UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
CLAYTON KOCK,	)	CASE NO. BK80-375
MARILYN KOCK,	)	
	)	
DEBTORS	)	

MEMORANDUM

On February 29, 1980, an involuntary petition was filed against Mr. and Mrs. Kock. By an order dated May 27, 1980, relief was ordered under Chapter 7 of Title 11 of the United States Code.

On June 6, 1980, debtors filed their schedules and statement of affairs indicating $568,531.05 in secured claims and $121,447.86 in unsecured claims without priority. On October 7, 1980, debtors moved to convert this case from a Chapter 7 case to a Chapter 13 case. Several creditors have opposed the conversion. Grounds for opposition are alleged to be ineligibility for relief under Chapter 13.

Pursuant to 11 U.S.C. §109(e) only an individual (or an individual and his spouse) with regular income owing non-contingent, liquidated unsecured debts of less than $100,000.00 and non-contingent, liquidated secured debts of less than $350,000.00 may be a debtor under Chapter 13.

On December 1, 1980, debtors amended their schedules A-2 and A-3. In that amendment, they list secured debts of $533,531.05 which, they allege, have security against those debts of $93,000.00 in market value. This matter is before me on the stipulation between the parties indicating that the amendments filed on December 1, 1980, may be considered by me and the matter be considered for decision as of January 9, 1981. I note from the file that on January 28, 1981, the debtors attempted to amend their schedules again. This last amendment violates the stipulation of the parties for submission of the case.

A disputed question is whether the debtors owe unsecured creditors more than $100,000.00 which is liquidated and non-contingent and also secured creditors more than $350,000.00 in liquidated, non-contingent debt. A dispute between the parties exists as to the appropriate method for resolution of the factual matter. I agree with the objecting creditors that asserting in schedules

that debts are contingent or unliquidated does not necessarily make them so. However, it would also seem that the debtors would have the burden of showing prima facie eligibility for relief under Chapter 13.

In their amended schedules, the debtors have listed certain debts as "disputed". However, there are distinctions between a "disputed" debt and a "contingent" or "unliquidated" debt. Listing a debt as disputed does not make it contingent or unliquidated. Cowans, Bankruptcy Law and Practice, Section 19.1 (Interim edition 1980). A contingent claim is one that may arise upon the occurrence of a future event, Collier on Bankruptcy, Section 502.03 (1979). An unliquidated claim is one the value of which cannot be exactly stated.

Pursuant to the stipulation, the parties have agreed to submit this matter to the Court on the documentary evidence in the file. This documentary evidence is as of January 9, 1981, without regard to the subsequent amendment. As of January 9, 1981, the debtors have listed in their amended schedules $533,531.05 in secured debts of which they list $198,000.00 as disputed. This does not make them contingent or unliquidated debts. They list the market value of the security at $93,000.00 which would indicate that the unsecured claims arising by reason of deficiencies for lack of adequate security exceed $100,000.00 on these debts alone. Ineligibility appears present.

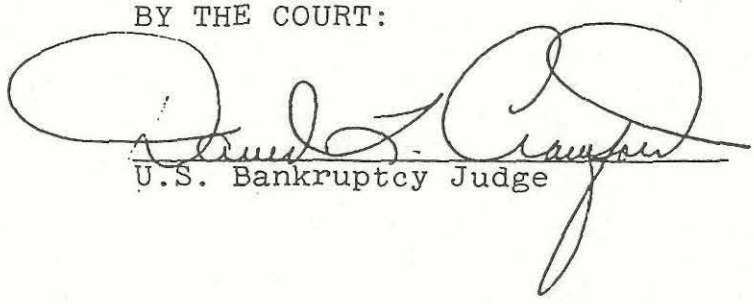
The debtors respond by asserting that they may have incorrectly referred to certain debts as "disputed". They suggest that further inquiry is appropriate. However, the parties have agreed to submit the matter on the stipulation and it is all that is before me.

The foregoing argument by the debtors of mislabeling in their schedules raises a troublesome problem. My concern arises because of the amendments to the schedules which are properly before me and the amendment which was filed after the stipulation and violates the stipulation. 11 U.S.C. §1325a(3) requires the Court to find the plan to have been proposed "in good faith" as a condition to confirmation. Exactly what "in good faith" means is not defined by the statute, the legislative history, or significant case law. I suggest that one element of "good faith" is candor and straight forwardness by the debtor in the Chapter 13 proceeding. Given the extreme flexibility of remedies available to the debtor in a Chapter 13 proceeding, it seems to me that the good faith requirement of Chapter 13 imposes on a debtor a counterbalancing obligation to be candid and straight forward with his creditors. Reasonably accurate and reliable schedules (which are filed under oath) are part of this obligation it seems to me. In the present case, it would appear that those requirements are lacking.

In accordance with the foregoing, I am unpersuaded that the debtors are eligible for relief under Chapter 13 because of their debt structure. If I am in error on that point, I am unpersuaded that the proceeding has been prosecuted in good faith because of the condition of the schedules on file. Either conclusion leads me to deny the debtors' request to convert to Chapter 13. A separate order is entered in accordance with the foregoing.

DATED: January 4, 1982.

BY THE COURT:



U.S. Bankruptcy Judge

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