

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

<b>FILED</b>	
DISTRICT OF NEBRASKA	
AT _____	M
MAY 16 1983 <i>lo</i>	
CV 83-0-William L. Olson, Clerk	
By _____	Deputy
MEMORANDUM OPINION	

IN THE MATTER OF: )  
 )  
MARK G. MCGILL, )  
 )  
Debtor. )

BK 82-1474  
CV 83-0-William L. Olson, Clerk  
By \_\_\_\_\_ Deputy  
MEMORANDUM OPINION

This matter is before the Court on appeal from orders of the United States Bankruptcy Court for the District of Nebraska denying the debtor's motion for a new trial and dismissing the debtor's Chapter 13 case.

The first issue raised on appeal is whether the Bankruptcy Judge correctly interpreted the portion of 11 U.S.C. § 109(e) which limits eligibility for Chapter 13 relief to individuals having "noncontingent, liquidated, unsecured debts of less than \$100,000.00." The Court affirms the Bankruptcy Judge's decision as to this issue for the reasons set forth below.

Section 109(e) states:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$100,000.00 and noncontingent, liquidated, secured debts of less than \$350,000.00, 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 \$100,000.00 and noncontingent liquidated, secured debts of less than \$350,000.00 may be a debtor under chapter 13 of this title.

(Emphasis added.)

"Debt" is defined in section 101(11) as "liability on a claim." Section 101(4) defines "claim" in pertinent part as a "right to payment, whether or not such right is . . . liquidated, fixed, contingent, . . . disputed, undisputed . . . ." It is

clear that the terms "liquidated" and "disputed" are not synonymous, and that a claim, although liquidated in character, may be disputed by the debtor by way of defenses or set-offs. The limits in section 109(e) thus apply to noncontingent, liquidated liabilities, whether or not right to payment is disputed.

At the hearing on appellee's objection to confirmation of appellant/debtor's Chapter 13 plan, counsel for the debtor conceded on the record that the amount of noncontingent, liquidated, unsecured claims against the debtor exceeds \$100,000.00. However, counsel asserts that the monetary limits of section 109(e) apply to "debts" not to "claims." Therefore, counsel urges that because the debtor disputes his liability on appellee's claim, the Bankruptcy Court was required to make an independent determination as to the validity, i.e., as to the debtor's "liability on," appellee's claim. See In re King, 9 B.R. 376 (Bankr. Or. 1981).

In this Court's view, however, the correct interpretation of section 109(e) is that adopted in In re Sylvester, 19 B.R. 671 (Bankr. 9th Cir. 1982), that:

disputed unsecured debt is not excluded when determining whether the \$100,000.00 limitation is exceeded. Put differently, the quoted sections evidence Congressional intent to make individuals who owe, at the commencement of the case, unsecured debt in excess of \$100,000.00 ineligible for Chapter 13 even though the debtor disputes all or part of that indebtedness. Only contingent or unliquidated debt is excluded from the computation.

. . . .

[T]he fact that [a] claim was disputed was not relevant for purposes of section 109(e), and the fact that it was subject to defenses and counterclaims was likewise not relevant.

The Sylvester Court expressly rejected the reasoning of In re King, stating:

The Bankruptcy Court in In re King . . . held that "a debt is not liquidated if there is a substantial dispute regarding liability or amount." We believe this definition has the effect of excluding disputed claims from section 109(e) computation, contrary to the express language of the section.

(Emphasis added.)

While the Sylvester Court did state that "the Court must determine the liquidated amount of any disputed claim prior to making the computation required by section 109(e)," counsel for the debtor in the present case correctly characterized appellee's claim (on a note) as liquidated in its entirety.

The Bankruptcy Judge in the present case relied on his recent decision in In the Matter of DeBrunner, 22 B.R. 36, 37 (Bankr. Neb. 1982) that:

Only contingent or unliquidated claims are to be excluded from the claims to be considered in determining eligibility for Chapter 13 and that disputed claims are not excluded if they are noncontingent and liquidated, as is the case here.

This Court agrees with his analysis.

As to the second issue on appeal, the parties are in accord, and this Court agrees, that dismissal of this action on the Bankruptcy Court's own motion was improper under 11 U.S.C. § 1307(c). This case will, therefore, be remanded to the Bankruptcy Court for a hearing under section 1307(c) limited to determining whether the case should be converted or dismissed, if dismissal is sought by an interested party.

An order will be entered contemporaneously herewith in accordance with this Memorandum Opinion.

DATED this 10<sup>th</sup> day of May, 1983.

BY THE COURT:



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C. ARLEN BEAM  
UNITED STATES DISTRICT JUDGE