

In the United States Bankruptcy Court

for the Northern District of Iowa

DARRIN T. PALMER
Debtor(s).

Bankruptcy No. 93-21509KD
Chapter 13

ORDER RE: TRUSTEE'S MOTION TO DISMISS OR CONVERT

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)

) Chapter 13

DARRIN T. PALMER,)

) Bankruptcy No. 93-21509KD

Debtor.)

)

ORDER RE: TRUSTEE'S MOTION TO DISMISS OR CONVERT

Debtor, Darrin T. Palmer, filed a Chapter 13 petition and proposed plan scheduling unsecured debts in the sum of \$127,730.00. The trustee moved to dismiss or convert the case on the basis that Debtor's unsecured debts exceed the limitations under 11 U.S.C. § 109(e). To qualify for Chapter 13, a debtor must be "an individual with regular income that owes, on the date of filing of the petition, noncontingent, liquidated, unsecured debts of less than \$100,000 . . .". Debtor proposed amendments to his Chapter 13 petition, schedules and plan. Under the proposed amendments, unsecured debts of \$32,000 have been eliminated thereby reducing unsecured debts to \$96,730.00. The \$32,000 reduction in scheduled unsecured debts represents a single claim of Mona Co-op Co. which Debtor's father purportedly paid on behalf of Debtor. Debtor states that he has no obligation to his father for the debt.

The attorney for Luana Savings Bank contends that even if the \$32,000 debt is deleted from Debtor's schedules, total unsecured debts remain in the approximate amount of \$102,000. The Bank claims an undisclosed amount for interest and attorney's fees associated with a judgment that the Bank acquired. The judgment relates to a \$92,000 unsecured debt that Debtor owes the Bank.

STANDARD OF REVIEW

In determining Chapter 13 eligibility, the Bankruptcy Code prefers reorganization over liquidation. In re Eckenrod, No. 93-60178LW, slip op. at 5 (Bankr. N.D. Iowa Aug. 19, 1993). This preference is effectuated by determining debt valuations in a summary fashion, giving substantial weight to the schedules of the debtor. Id. at 5; In re White, 148 B.R. 283, 285 (Bankr. N.D. Ohio 1992). Although the Court may look beyond the debtor's schedules in determining debt values, Lucoski v. I.R.S., 126 B.R. 332, 342 (S.D. Ind. 1991), "the debtors' good faith in establishing values in the schedule should be given the greatest weight." Eckenrod, slip op. at 5.

Does payment of a debt by a third party, postpetition, enable Debtor to meet the eligibility requirements of 11 U.S.C. § 109(e)?

It is axiomatic that Chapter 13 eligibility is established "on the date of the filing of the petition . . ." 11 U.S.C. § 109(e); Eckenrod, slip op. at 5; see also White, 148 B.R. at 287; In re Jerome, 112 B.R. 563, 566 (Bankr. S.D.N.Y. 1990); In re Miller, No. 4-88-5145, 1989 WL 113152, slip op. at 4 (Bankr. D Minn. Sept. 29, 1989); Comprehensive Accounting Corp. v. Pearson, 773 F.2d 751, 756 (6th Cir. 1985); In re Norman, 32 B.R. 562, 566 (Bankr. W.D. Mo. 1983). Therefore, Debtor's scheduled unsecured debts exceed the statutory maximum on the date of filing rendering Debtor ineligible under Chapter 13 unless other legal principles render this rule inapplicable.

There are few cases analyzing postpetition liquidations of debt to enable a debtor to meet eligibility requirements. In In re Clark, 91 B.R. 570, 571 (Bankr. D. Colo. 1988), debtors' original schedule included a \$10,000 unsecured debt representing the undersecured portion of a mortgage. Debtors subsequently conveyed the property securing the mortgage to the mortgagee "in full and final satisfaction of its claim" against the debtors. Id. at 571. Finding that the debtors did not meet the eligibility requirements of 11 U.S.C. § 109(e), the court held that the postpetition transfer of collateral did not retroactively extinguish the creditor's claim as of the date the petition was filed. Id. at 573.

In re Williams Land Co., 91 B.R. 923, 925 (Bankr. D. Or. 1988), involved a debtor's eligibility within the context of Chapter 12 debt limitations. After filing a proof of claim, an insider creditor submitted a waiver of right to payment. Debtor argued that the waiver negated the claim, and that the creditor's claim should not be considered for eligibility purposes. The court held that a pre-filing waiver might have negated the debt, however, a postpetition waiver had no effect for eligibility purposes. Id. at 927.

In In re Labig, 74 B.R. 507, 509 (Bankr. S.D. Ohio 1987), the son-in-law of the debtors purchased for an assignment three judgment certificates held against the debtors. Two of the claims (totalling \$255,764) were acquired from the debtors' creditors postpetition. The son-in-law offered to forego payment on the claims to enable the debtors to qualify under Chapter 12. The court held that the debts would be valued for eligibility purposes as of the date of the filing of the petition. Id. at 510.

The foregoing courts dealt with postpetition liquidations in the context of a debtor's eligibility while focusing on the date of filing. They did not address the amendment provisions of Federal Rules of Bankruptcy Procedure 1009(a). Bankruptcy Rule 1009(a) allows a debtor to amend his petition and schedules as follows:

(a) GENERAL RIGHT TO AMEND. A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. . . .

Under this Rule, amendments, sometimes, relate back to the date of filing of the petition.

Three cases from various bankruptcy courts have allowed postpetition amendments to allow debtors to meet debt limitations. The Bankruptcy Court for the Southern District of Ohio allowed a postpetition amendment to a plan in order to enable the debtor to meet the debt limitations of 11 U.S.C. § 109(e). Factually, three married couples jointly owned a farming business and filed three separate Chapter 13 plans. A creditor sought dismissal of the cases on the grounds that joint and several liability of the individual debtors with respect to certain farm loans resulted in each debtor exceeding the statutory limits of § 109(e). The Court denied the request for dismissal and allowed the debtors an opportunity to modify their plans, deleting from those plans the operation of the farm business. The court did not specifically refer to Bankruptcy Rule 1009(a). In allowing the amendment, the court found that the farm operation could file as an independent partnership entity. Miami Valley Prod. Credit Ass'n v. Tegtmeier, 31 B.R. 555 (Bankr. S.D. Ohio 1983).

The Bankruptcy Court in the Northern District of Ohio allowed an amendment to the bankruptcy schedules and allowed the amendments to relate back to the date schedules were originally filed. The debtor filed its original schedules under Chapter 11, alleging that it was solvent on the date of filing. The debtor subsequently amended its schedules, adding additional liabilities. The court's rationale for allowing the amendments to relate back to the original date of filing was that the amendments simply and more accurately portrayed the true financial picture of the debtor at the time that it filed its original bankruptcy petition. In re Ace Fin. Co., 64 B.R. 688 (Bankr. N.D. Ohio 1986).

The court in the Western District of Arkansas determined that amendments under General Order 11, a predecessor to Bankruptcy Rule 1009(a), relate back to the time of filing of the petition. The facts establish that the debtors filed for bankruptcy without claiming a homestead exemption. Following foreclosure on the debtors' home, but before any distribution by the Trustee, debtors sought to amend their schedules to claim as exempt a homestead which the debtors owned on the date of filing. In re Powers, 339 F. Supp. 1068 (W.D. Ark. 1972).

The foregoing cases appear to have applicability to the present issue. However, close examination of these cases establish that the amendments allowed by the respective courts addressed matters which existed prior to or on the date of the filing of the original petition. As all of the matters raised in the amendments existed on the date of filing, they could have been presented in the original petition. In the present case, Debtor's amendment relates to a transaction that occurred postpetition. Debtor's proposed amendment relates to a transaction that could not have been listed in Debtor's original petition and is, therefore, factually and legally distinct from the foregoing cases.

In summary, the law is clear that Chapter 13 eligibility is determined on the date of filing of the petition. The majority of cases which analyze this issue have disallowed amendments when postpetition liquidation of the debt from a debtor's schedules brings the total debt within eligibility requirements of 11 U.S.C. § 109(e).

Bankruptcy Rule 1009(a) allows a debtor to amend the bankruptcy schedules as a matter of course at any time before the case is closed. As previously discussed, some cases allow amendments to relate back to the date of filing. However, all of the cases that allow relation back to the date of filing present circumstances that existed on the date of filing. To a large extent, debtors were merely correcting their original schedules. In the present case, Debtor's circumstances have changed. The debt, which Debtor proposes to remove from the schedules postpetition, was a valid existing debt on the date of filing. While Bankruptcy Rule 1009(a) is silent on whether amendments can relate back to the date of filing, the case law does not support a construction of this rule which would allow debtors to relate their amended petitions back to the date of filing for purposes of eligibility where a debt which was valid on the date of filing was liquidated postpetition.

It is the ultimate conclusion of this Court that at the time of filing of the Chapter 13 petition, the Debtor had unsecured debts in excess of \$127,000. The debt limit under a Chapter 13 is \$100,000. Factually, this case is distinct from In re Eckenrod, id., in which good faith valuation differences may exist. Absent the payment of a substantial debt by a third party postpetition, Debtor does not meet the requirements of this Chapter. For the reasons stated in this opinion, postpetition payments of sufficient debts to reduce the unsecured debts below the \$100,000 limit does not modify the rule that the determination of debt valuations is made as of the date of filing of the petition. Additionally, Bankruptcy Rules relating to amendments have no impact in modifying this underlying Rule. For all these reasons, this Court must conclude that as of the date of filing, the Debtor had debts substantially in excess of the limit authorized by 11 U.S.C. § 109(e). The subsequent conduct of the Debtor does not change those eligibility requirements and for those reasons, the Trustee's Motion to Dismiss or Convert is sustainable. The Court has the discretion under 11 U.S.C. 1307 to dismiss the Chapter 13 case or convert to a Chapter 7 liquidation. As the Court's determination of the foregoing issue resolves this case, the Court does not address the issues of good faith, refiling a Chapter 13 petition, or valuation of the remaining disputed unsecured debts. Nevertheless, the Court feels that a dismissal of the present Chapter 13 allows the Debtor the opportunity to evaluate these matters and make his own independent determination as to which Chapter, if any, he wishes to pursue.

WHEREFORE, for all of the reasons set forth herein, Trustee's Motion to Dismiss or Convert is sustained.

FURTHER, it is the finding of this Court that the Debtor has failed to qualify as a Debtor under Chapter 13 of the Bankruptcy Code pursuant to 11 U.S.C. § 109(e).

FURTHER, for all the reasons set forth herein, it is the finding of this Court that this matter should be dismissed as opposed to converted to a Chapter 7 proceeding pursuant to 11 U.S.C. § 1307.

FURTHER, for all the reasons set forth herein, this Chapter 13 Petition is DISMISSED.

SO ORDERED this 1st day of December, 1993.

Paul J. Kilburg
U.S. Bankruptcy Judge