

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re: *

THOMAS MICHAEL TOGGAS * Case No. 10-12205-NVA
Debtor * (Chapter 13)

* * * * *

GERARD R. VETTER *

Movant/Chapter 13 Trustee *

v. *

THOMAS MICHAEL TOGGAS *

Respondent/Debtor *

* * * * *

MEMORANDUM ORDER GRANTING CHAPTER 13 TRUSTEE’S MOTION TO DISMISS [DOC. 19] FOR FAILURE TO QUALIFY FOR RELIEF UNDER CHAPTER 13

This matter comes before the Court on the Chapter 13 Trustee’s Motion to Dismiss [doc. 19] for Failure to Qualify for Relief Under Chapter 13. The Trustee alleges that the Debtor’s unsecured debt exceeds the allowed \$336,900 set forth in 11 U.S.C. §109(e). At the time of the

filing of the Trustee's Motion, the aggregate amount of unsecured debt stated under Proofs of Claim that had been filed by creditors in this case exceeded \$1,243,685.81.¹ By far the largest unsecured Proof of Claim was filed by creditor RRR, Inc., (Claim #6) on March 1, 2010 in the amount of \$1,235,414.02. The claim is based upon "judgment for injury to property, pun. damages." *See*, Claim #6.

RRR's Claim #6 is supported by an exemplified copy of a judgment from "State of South Carolina, County of Beaufort in the matter of Rrr Inc. [sic] vs. Thomas M. Toggas, RE: 2001CP0702018R" signed by the Clerk of the Courts of Common Pleas, General Sessions and Family Courts for Beaufort County, South Carolina as well as the presiding Judge of the 14th Judicial Circuit in and for the County of Beaufort, South Carolina. Accompanying the exemplified copy of the judgment is a certified copy of the Jury Verdict Order dated July 24, 2003 as well as a verdict form reflecting various awards granted by the jury in favor of the plaintiff and against Mr. Toggas totaling \$81,331.00 for actual damages and totaling \$560,000.00 for punitive damages.²

In the Debtor's Response [doc. 27] to the Chapter 13 Trustee's Motion to Dismiss, the Debtor alleges that "the claim by RRR is disputed and not owed" "the totality of this claim is zero" and "there is no substance to this claim." As of the date of the hearing on the Trustee's Motion to Dismiss however, no objection to Claim #6 had been filed with the Court pursuant to

¹At the time of the hearing on this matter the Proofs of Claim alleging unsecured debts owed by the Debtor totaled approximately \$1,257,669.27.

²These amounts do not include any fees, costs or post-judgment interest or costs that RRR, Inc. may be entitled to under South Carolina state law. RRR, Inc.'s "Itemized Statement of Interest and Charges" attached to its Claim states that post-judgment interest of 14% has accumulated since July 24, 2003 through the petition date totaling \$586,686.08, as well as post-judgment collection costs (excluding attorneys fees) in the amount of \$7,396.91.

11 U.S.C. §502(a) and Fed. R. Bankr.P. 3007(a). Instead, the Debtor is attempting to attack Claim #6 through his opposition to the Trustee's Motion to Dismiss.

Claim Validity

The Bankruptcy Code establishes a burden-shifting framework for establishing the amount and validity of a claim. Initially the filing of a proof of claim constitutes prima facie evidence of the amount and validity of the claim. Fed. R. Bankr.P. 3001(f). Pursuant to 11 U.S.C. § 502(a), the burden then shifts to the debtor to object to the claim. The debtor must introduce evidence to rebut the claim's presumptive validity. Fed. R. Bankr.P. 9017. If the debtor carries its burden, the creditor has the ultimate burden of proving the amount and validity of the claim by a preponderance of the evidence. *In re Harford Sands Inc.*, 372 F.3d 637, 640-641 (4th Cir. 2004).

The Debtor appeared at the hearing and testified in opposition to the Trustee's Motion to Dismiss. The Debtor's testimony was rambling and disgruntled, and to the only extent it was comprehensible, it suggested that (for reasons not adequately explained) the U.S. Marshal's Service was wrongfully in possession of his records, thereby impeding him from attacking RRR Inc.'s claim and the Trustee's Motion to Dismiss. The Debtor's counsel stated that this testimony by the Debtor (which the Court does not find to be credible or coherent) was the only evidence the Debtor would or could present to dispute the validity of the RRR Inc. claim and to oppose the Trustee's Motion to Dismiss.. The Debtor presented no credible evidence to demonstrate that RRR, Inc.'s unsecured Claim #6, lacks validity and should not be included in the calculation of the aggregate of the Debtor's unsecured debt for Chapter 13 qualification purposes.

Failure to Qualify as a Debtor

The qualifications for a Chapter 13 Debtor are set forth in 11 U.S.C. §109(e) as follows:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$ 336,900 and noncontingent, liquidated, secured debts of less than \$ 1,010,650 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 \$ 336,900 and noncontingent, liquidated, secured debts of less than \$ 1,010,650 may be a debtor under chapter 13 of this title.

Because the Debtor has not adequately refuted the validity of RRR, Inc.'s Claim #6 and the amount of that claim itself exceeds the monetary limits placed on unsecured debts allowable in a Chapter 13, the only inquiry that remains is whether the claim is “noncontingent” or “liquidated” for purposes of 11 U.S.C. §109(e). If the Debtor demonstrates that the claim is “contingent” and/or “unliquidated” then the claim is excluded from the eligibility calculation.

The Debtor appears to take the position that a debt that is listed in his schedules as “disputed”, should be excluded from the §109(e) calculus. The Debtor urges that a debt which he labels as “disputed” for purposes of preparing his schedules of debts, cannot be either a “noncontingent” or “liquidated” debt for §109(e) purposes. The Court disagrees. “Code §109(e) addresses “contingent” and “liquidated” debts, but says nothing about “disputed” debts. Most courts have concluded from this statutory omission that disputed debts are included in the calculation of the amount of debt for eligibility purposes.” *Norton Bankruptcy Law and Practice*, § 17:13 (3d ed. 2008). The terms “noncontingent” and “liquidated” have generated conflicting judicial interpretation. The Bankruptcy Code does not define either term and decisional law does not squarely address either term in the context of debtor eligibility. However, this Court finds persuasive the statement of the Second Circuit that “it is generally agreed that a debt is

contingent if it does not become an obligation until the occurrence of a future event, but is noncontingent when all the events giving rise to liability for the debt occurred prior to the debtor's filing for bankruptcy." *Mazzeo v. United State*, 131 F. 3d 295, 303 (2nd Cir. 1997). The Bankruptcy Code in its definition of the term "claim" contemplates that a claim may be either "unliquidated" and/or "disputed". 11 U.S.C. §101(5)(a). To rule that a claim is "unliquidated" whenever it is "disputed" would be to render the term "unliquidated" mere surplusage. Such an interpretation also would allow a debtor, simply by characterizing certain claims as disputed in the debtor's self-created schedules, to ensure his eligibility to proceed under Chapter 13.

The Court also finds persuasive the reasoning in *In re Stern*, 266 B.R. 322 (D. Md., 2001), in which this Court (Schneider, J.), in similar factual circumstances stated "[M]erely because the debtor labeled the claim as "disputed" did not make it so, where the state court already adjudicated it and entered a money judgment on it against the debtor. Even claims that are disputed as to liability must be counted in determining the debtor's eligibility for Chapter 13 relief." 266 B.R. at 327. In the instant case, RRR Inc.'s underlying tort claim was liquidated by virtue of the pre-bankruptcy South Carolina state court judgment and evidenced by the self-authenticating³, triple-seal, exemplified copy of the judgment filed with the Proof of Claim and admitted into evidence in this Court. Given this state court judgment and documentation, the RRR Inc. debt was both "liquidated" and "noncontingent" as of the date of the Chapter 13 filing. The Debtor presented no evidence to the contrary and did not controvert these documents.⁴

³See Federal Rule of Evidence 902(1); Federal Rule of Bankruptcy Procedure 9017.

⁴In fact, the Court notes that Debtor's counsel admitted on the record that he had not even looked at RRR Inc.'s Proof of Claim or any of the accompanying documents.

The Court finds that the Trustee has sustained his burden on his Motion to Dismiss and demonstrated that the Debtor in this case is ineligible to be a debtor in a case filed under Chapter 13.

In consideration of the foregoing, it is, by the United States Bankruptcy Court for the District of Maryland, hereby:

ORDERED that the Chapter 13 Trustee's Motion to Dismiss for Failure to Qualify for Relief Under Chapter 13 [19] is GRANTED.

cc: Gerard R. Vetter- Trustee
Thomas Michael Toggas- Debtor
Michael A. Lieberman, Esquire- Attorney for Debtor

END OF ORDER