

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 13
DAVID LEE ANDERSON and)
MARTHA ELLEN ANDERSON,) No. BK 92-40793
)
Debtors.)

OPINION

Creditor Golden Cat Corporation ("GCC") has filed a motion to dismiss the Chapter 13 petition of debtors, David and Martha Anderson, on grounds that they are ineligible for relief under 11 U.S.C. § 109(e). Specifically, GCC alleges that at the time of filing their petition, the debtors owed a non-contingent, liquidated, unsecured debt to GCC in excess of \$100,000 and thus did not meet the debt limitation requirement of § 109(e).¹ The debtors respond that the alleged "debt" to GCC, which is based upon a RICO action filed against debtor David Anderson prepetition, is disputed as to amount and underlying liability and, therefore, constitutes an unliquidated debt not subject to inclusion in the calculation of debts under § 109(e).

¹Section 109(e) provides in pertinent part:

Only . . . an individual with regular income and such individual's spouse, . . . that owe, on the date of filing the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$100,000 may be a debtor under Chapter 13

11 U.S.C. § 109(e) (emphasis added).

The debtors' eligibility for Chapter 13 relief depends on whether the disputed debt to GCC qualifies as a "liquidated" debt for purposes of § 109(e).² The concepts of "debt" and "claim" under the Code are coextensive. The broad definition of "debt" as "liability on a claim" means that a debt exists even though a creditor's claim is disputed. In re Energy Cooperative, Inc., 832 F.2d 997, 1001 (7th Cir. 1987).

The debtors contend that they have a meritorious defense to GCC's RICO action, rendering GCC's claim based on this action unliquidated. Liquidation, however, relates only to the amount of liability and does not concern the existence of liability itself. In re McGovern, 122 B.R. 712, 715 (Bankr. N.D. Ind. 1989). The fact that a debtor has defenses or counterclaims to a claim does not render it unliquidated. In re Albano, 55 B.R. 363, 368 (N.D. Ill. 1985); McGovern, at 717. Rather, liquidation of a claim depends upon the certainty or precision with which the amount claimed can be determined. A debt is liquidated if it may be ascertained by mere calculation or computation; it is unliquidated if judgment, discretion, or opinion is required to determine the amount of the claim. McGovern, at 715, (citing First Nat'l. Bank of Clinton v. Ins. Co. of N. Amer., 606 F.2d 760, 769-770

²No issue is raised concerning the unsecured or noncontingent nature of GCC's claim against the debtors. Thus, the Court need only consider the liquidated nature of this claim.

(7th Cir. 1979)).³

While eligibility for Chapter 13 relief requires that a debt be "liquidated," it is not necessary that the entire claim be liquidated. If any portion of the claim is liquidated, that amount may be included in applying the \$100,000 debt limitation of § 109(e). See, In re Wenberg, 94 B.R. 631 (Bankr. 9th Cir. 1988); In re Michaelson, 74 B.R. 245, 248 (Bankr. D. Nev. 1987).

In its complaint, GCC alleges that David Anderson engaged in a payroll fraud scheme whereby employee timecards and other payroll records were falsified to pay GCC employees for hours not actually worked at GCC's plant. In some instances, participating employees received these unearned wages as compensation for labor performed at the dairy farm owned by the debtor and his brother, Dennis Anderson. Specifically, the complaint alleges that two employees worked full-time at the Anderson dairy farm but were paid by GCC for purportedly working at the GCC plant. GCC's payroll records show that sums paid to these two "ghost" employees totaled \$25,411.48. Further, time logs were kept by individuals who actually altered timecards to record the exact

³The debtor in McGovern filed for Chapter 13 relief after an audit disclosed that he had misappropriated approximately \$165,000 from his employer. The McGovern court noted that the audit provided data which, if believed, would permit the trier of fact to compute the exact amount of the debtor's liability without the use of judgment or discretion. The court concluded that the claim for misappropriation of funds was liquidated where, after determining liability for separate events, the trier of fact need only add up the amount of money involved in each to determine the amount of debt.

number of fraudulent hours added to employees' timecards. These time logs, when compared with GCC's payroll records, show that fraudulent wages and benefits were paid in the amount of \$173,840.51.

The debtor's liability for fraudulent activities alleged in the RICO complaint will undoubtedly require the exercise of judgment or discretion by the trier of fact. However, assuming the trier of fact believes the evidence regarding the "ghost" employees and believes that the time logs reflect fraudulent hours added to employees' timecards during the relevant period, the trier of fact will be able to determine that portion of GCC's damages with exactness, without the use of judgment or discretion, by simply turning to GCC's payroll records and adding up the various amounts paid by GCC based upon the fraudulent hours. Thus, the evidence includes data which makes it possible to compute with exactness a substantial portion of GCC's damages without the use of judgment or discretion. See In re McGovern, 122 B.R. 712, 717-18 (Bankr. N.D. Ind. 1990). GCC's claim in the total amount of \$199,251.99 (the sum of \$25,411.48 and \$173,840.51) can be readily ascertained from payroll records and employee time logs and is, therefore, liquidated in that amount. The fact, moreover, that punitive or treble damages sought by GCC may be unliquidated as requiring the exercise of judgment or discretion does not preclude inclusion of this liquidated portion of damages in determining the debtors' Chapter 13 eligibility under § 109(e).

Because the liquidated portion of Dennis Anderson's indebtedness to GCC exceeded the \$100,000 debt limitation of § 109(e), the debtors are not eligible for relief under Chapter 13. Accordingly, the debtors' chapter 13 case is dismissed for cause under 11 U.S.C. § 1307(c).

As a result of this dismissal, remaining matters in this case are rendered moot and all further settings are vacated.

See written order.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: SEPTEMBER 11, 1992