

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

In the matter of)
)
 Charles D. Copeland II)
 and Cynthia R. Copeland)
)
 Debtors.)
)
 CHARLES D. COPELAND II and)
 CYNTHIA R. COPELAND,)
)
 Appellants,)
)
 v.)
)
 NEHAWKA BANK,)
)
 Appellee.)
 _____)

CV. 84-0-24

BK. 83-1513

MEMORANDUM AND ORDER
FILED
DISTRICT OF NEBRASKA
AT _____ M
MAR 1 1985
William L. Olson, Clerk
By _____ Deputy

This matter comes on for determination with reference to an appeal filed by debtors Charles D. Copeland II and Cynthia R. Copeland, from a January 13, 1984 order of the bankruptcy court converting debtors' Chapter 13 proceeding to a Chapter 7 proceeding. On February 13, 1984, debtors filed a motion for stay of the order of the bankruptcy court pending appeal. Following a hearing on such motion, the Court entered a memorandum opinion denying a stay pending appeal (Filing No. 11). Since the date of such memorandum, neither appellants nor appellee has submitted a brief on the merits of the appeal. The following constitutes the Court's findings of fact and conclusions of law.

On September 1, 1983, debtors filed their joint petition for relief under Chapter 13 of Title 11 of the United States Bankruptcy Code. On November 21, 1983, Nehawka Bank filed a motion to dismiss debtors' Chapter 13 proceeding or, in the alternative, to

convert the proceeding to a Chapter 7 liquidation. The bank claimed that debtors were not eligible under 11 U.S.C. § 109 to maintain a Chapter 13 proceeding. Pursuant to 11 U.S.C. § 109(e):

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

Debtors' financial schedules indicated that they had undisputed, unsecured debts of \$26,749.56 and disputed, unsecured debts of \$69,409.96. The bankruptcy court initially determined, therefore, that debtors owed § 109(e) debts in the amount of \$96,159.52. This Court has previously established in *In re McGill*, CV. 83-0-127 (D.Neb. May 16, 1983), that for purposes of determining such debts under Section 109(e) as would establish eligibility to proceed under Chapter 13, disputed, unsecured debt is included in the determination. See also *In re Blehm*, 33 B.R. 678 (Bankr.D.Colo. 1983); *In re Sylvester*, 19 B.R. 671 (Bankr.9th Cir. 1982).

It is undisputed that the bankruptcy court herein ultimately found that debtors' exceeded the \$100,000 ceiling by including within the determination those debts under 11 U.S.C. § 506(a), to the extent the same were unsecured. In pertinent part, Section 506(a) provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest * * * is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property * * * and is an unsecured claim to the extent that the

value of such creditor's interest * * *
is less than the amount of such allowed
claim.

The debt schedules reveal, for example, certain real estate valued at \$195,000 with secured claims against same of \$244,200. Furthermore, furnishings worth \$2,500 are encumbered by secured debt of \$49,500. Thus application of Section 506(a) obtains the result that these debts are unsecured to the extent that they exceed the value of the property secured.

Debtors allege that the bankruptcy court should not have considered Section 506(a) debts when it determined eligibility under Section 109(e) to proceed with a Chapter 13 plan. However, in contradiction to this position, other bankruptcy courts have in fact included Section 506(a) unsecured debts in making a Section 109(e) determination. See, *In re Bobroff*, 32 B.R. 933 (Bankr.E.D.Pa. 1983); *In re Flaherty*, 10 B.R. 118 (Bankr.N.D.Ill. 1981).

Since the Bankruptcy Court committed no error of law,

IT IS HEREBY ORDERED that the January 13, 1984 order of the bankruptcy court should be and the same is hereby affirmed; and

IT IS FURTHER ORDERED that this appeal should be and the same is hereby dismissed with prejudice, each party to pay its own costs.

BY THE COURT:

Robert G. Flaherty

JUDGE, UNITED STATES DISTRICT COURT