THE COURT: Okay. Thank you for your presentations
2 here today.

3 (Whereupon these proceedings were concluded at 5:06 PM)
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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
FOR THE DEBTOR:					
Paul Leitner-Wise	3		6		

EXHIBITS:	DESCRIPTION	I.D.	EVID
Trustee:			
1	Two mailing receipts	15	15
2	Document showing status of refinance attempts	18	23
3	E-mail about loan	23	23
4	Mr. Gorman's payment ledger	25	25

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C E R T I F I C A T I O N

I, Hana Copperman, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Hana Copperman

June 22, 2015

HANA COPPERMAN

DATE

AAERT Certified Electronic Transcriber CET**D 487

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