

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:

MARLIN A. KOEHLER,

Debtor.

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BK 85-127
CV 86-0-49

ORDER

FILED DISTRICT OF NEBRASKA JUN 18 1986 William L. Olson, Clerk By _____ Deputy

This matter is on appeal from an order of the Bankruptcy Court entered January 7, 1986, pursuant to 11 U.S.C. § 1307(c) dismissing the case for cause. The Bankruptcy Court found that the debtor Mr. Koehler owed on the date of the filing of the petition, non-contingent, liquidated, unsecured debts that aggregated more than \$100,000.00 and that as a result he was ineligible to be a debtor under Chapter 13 of the Bankruptcy Code pursuant to 11 U.S.C. § 109(e). The Court finds, after a review of the submitted materials, that cause existed to dismiss the case pursuant to 11 U.S.C. § 1307(c) and that the decision of the Bankruptcy Court should be affirmed.

FACTS

The facts in this case are not in dispute. The Chapter 13 debtor filed a Chapter 13 plan. In the plan, the debtor listed a secured debt of \$173,676.00 owed to the appellee Bank of Norfolk (Bank) and an unsecured debt of \$8,000.00. The debtor also listed the value of the collateral securing the Bank's debt at \$56,850.00. The plan was confirmed on May 18, 1985, without objection. On June 12, 1985, less than one month after confirmation, the Bank filed a motion to dismiss alleging the Bankruptcy Court entered the order confirming the plan when it did not have jurisdiction to confirm the plan because Mr. Koehler was

not qualified to be a debtor under Chapter 13 since the Bank had unsecured claims of approximately \$116,000.00 at the time the plan was proposed.

DISCUSSION

The debtor argues on appeal that he is eligible to be a debtor under Chapter 13, and that the determination that he is not eligible to be a debtor under Chapter 13 is the result of a failure to distinguish between the word "debt" as used in 11 U.S.C. § 109(e) and the word "claim" as used in 11 U.S.C. § 506(a). In re Morton, 43 B.R. 215 (Bankr. E.D.N.Y. 1984). This Court, however, agrees with the Bankruptcy Court's rejection of the debtor's proposed limitations. 11 U.S.C. § 109(e) provides:

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 and noncontingent, liquidated, secured debts of less than \$350,000 . . . may be a debtor under Chapter 13 of this title.

Id. The Bankruptcy Court correctly reasoned as follows:

[T]he Code defines 'debt' at §101(11) as liability on a claim. It defines 'claim' at § 101(4) as a right to payment, whether or not secured or unsecured. Therefore, Mr. Koehler owed the Bank a debt in the amount of \$173,676. The claim of the Bank was \$173,676. Part of the claim was secured to the extent of \$56,850, the value of the collateral, and part was unsecured to the extent of \$116,826. The debtor acknowledged those numbers in the plan.

Record on Appeal, Filing 26 at 3.

In addition, the Bankruptcy Court did not err in the application of the holding of In re Pearson, 773 F.2d 751 (6th Cir. 1985) to the facts in this case. The Court in In re Pearson,

held that in determining whether debtors meet Chapter 13 eligibility requirements a court should primarily rely on the debtors' schedules, checking only to see if the schedules were made in good faith, on the theory that the statute considers debts as they exist at the time of filing not after a hearing. Id. at 756. The Bankruptcy Court properly analyzed that:

[I]n this case, the petition, schedules and plan show on their face, without a hearing to determine secured status, that part of the Bank's claim is secured and part is unsecured. In addition, the plan carries out the scheme of the schedules. It proposes to pay the Bank only the value of its collateral by transferring the collateral to the Bank.

Mr. Koehler clearly is not eligible to be a debtor under Chapter 13 of the Code.

Record on Appeal, filing 26 at 4.

The Bankruptcy Court, likewise, did not err in determining that the order, entered without a hearing, confirming the Chapter 13 plan was entered without jurisdiction and that the case should be dismissed for cause.¹ See In re Pearson, 773 F.2d at 757 (case likens the threshold determinations of Chapter 13 eligibility to the threshold determinations of the amount in controversy in diversity cases); St. Paul Mercury Indemnity Co. v.

¹The debtor argues that laches should apply in this instance. This Court cannot agree. As the Bankruptcy Court pointed out, lack of subject matter jurisdiction can be raised at any stage in a proceeding. In addition, the motion to dismiss drawing the jurisdiction issue to the Court's attention was filed less than one month after the plan was confirmed. This certainly put the debtor on notice that there was a problem in the proceedings and should have stopped any further reliance.

Red Cab Co., 303 U.S. 283, 288-90 (1938). See also In re Mozer, 1 B.R. 350 (Bankr. D. Colo. 1979); In re Kelsey, 6 B.R. 114, 117 (Bankr. S.D. Tex. 1980).

Accordingly,

IT IS ORDERED that the order of the Bankruptcy Court should be and hereby is affirmed.

DATED this 18th day of June, 1986.

BY THE COURT:


C. ARLEN BEAM, CHIEF JUDGE
UNITED STATES DISTRICT COURT