

In the United States Bankruptcy Court

for the Northern District of Iowa

JAMES DONALD ECKENROD and
 JULIE ANN ECKENROD
 a/k/a JULIE ANN ROE
 a/k/a JULIE ANN SCHULTZ
 Debtors.

Bankruptcy No. 93-60178LW

Chapter 13

ORDER RE: MOTION TO DISMISS

This matter came on for hearing before the undersigned on July 29, 1993 on a Motion to Dismiss filed by Creditor Farmland Financial Services Co. Farmland asserts that Debtors James and Julie Eckenrod do not qualify for Chapter 13 protection because their unsecured debts under 11 U.S.C. 109(e) total more than \$100,000. This is a core proceeding under 28 U.S.C. 157(b)(2)(A).

At the hearing, Farmland amended its motion to make it applicable to both debtors, James and Julie. Farmland's original motion sought dismissal of only James' Chapter 13 proceeding. Farmland presented evidence and exhibits to support its contention that Debtors have unsecured debts of more than \$100,000. Its summary on Exhibit 9 draws values for various items of collateral from a statement of proceeds from sale by Chuck's Sale Yard (Exhibit 7) and from a June 18, 1993 appraisal by Boos Implement (Exhibit 8) prepared for Farmland. These values are at odds with the values listed by Debtors in their amended schedules. The pertinent differences are as follows:

Farmland's calculations:			
	Total debt (undisputed)	Value of collateral	Portion undersecured
1. Farmland	\$94,280.88	\$27,566.283 ⁽¹⁾	\$66,714.60
2. Elma Bank	5,534.50	5,250.00	284.50
3. John Deere	8,020.00	6,500.00	1,520.00
4. First Nat'l	6,070.00	5,000.00	1,070.00
Total undersecured:			\$69,589.10
Debtors' other unsecured debt as set out on amended schedules (not disputed):			38,924.00
Total:			\$108,513.10

Debtors' calculations			
	Total debt (undisputed)	Value of collateral	Portion undersecured
1. Farmland	\$94,280.88	\$45,854.50	\$48,426.38
2. Elma Bank	5,534.50	5,550.00	0.00
3. John Deere	8,020.00	8,250.00	0.00
4. First Nat'l	6,070.00	5,000.00	1,070.00
Total undersecured:			\$49,496.38

Debtors' other unsecured debt as set out on amended schedules (not disputed):	38,924.00
Total:	\$88,420.38

Part of the difference in the values the parties place on Farmland's collateral is attributable to Debtors' claim that some collateral is exempt as tools of the trade. Debtors are attempting to avoid Farmland's lien to the extent it impairs those exemptions. Debtors have valued the equipment claimed exempt at \$18,990.00. Farmland has objected to the exemptions and to lien avoidance. It asserts that some of the equipment claimed exempt is subject to an ownership interest in favor of Arlene Eckenrod, James' ex-wife, that Debtors have undervalued the equipment, that Julie has no interest in the equipment and that Julie is not entitled to claim farming equipment as exempt. Farmland further argues that its security interest is a purchase money security interest which is not subject to avoidance under 11 U.S.C. 522(f).

If the \$18,990 value of the collateral equipment claimed exempt is added to Farmland's calculation of the value of its collateral, Debtors may be eligible for Chapter 13 under 109(e). However, if Debtors' calculations are revised to adopt Farmland's lower valuations of equipment and to exclude the values of the equipment they claim exempt in calculating unsecured debt, Debtors may be ineligible.

The issues presented are: 1) should the value of exempt collateral equipment be deducted from the amount of the secured debt to determine the extent to which Farmland is unsecured and 2) what is the extent of unsecured debt in light of the parties' dispute as to values of collateral.

Sec. 109(e) provides that "[o]nly 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." An undersecured debt should be treated as unsecured in determining Chapter 13 eligibility. Miller v. United States, 907 F.2d 80, 82 (8th Cir. 1990). "[A] creditor has a secured claim only to the extent of the value of the collateral and an unsecured claim for the balance." Id. Courts examine the true value of collateral securing a debt when evaluating a debtor's eligibility for Chapter 13 relief under 11 U.S.C. 109(e). Id.

Courts must look realistically at the state of a debtor's affairs at the time the Chapter 13 petition is filed. Lucoski v. I.R.S., 126 B.R. 332, 340 (S.D. Ind. 1991). Most courts look beyond the debtor's schedules to determine whether the debtor, in actuality, exceeds the statutory maximum limits. Id. at 342; see also In re Jerome, 112 B.R. 563, 566 (Bankr. S.D. N.Y. 1990) (courts should look beyond debtor's schedules to avoid allowing debtor to circumvent 109(e) limitations); Miller, 907 F.2d at 82 (Court concluded that, under the circumstances, it need not decide whether to determine eligibility by debtor's good faith filings alone).

In In re White, 148 B.R. 283, 284 (Bankr. N.D. Ohio 1992), the value of the collateral, debtor's home, was at issue and, depending on the value of the home, there was a possibility that the debtor's undersecured debt might be less than \$100,000. The court stated that "tying section 109(e) eligibility to resolution of the value of the home and such other matters would clearly violate [the] admonition that chapter 13 eligibility be decided summarily." Id. at 287. Summary disposition of the eligibility determination is consistent with Congress' intent to provide consumers and small businesses incentives to choose chapter 13 rather than liquidation. Id. at 285. The White court concluded that the debtor was eligible for chapter 13, noting that real estate valuations can vary widely and the debtor could have asserted in good faith that his unsecured debt as of the filing date was less than \$100,000. Id. at 287-88.

The Court has found two cases which discuss the effect of exemptions in calculating 109(e) eligibility. Jerome, 112 B.R. at 565; In re Norman, 32 B.R. 562, 566 (Bankr. W.D. Mo. 1983). Both cases calculated the extent that a judgment was a lien on the debtor's real estate. Norman noted that the debtor's ex-wife's judgment was a lien on the debtor's real estate, provided the lien was not avoidable under 11 U.S.C. 522(f). 32 B.R. at 566. The court found that the ex-wife was

secured to the extent of the value of the real estate, minus the amount of the secured debt on the real estate and minus debtor's exemption. *Id.* The remainder of the judgment constituted unsecured debt. *Id.* Similarly, Jerome allowed that a judgment became a lien against a debtor's equity in real estate, calculated by taking the value of the home less exemptions and less the mortgage balance. 112 B.R. at 565. The applicable exemptions in both Jerome and Norman appear to be homestead exemptions which were not disputed.

Farmland's calculation of the value of its collateral omits the value of the equipment securing its debt which Debtors have claimed exempt, rendering Farmland unsecured to that further extent. The Court does not accept this analysis. Debtors' claimed exemption is highly disputed and dependent on many factors. Debtors characterize the amount of the value of that equipment as contingent debt for purposes of the 109(e) determination. "Noncontingent" is not defined in the Bankruptcy Code. In general, however, the fact that a debtor disputes a debt or has defenses to it does not render the debt contingent. In re Teague, 101 B.R. 57, 58 (Bankr. W.D. Ark. 1989). Here the debt itself is not contingent; rather, its status as secured or unsecured is disputed.

The fact that Debtors claim some of Farmland's collateral as exempt should not be a consideration in calculating 109(e) eligibility. This is not a case of a fixed homestead exemption which is nearly indisputable. There is a degree of uncertainty under the facts of this case as to the extent of the exemption to be allowed to either debtor. At the time of filing bankruptcy and at the time of conversion to Chapter 13 herein, the equipment constituted security for Debtor's debt to Farmland. Eligibility is based on the status of the debtor at the time of filing, not after a hearing on the merits of a claim. Jerome, 112 B.R. at 566. Whether the property is eventually determined to be exempt cannot influence a determination of whether Debtors are eligible for Chapter 13. Therefore, the Court will include the value of the exempt property in the value of Farmland's collateral for purposes of calculating the amount of Debtor's unsecured debt under 109(e).

Farmland argues that Debtors have unsecured debts of more than \$100,000 even if it is not considered undersecured to the extent some of its collateral is exempt. In order for Farmland to succeed in this argument, the Court must accept Farmland's valuations of collateral over Debtors' valuations. A review of the record discloses many different appraisals of Debtors' property, i.e., Debtors' values in their schedules and amended schedules; Farmland's values presented as exhibits as noted above; values presented in state court in James' and Arlene's dissolution proceedings.

The test of 11 U.S.C. 506(a) is used to determine the character of debts for purposes of 11 U.S.C. 109(e). Miller, 907 F.2d at 82. Sec. 506(a) provides in relevant part, that

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. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property.

An internal conflict exists in this language. The first sentence of 506(a) requires courts to value the creditor's interest; the second sentence directs courts to value the collateral considering debtors use or disposition of it. In re Balbus, 933 F.2d 246, 248 (4th Cir. 1991) (hypothetical costs of sale not included in value of collateral). Also important is the purpose of the valuation. *Id.* at 251. The purpose of 109(e) is to set specific dollar limitations to "permit the small sole proprietor, for whom a chapter 11 reorganization is too cumbersome a procedure, to proceed under chapter 13." *Id.*

Debtors themselves have conflicting goals in placing values on their property. For purposes of eligibility for Chapter 13, debtors may tend to place a high value on collateral equipment to avoid exceeding the \$100,000 limit on unsecured debt. On the other hand, debtors may place a low value on equipment claimed exempt in order to take full advantage of their exemptions. A creditor in Farmland's position has incentive to present low valuations on equipment in objecting to

Chapter 13 eligibility in order to prove debts are undersecured in excess of the \$100,000 limitation. This also puts Farmland in the unenviable position of arguing that Debtors' values of exempt property are too low and their values of other non-exempt collateral are too high. Property valuations can vary widely. The values presented by both Farmland or Debtors could reasonably be accepted as accurate.

There are few cases which discuss these issues. However, the cases tend to stress certain themes, namely: 1) that values are established as of the time of filing; 2) that valuation should be accomplished in a summary fashion; 3) that the Debtors' schedules should be given substantial weight in making determinations as to value; 4) that Debtors' good faith in establishing values in the schedule should be given great weight; and 5) that sec. 109(e) should be liberally construed to effectuate the Congressional purpose of encouraging Chapter 13 reorganization over liquidation.

In summary, this record does not establish that the valuations placed upon the property by either party are presented in other than good faith. The various values presented to the Court create a sufficiently close question that the Court, in applying the foregoing criteria, determines that eligibility has been established. The Court ultimately concludes that, considering the Bankruptcy Code's preference for reorganization over liquidation, the Debtors must be given the benefit of any doubt as to valuation. Creditor Farmland's Motion to Dismiss must be denied.

WHEREFORE, for all of the reasons set forth herein, Creditor Farmland Financial Services Co.'s Motion to Dismiss is **DENIED**.

SO ORDERED this 19th day of August, 1993.

Paul J. Kilburg, Judge
U.S. Bankruptcy Court

1. This amount differs from the amount set out in Exhibit 9. It is increased by \$3,863.00 which represents the July 29, 1993 receipt of a disaster check which Debtors' attorney characterizes as "clearly secured to Farmland." Also, the amount includes a value of \$1,000 for the pulling tractor as Farmland asserted at the hearing rather than \$5,750.00 as reflected in Exhibit 9.