

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

IN RE:)
RAY FEHRENBACHER,) Bankruptcy Case No. 97-
60852)
Debtor.)

OPINION

This matter having come before the Court on a Motion to Dismiss filed by the Trustee on April 6, 1998, and a Response thereto by the Debtor; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

At issue in this proceeding is whether the Debtor is eligible for relief under Chapter 13 of the Bankruptcy Code, as defined in 11 U.S.C. § 109(e), which states:

(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 \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000, 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 \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000 may be a debtor under chapter 13 of this title.

The facts in this matter are not in dispute, and they show that, while the Debtor's schedules indicate unsecured noncontingent, liquidated debts of less than \$250,000, the actual claims filed have exceeded that amount. In his Memorandum, filed in response to the

Trustee's objection, the Debtor basically concedes that all unsecured claims filed are appropriate with the exception of the claim filed by Sandra Allen and Stephen Allen, each in the amount of \$50,000. As to these debts, the Debtor argues that the debts are unliquidated, and, as such, cannot be included in the computation to determine whether the Debtor is eligible under § 109(e) of the Code.

In reviewing the claims of Sandra Allen and Stephen Allen, the Court has no difficulty in concluding that these debts are noncontingent in that all events leading to the creation of these debts occurred prior to the filing of the bankruptcy petition. See: In re Nicholes, 184 B.R. 82 (9th Cir. BAP 1995); and In re Knight, 55 F.3d 231 (7th Cir. 1995). The dispute in this matter is whether the claims of the Allens are liquidated such that, under the authority of In re Knight, supra, they must be included in the calculation for eligibility under § 109(e).

As for the issue of whether the claim of the Allens is liquidated or unliquidated, the Court finds that the vast majority of Courts have held that the existence of a dispute, over either the underlying liability or the amount of a debt, does not automatically render the debt either contingent or unliquidated. See: In re Jordan, 166 B.R. 201 (Bankr. D. Ma. 1994). More fundamentally, cases have uniformly provided the method for determining whether a debt is liquidated and have stated that "if the amount of a claim has been ascertained or can readily be calculated, it is liquidated, whether contested or not." See: In re Fostvedt, 823 F.2d 305 (9th Cir. 1987). Thus, the question of whether a debt is liquidated turns on whether it is subject to ready determination and precision in computation of the amount due. See: e.g. In re

Albano, 55 B.R. 363 (N.D. Ill. 1985); and In re Williams, 51 B.R. 249 (Bankr. S.D. Ind. 1984). In this case, the Debtor takes the position that the claims of the Allens are unliquidated and are merely estimates which will be the subject of extensive litigation necessary to determine the exact amount of damages.

As stated above, determination that a claim is liquidated is a result of a finding that the amount of a claim can be easily determined. Courts generally recognize that debts based upon tort and quantum meruit claims are unliquidated until resolved by judgment decree or otherwise because the claimant's damages are not fixed. In re Belt, 106 B.R. 553 (Bankr. N.D. Ind. 1989) and In re Furey, 31 B.R. 495, at 497 (Bankr. E.D. Pa. 1983). Given that the claims of the Allens in this case sound in tort, the Court must conclude that the debts are unliquidated for the purpose of an analysis under § 109(e) of the Bankruptcy Code, in that the Allens damages are not fixed as defined in the case law. As such, the Court concludes that the Debtor is eligible for relief under Chapter 13 of the Bankruptcy Code and that this case can proceed to hearing on confirmation of Debtor's Amended Plan, filed on February 2, 1998, and the Trustee's Objection thereto, filed on February 19, 1998.

ENTERED: May 27, 1998.

/s/ GERALD D. FINES