Entered: March 8th, 2022
Signed: March 8th, 2022

Maria Ellena Chavez-Ruark

MARIA ELLENA CHAVEZ-RUARK
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt

In re: DENIS STANTON IBBOTT, Debtor.	Case Number: 21-15920-MCR (Chapter 13)

AMENDED MEMORANDUM OPINION IN CONNECTION WITH
ORDER DETERMINING DEBTOR IS INELIGIBLE FOR
RELIEF UNDER CHAPTER 13 AND GRANTING MOTIONS TO
CONVERT OR DISMISS SUBJECT TO FURTHER PROCEEDINGS[1]

Before the Court are two motions to convert or dismiss this Chapter 13 case filed by Denis Stanton Ibbott (the "Debtor"). The movants are the Chapter 13 trustee, Rebecca A. Herr (the "Trustee"), and the Debtor's largest creditor, Cantwell-Cleary Co., Inc. ("Cantwell-Cleary"). They argue that cause exists to convert the case to a Chapter 7 proceeding or to dismiss the case because the Debtor is ineligible to seek relief under Chapter 13. Based on the undisputed facts and applicable law on the legal issues presented, the Court concludes that the Debtor is not eligible to be a Chapter 13 debtor and grants the motions subject to further

[1] The Court issues this Amended Memorandum to change the reference to the applicable Bankruptcy Code section in the Conclusion from Section 1112(b) (which governs conversion or dismissal of a Chapter 11 case) to Section 1307(c) (which governs conversion or dismissal of a Chapter 13 case).

proceedings to enable the Court to determine whether conversion or dismissal is in the best interests of creditors and the estate.[2]

At the heart of this dispute are two state court money judgments awarded to Cantwell-Cleary and against the Debtor before the Debtor commenced his bankruptcy case but entered on the state court's docket after the Debtor commenced the bankruptcy case. The Trustee and Cantwell-Cleary argue that the judgments cause the Debtor's total unsecured debt to exceed the statutory debt ceiling for a Chapter 13 debtor imposed by the Bankruptcy Code.[3] The Debtor argues that the judgments are not final, nonappealable judgments and therefore are contingent and unliquidated debts that must be excluded from any eligibility analysis.

For the reasons set forth below, the Court finds that cause exists to convert or dismiss this case because the debt arising from the judgments is noncontingent and liquidated debt that renders the Debtor ineligible for relief under Chapter 13. Therefore, the Court will grant the motions subject to further proceedings to enable the Court to determine whether conversion or dismissal of the case is in the best interests of creditors and the estate.

I. THE STATE COURT LITIGATION

The Debtor, Cantwell-Cleary and the Trustee stipulated to the following facts.

On September 19, 2018, Cantwell-Cleary sued the Debtor, Timothy Ingram and Kevin Barstow in the Circuit Court for Anne Arundel County (the "State Court") for breach of contract, violations of the Maryland Uniform Trade Secrets Act, breach of the duty of loyalty

[2] In their motions, the Trustee and Cantwell-Cleary also argued that conversion or dismissal is warranted because the Debtor acted in bad faith in filing his bankruptcy case. Because neither party appeared at the hearing with a witness to testify on this fact-intensive issue, the Court did not consider the Debtor's alleged bad faith in finding cause to grant the motions. However, the Court may take the Debtor's alleged bad faith into account in determining whether conversion or dismissal is appropriate.

[3] All references to the "Bankruptcy Code" are to Title 11 of the United States Code, and all references to a "Section" are to a section of the Bankruptcy Code unless otherwise stated.

and civil conspiracy in the case styled *Cantwell-Cleary Co., Inc. v. Denis Ibbott, et al.*, Case No. C-02-CV-18-002875 (the "State Court Action").[4] *See* tr. of Sept. 2, 2021 hearing in State Court Action attached to Claim No. 1-1 (cited herein as "Tr.") at 3:14-4:9;[5] Trustee's Mot. to Convert to Chapter 7 or, in the Alternative, to Dismiss with Prejudice, and Notice and Opportunity to Respond [Dkt. No. 34] at ¶ 5; Cantwell-Cleary's Mot. to Convert Chapter 13 Case to Chapter 7 or, in the Alternative, to Dismiss Case [Dkt. No. 35] at ¶ 4.

On September 2, 2021, after a multi-day bench trial, the State Court issued a bench ruling that:

1. Found the Debtor, Mr. Ingram and Mr. Barstow liable to Cantwell-Cleary for breach of contract, violation of the Maryland Uniform Trade Secrets Act and breach of the duty of loyalty. Tr. at 90:6-90:16.

2. Found the Debtor and Mr. Ingram liable to Cantwell-Cleary for civil conspiracy. Tr. at 90:6-90:16.

3. Awarded a judgment in the amount of $273,004.72 against the Debtor, jointly and severally with Mr. Ingram, and granted a permanent injunction precluding certain conduct by the Debtor. Tr. at 125:12-125:21.

4. Awarded a judgment in the amount of $867,335.44 against Mr. Ingram, jointly and severally with the Debtor, and granted a permanent injunction precluding certain conduct by Mr. Ingram. Tr. at 125:12-125:21.

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[4] On September 15, 2021, Mr. Ingram and Mr. Barstow filed Chapter 13 petitions for relief in this Court (Case No. 21-15869-DER and Case No. 21-15870-DER, respectively). In addition, Cleary Packaging, LLC filed a Chapter 11, Subchapter V petition for relief (Case No. 21-10765-MMH) on February 7, 2021, and Vincent D. Cleary, Jr. filed a Chapter 13 petition for relief (Case No. 21-15816-NVA) on September 13, 2021. Cantwell-Cleary obtained state court judgments against Cleary Packaging, LLC and Mr. Cleary in the amounts of $4,715,764.98 and $300,000, respectively, based on causes of action and facts similar those asserted against the Debtor. *See Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC* (Adv. No. 21-00056-MMH) filed on March 2, 2021, and *Cantwell-Cleary Co., Inc. v. Cleary* (Adv. No. 21-00272-NVA) filed on December 27, 2021.

[5] The transcript includes the State Court's ruling, which begins on page 89 of the transcript. The award of the judgments appears at page 125 and the granting of the permanent injunction appears throughout the ruling. All references to "Tr. at [page:line]" refer to the transcript at the page numbers identified in the top right corner of the transcript as opposed to the CM/ECF page numbers which are not easily decipherable.

5. Awarded a judgment in the amount of $780,757.32 against Mr. Barstow and granted a permanent injunction precluding certain conduct by Mr. Barstow. Tr. at 125:12-125:21.

6. Reserved on the issue of an award of attorneys' fees and costs to Cantwell-Cleary. Tr. at 125:4-125:7.

The State Court stated in its ruling that the judgments against the Debtor, Mr. Ingram and Mr. Barstow would not be final for purposes of appeal until the State Court ruled on the request for attorneys' fees and costs and that the permanent injunctions would go into effect the day the State Court signed them. Tr. at 127:9-127:17. At the end of its ruling, the State Court asked counsel for Cantwell-Cleary to draft the judgment and injunctions and present them to the State Court for entry. Tr. at 126:13-126:19 and 127:9-127:22. Notably, the State Court also asked counsel for the Debtor, Mr. Ingram and Mr. Barstow to approve the form of the judgment and injunctions being submitted to the State Court. Tr. at 126:13-126:19 and 127:9-127:22. On September 10, 2021, Cantwell-Cleary filed a petition for an award of attorneys' fees in the amount of $336,401.65 in the State Court Action. *See* pet. for fees attached to Claim No. 1-1.

On September 22, 2021, the State Court signed a judgment and three permanent injunctions, one against each defendant, consistent with its oral ruling. Ex. List in Connection with Mot. to Convert to Chapter 7 or, in the Alternative, Dismiss Case [Dkt. No. 58] at Ex. 4 (exhibits are cited herein as "Ex. ____"). Two days later, the State Court entered the judgment and permanent injunctions on the docket of the State Court Action. Ex. 4.

II. THE BANKRUPTCY CASE AND SUBSEQUENT STATE COURT PROCEEDINGS

On September 17, 2021 (the "Petition Date") – after the State Court gave its oral ruling and before the State Court signed the judgment and entered it on the docket in the State Court

Action – the Debtor commenced the above-captioned case by filing a voluntary petition for relief under Chapter 13 of the Bankruptcy Code.

On September 21, 2021, Cantwell Cleary filed a Motion for Relief From Automatic Stay to Conclude State Court Litigation [Dkt. No. 8] (the "Lift Stay Motion"). The Lift Stay Motion requested that the automatic stay be modified to allow the State Court to conclude the State Court Action by "(i) entering judgments on the monetary and injunctive relief claims against the Debtor and (ii) adjudicating the pending Motion for Attorney's Fees against the Debtor[.]" Lift Stay Mot. at p. 11.

On October 15, 2021, the Debtor filed his original Schedules and Statement of Financial Affairs [Dkt. No. 23] (collectively, the "Schedules"). Relevant to the issue before the Court is the Debtor's Schedule E/F, which lists two claims by Cantwell-Cleary – one in the amount of $273,004.72 (*i.e.*, the judgment against the Debtor for which Mr. Ingram is jointly and severally liable) and one in the amount of $336,401.65 (*i.e.*, the attorneys' fees requested by Cantwell-Cleary). The Debtor indicates on Schedule E/F that both claims are contingent, unliquidated and disputed. The Debtor's Schedules do not list the $867,335.44 judgment against Mr. Ingram for which the Debtor is jointly and severally liable.

On October 21, 2021, the Debtor filed an Opposition to Motion for Relief From Automatic Stay [Dkt. No. 25], and the next day, the Debtor filed an Amended Opposition to Motion for Relief From Automatic Stay [Dkt. No. 26] (the "Amended Opposition"). The Court held a hearing to consider the Lift Stay Motion and the Amended Opposition on November 4, 2021, at which the parties informed the Court that they had reached an agreement and would submit to the Court a consent order modifying the automatic stay subject to certain terms and conditions.

On November 15, 2021, the Court entered an Order Modifying the Automatic Stay to Permit Conclusion of State Court Litigation [Dkt. No. 30] (the "Lift Stay Order").[6] The Lift Stay Order modifies the automatic stay imposed by Section 362(a) of the Bankruptcy Code to the extent necessary to permit conclusion of, and resolution by, the Maryland courts of appeal of any appeal related to the State Court Action but requires that Cantwell-Cleary first obtain orders from the State Court that vacate the judgment, injunction and notice of recordation of the money judgment as they relate to the Debtor. In addition, the Lift Stay Order allows the State Court to enter a new judgment and permanent injunction against the Debtor in the same form and substance as the judgment and permanent injunction dated September 22, 2021 and entered on September 24, 2021. Finally, the Lift Stay Order modifies the automatic stay to the extent necessary to permit the State Court, and any Maryland courts of appeal of any appeal related thereto, to resolve Cantwell-Cleary's motion for an award of attorneys' fees and reduce any such award to final judgment.

On November 22, 2021, Cantwell-Cleary filed its proof of claim [Claim No. 1-1] (the "Proof of Claim"). The Proof of Claim asserts a general unsecured claim against the Debtor in the amount of $1,476,741.81, which includes: (i) the $273,004.72 judgment against the Debtor; (ii) the $867,335.44 judgment against Mr. Ingram for which the Debtor is jointly and severally liable; and (iii) attorneys' fees in the amount of $336,401.65.

On December 8, 2021, the Trustee filed her Motion to Convert to Chapter 7 or, in the Alternative, Dismiss with Prejudice, and Notice and Opportunity to Respond [Dkt. No. 34] (the "Trustee's Motion"). On the same day, Cantwell-Cleary filed its Motion to Convert Chapter 13 Case to Chapter 7 or, in the Alternative, Dismiss Case [Dkt. No. 35] ("Cantwell-Cleary's

[6] Although not titled a "consent order", the Lift Stay Order is signed by counsel to Cantwell-Cleary and counsel to the Debtor.

Motion"; together with Trustee's Motion, the "Motions"). The Motions request that the Court convert the Debtor's bankruptcy case to a case under Chapter 7 or, in the alternative, that the Court dismiss the Debtor's bankruptcy case. In support, the Trustee and Cantwell-Cleary argue that the Debtor is not eligible to be a debtor under Chapter 13 based on the amount of his unsecured debt and that the Debtor has acted in bad faith in filing for bankruptcy and throughout his bankruptcy proceeding.

On December 28, 2021, the Debtor filed an Opposition to Trustee's Motion to Convert [Dkt. No. 44], which opposed the relief requested in the Trustee's Motion, and an Opposition to [Cantwell-Cleary's] Motion to Convert Case [Dkt. No. 45], which opposed the relief requested in Cantwell-Cleary's Motion (referred to collectively herein as the "Oppositions" and cited herein as "Opps.").

On February 9, 2022, the State Court held a hearing in the State Court Action as authorized by the Lift Stay Order. At that hearing, the State Court denied Cantwell-Cleary's request for attorneys' fees and agreed to enter a new judgment in the same amounts as the September 24, 2021 judgments and new preliminary injunctions.

On the next day, this Court held a hearing on the Motions and Oppositions. At the hearing, the Court heard oral argument on whether the Debtor is eligible to be a debtor under Chapter 13.[7] With the agreement of the Debtor, the Trustee and Cantwell-Cleary, the Court:

- Admitted Cantwell-Cleary's Exhibit 1, which is a copy of the Debtor's Schedules filed on October 15, 2021;
- Admitted Cantwell-Cleary's Exhibit 4, which is a copy the State Court's judgment and permanent injunctions against the Debtor, Mr. Ingram and Mr. Barstow dated September 22, 2021 and entered on the docket in the State Court Action on September 24, 2021;

[7] *See* footnote 1 above.

- Admitted Cantwell-Cleary's Exhibit 5, which is a draft of an Order titled "Order Striking and Nullifying Judgments and Permanent Injunctions and Notices of Recordation of Judgments as Void and in Willful Violation of the Automatic Stay and Re-Entry of Judgments" with certain handwritten revisions;

- Took judicial notice of the Proof of Claim, which attaches the transcript of the parties' closing arguments and oral ruling made at the September 2, 2021 State Court hearing as well as Cantwell-Cleary's petition for attorneys' fees filed in the State Court;

- Took judicial notice of the transcript of the Court's ruling on October 25, 2021 on Cantwell-Cleary's motions for relief from stay filed in Mr. Ingram's bankruptcy case, *see In re Ingram*, Case No. 21-15869, at Dkt. No. 60, and *In re Barstow*, Case No. 21-15870, at Dkt. No. 69; and

- Took judicial notice that the State Court denied Cantwell-Cleary's request for an award of attorneys' fees at the February 9, 2022 hearing in the State Court Action.[8]

It is worth noting that, in his Oppositions, the Debtor states that "the only amount of damages liquidated against the Debtor was … [$273,004.72], which is clearly under the statutory amount." Opps. at p. 2. It is unclear to the Court why the Debtor's Schedules and Oppositions address the $273,004.72 judgment but not the $867,335.44 judgment. At the February 10, 2022 hearing, the Court asked the Debtor's counsel whether the $867,335.44 judgment against Mr. Ingram, for which the Debtor is jointly and severally liable, was purposefully or mistakenly omitted from the Debtor's Schedule E/F. Her reply was that she assumed the omission was inadvertent. As noted above, at the conclusion of its September 2, 2021 ruling, the State Court expressly requested that counsel for Cantwell-Cleary obtain the consent of Debtor's counsel to the form of the judgment. *See* Tr. at 126:13-126:19 and 127:9-127:22. It is reasonable for the Court to assume that the Debtor's litigation counsel in the State Court Action consented to the form of the judgment that was entered, which includes the

[8] In addition, the Court admitted Cantwell-Cleary's Exhibit 2, which is a copy of the Debtor's Amended Schedules A/B and C [Dkt. No. 36] filed on December 21, 2021. These Amended Schedules are not relevant to the issue before the Court.

$867,335.44 judgment against Mr. Ingram and provides that the Debtor is jointly and severally liable. But regardless of whether the omission was purposeful or inadvertent and regardless of whether the Debtor's counsel consented to the form of the judgment, it is clear from the record that the State Court awarded the $867,335.44 judgment against Mr. Ingram and made the Debtor jointly and severally liable on the judgment because the State Court found that the Debtor and Mr. Ingram engaged in a civil conspiracy.

III. ANALYSIS

The issue before the Court is whether the Debtor is eligible to be a debtor under Chapter 13 of the Bankruptcy Code. Applying well-settled law on the issue presented to the undisputed facts of this case, the Court concludes that the Debtor's total noncontingent, liquidated, unsecured debt is greater than the statutory limit set forth in Section 109(e), rendering the Debtor ineligible for relief under Chapter 13. As a result, the Court finds that cause exists to convert or dismiss the Debtor's bankruptcy case and grants the Motions subject to further proceedings to enable the Court to determine whether conversion or dismissal is in the best interests of creditors and the estate.

A. 11 U.S.C. § 109(e)

The Court begins its analysis with a review of Section 109(e), which provides in relevant part:

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850 … may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e). The Debtor's Schedules reflect that he has no secured debt. Thus, the issue for the Court, more precisely stated, is whether the Debtor "owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275." *Id.*

The Trustee and Cantwell-Cleary argue that the debt to Cantwell-Cleary arising from the two judgments may be disputed but is not contingent or unliquidated because the State Court determined the Debtor's liability and the amount of damages after a trial on the merits. According to the Trustee and Cantwell-Cleary, Cantwell-Cleary's judgments of $273,004.72 and $867,335.44 must be included in determining the total amount of the Debtor's noncontingent, liquidated, unsecured debt. The two judgments total $1,140,340.16, which exceeds the $419,275 threshold set forth in Section 109(e) even without consideration of any other unsecured debt.

The Debtor argues that his debt to Cantwell-Cleary is contingent and unliquidated and should be excluded from any eligibility analysis under Section 109(e) because the judgments were not final and nonappealable prior to the Petition Date. According to the Debtor, he has only one noncontingent, liquidated, unsecured claim and that is the claim of his State Court litigation counsel in the amount of approximately $5,700, which is far below the Section 109(e) threshold. Although it is arguable that the Debtor conceded in his Oppositions to the Motions that both the $273,004.72 judgment and the $867,335.44 judgment are liquidated, it is clear from the Debtor's argument at the February 10, 2022 hearing that his position is that all of his obligations to Cantwell-Cleary stemming from the State Court Action are contingent and unliquidated.

B. *Parking Management*

This Court recently analyzed the terms "noncontingent" and "liquidated" in determining a debtor's eligibility for relief under Chapter 13 of the Bankruptcy Code in *In re Parking Mgmt., Inc.*, 620 B.R. 544 (Bankr. D. Md. 2020) (Catliota, J.). *Parking Management* involved an eligibility determination for a corporate debtor in a Chapter 11, Subchapter V case, but it is instructive here because it relies on and adopts case law examining a Chapter 13

debtor's eligibility under Section 109(e) and defines the terms "noncontingent" and "liquidated" as used in that section. *Parking Management* sets forth several legal principles that govern the Court's consideration of the Debtor's eligibility as a Chapter 13 debtor.

First, *Parking Management* requires the Court to consider the entire record in determining whether a debt is contingent and/or unliquidated. In determining a debtor's eligibility, *Parking Management* explains that the court:

> "should neither place total reliance upon a debtor's characterization of a debt nor rely unquestionably on a creditor's proof of claim, for to do so would place eligibility in control of either the debtor or the creditor. *In re Madison*, 168 B.R. [986] at 989 [(D. Hawai'i [sic] 1994)]. At a hearing on eligibility, the court should thus, canvass and review the debtor's schedules and proofs of claim, as well as other evidence offered by a debtor or the creditor to decide only whether the good faith, facial amount of the debtor's liquidated and non-contingent debts exceed statutory limits." *Barcal v. Laughlin (In re Barcal)*, 213 B.R. 1008, 1015 (B.A.P. 8th Cir. 1997). Further, a bankruptcy court can "scrutinize and redesignate the characterization by a debtor of any given debt when that characterization is the subject of a case or controversy." *In re Stern*, 266 B.R. 322, 326 (Bankr. D. Md. 2001); *see also In re Kelly*, No. 18-13244-WIL, 2018 WL 4354653, at *5 (Bankr. D. Md. Sept. 11, 2018) (bankruptcy court can review a debt scheduled as "unknown" or "unliquidated" when it appears to a legal certainty to be owed in an amount other than what the debtor maintains.); *In re De Jounghe*, 334 B.R. 760, 768 (B.A.P. 1st Cir. 2005).

Parking Mgmt., 620 B.R. at 550-51 (brackets in original).

Second, *Parking Management* defines "noncontingent" debts as follows:

> [n]oncontingent debts are those where "all events necessary to give rise to liability take place prior to filing the petition." *In re Green,* 574 B.R. 570, 576–77 (Bankr. E.D.N.C. 2017) (cleaned up); *see In re Aparicio,* 589 B.R. 667, 674-75 (Bankr. E.D. Cal. 2018) (all events that triggered liability occurred prepetition). A debt is deemed contingent if liability relies on a future extrinsic event which may never occur. *Id.* at 577 (quoting *In re Hanson,* 275 B.R. 593, 596 (Bankr. D. Colo. 2002)) (quoting *In re Nesbit,* No. 99-28414JKF, 2000 WL 294834 at *2 (Bankr. W.D. Pa. March 16, 2000)). Contingent liabilities therefore are a class of

> liabilities in which the obligation to pay does not arise until the occurrence of a "triggering event or occurrence ... reasonably contemplated by the debtor and creditor at the time the event giving rise to the claim occurred." *In re Barcal*, 213 B.R. at 1013 (cleaned up).

Parking Mgmt., 620 B.R. at 552.

Third, *Parking Management* determined that the characterization of a debt as contingent or noncontingent must be made as of the petition date. *Id.* at 554. The Court analyzed the question of whether debts are classified as contingent or noncontingent as of the petition date or some other date by "delv[ing] into the extent to which courts take into account post-petition events when making an eligibility determination, at least in Chapters 12 and 13." *Id.* The Court noted that "many post-petition actions could result in contingent claims becoming noncontingent after the case is filed." *Id.*

> Numerous events may occur postpetition to affect a debtor's total secured or unsecured debt. Collateral may be liquidated, converting a secured claim to an unsecured deficiency claim. Contingent personal guaranties may be liquidated after the creditor pursues a co-debtor, surety, or principal. A creditor may file a postpetition claim treated under the Code as prepetition, such as a lease rejection claim under § 365(g) or a § 1305 claim. Or, as was the case here, a judgment might be modified or vacated by the trial court that issued the judgment later on appeal.
>
> The majority of courts that have considered the effect of a postpetition event on eligibility to file (or be converted) to Chapter 13 have concluded that postpetition events should not be considered in determining eligibility. To hold otherwise would mean that a debtor could float in and out of Chapter 13 eligibility during the course of a case, depending on what happens, which of course makes no legal or practical sense.
>
> The ... plain language of § 109(e) requires consideration of the debts as they exist as of the petition date, irrespective of postpetition events. *E.g., In re Wiencko*, 275 B.R. 772 (Bankr. W.D. Va. 2002); *In re Slack*, 187 F.3d 1070 (9th Cir. 1999); *In re Snell*, 227 B.R. 127 (Bankr. S.D. Ohio 1998); *In re Harwood*, 519 B.R. 535, 539–40 (Bankr. N.D. Cal. 2014); *In re Pearson*,

> 773 F.2d 751, 758 (6th Cir. 1985) ("[T]he fact that some later resolution of the conflict might render more certain the precise nature of the debt itself ... is relatively immaterial in determining the debtors' financial condition and Chapter 13 eligibility on the date the petition is filed. ... We do not believe that the statute requires any more" than a realistic look at "the state of the debtors' affairs" on the petition date).

Parking Mgmt., 620 B.R. at 554 (brackets in original) (quoting *James v. West (In re West)*, No. 16-40358-CAN7, Adv. No. 16-04083-CAN, 2017 WL 746250, at *16 (Bankr. W.D. Mo. Feb. 24, 2017)).

Fourth, in examining what constitutes a "liquidated" debt, *Parking Management* states:

> The Bankruptcy Code does not define the term "liquidated." Again, borrowing from Chapter 13 cases, the concept of a liquidated debt relates to the amount of liability, not the existence of liability. *United States v. Verdunn*, 89 F.3d 799 (11th Cir. 1996). Courts generally hold that "the key factor in distinguishing liquidated from unliquidated claims is not the extent of the dispute nor the amount of evidence required to establish the claim, but whether the process for determining the claim is fixed, certain, or otherwise determined by a specific standard." *In re Barcal*, 213 B.R. at 1014. *See In re Adams*, 373 B.R. 116, 119-120 (B.A.P. 10th Cir. 2007) (a "debt is readily determinable only if the process of determining the claim is fixed, certain, or otherwise determinable by a specific standard"). *See In re Slack*, 187 F.3d at 1073 ("debt is liquidated for the purposes of calculating eligibility for relief under § 109(e) if the amount of the debt is readily determinable."); *In re Stern*, 266 B.R. 322 (quoting and adopting *In re Barcal*, 213 B.R. at 1014, to determine that debts were fixed amounts due pursuant to a contract).

Parking Mgmt., 620 B.R. at 559.

C. Application of *Parking Management* to the Debtor's Case

Parking Management is well-reasoned and well-founded, and the Court adopts and applies its conclusions here.

The Court has considered the entire record of the bankruptcy case and the evidence presented at the February 10, 2022 hearing in determining whether the debt owed to Cantwell-

Cleary is contingent and/or unliquidated. As directed by *Parking Management*, the Court does not place total reliance on the Debtor's Schedules or the Proof of Claim. In addition to the Schedules and Proof of Claim, the Court has considered the State Court judgment entered on September 24, 2021;[9] the proposed order submitted to the State Court at the hearing on post-trial motions on February 9, 2022;[10] and the denial of Cantwell-Cleary's request for attorneys' fees as determined by the State Court at the February 9, 2022 hearing.[11]

Applying the definition of "noncontingent" debts as set forth in *Parking Management*, the Court finds that the debt arising from the judgment against the Debtor and the judgment against Mr. Ingram, for which the Debtor is jointly and severally liable, is a noncontingent debt. All events giving rise to the Debtor's liability took place prior to the Petition Date, the Debtor's liability was determined by the State Court prior to the Petition Date and the Debtor's liability does not rely on a future extrinsic event.

After a trial on the merits at which numerous witnesses testified over the course of several days, the State Court considered the evidence presented and determined that the Debtor is liable to Cantwell-Cleary for breach of contract, violation of the Maryland Uniform Trade Secrets Act, breach of the duty of loyalty and civil conspiracy. With regard to the violation of trade secrets, breach of the duty of loyalty and civil conspiracy counts, the State Court concluded:

> All three defendants should have a permanent injunction granted against them. All three defendants have engaged in a civil conspiracy that Mr. Ibbott and Mr. Ingram -- excuse me, that all three defendants engaged in a theft of trade secrets, that Mr. Ibbott and Mr. Ingram were involved in a civil conspiracy and

[9] The Court admitted a copy of the judgment into evidence as Exhibit 4 at the February 10, 2022 hearing.

[10] The Court admitted a copy of the proposed order into evidence as Exhibit 5 at the February 10, 2022 hearing.

[11] The Court took judicial notice of the State Court's denial of Cantwell-Cleary's petition for attorneys' fees at the February 10, 2022 hearing.

> that there was negligence inartfully pled, however it is basically a breach of fiduciary duty.
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> * * *
>
> In terms of the civil conspiracy, there's a whole lot more than two people that were involved in this conspiracy. And the Court is convinced that there was a civil conspiracy, and Vince Cleary's termination was to destroy Cantwell Cleary and all civil conspirators are jointly and severally liable for the harm caused by the company -- caused by the conspiracy, regardless of which conspirator performed the unlawful act.

Tr. at 90:9-90:16 and 123:20-124:2. With respect to the breach of contract count, the State Court concluded:

> The Court finds for the plaintiff on Count I breach of contract because each defendant violated the contract by engaging in the sell [sic] of paper and packaging products directly or indirectly and competing with Cantwell Cleary.

Tr. at 122:8-122:12.

The transcript confirms that the State Court found the Debtor liable to Cantwell-Cleary for breach of contract, violation of the Maryland Uniform Trade Secrets Act, breach of the duty of loyalty and civil conspiracy. In fact, the State Court dedicated the majority of its ruling to the reasons for the determination of that liability. The State Court was thorough and specific. No further proceeding or act is necessary to determine the Debtor's liability to Cantwell-Cleary.

As recognized in *Parking Management*, the Court should not consider any postpetition actions that could result in a contingent debt becoming noncontingent after the case is filed. *Parking Mgmt.*, 620 B.R. at 554 ("The ... plain language of § 109(e) requires consideration of the debts as they exist as of the petition date, irrespective of postpetition events.") (citations omitted). "To hold otherwise would mean that a debtor could float in and out of Chapter 13 eligibility during the course of a case, depending on what happens, which of course makes no

legal or practical sense." *Id.* "[T]he fact that some later resolution of the conflict might render more certain the precise nature of the debt itself … is relatively immaterial in determining the debtors' financial condition and Chapter 13 eligibility on the date the petition is filed." *Id.* Consequently, the Court considered the nature of the debt owed by the Debtor to Cantwell-Cleary as of the Petition Date without regard to whether the judgments may be modified or reversed on appeal at some time in the future.

As argued by Cantwell-Cleary at the February 10, 2022 hearing, to hold otherwise would allow a debtor to take his chances at trial, lose after all the evidence is presented and the court or jury renders its findings, race to the bankruptcy court to file a petition for relief before the judgment gets entered and be given a second bite at the apple by arguing the debt is contingent and unliquidated. This, the Court believes, would be inequitable, likely prejudicial to the judgment creditor and contrary to the spirit, purpose and plain language of Section 109(e).

Next, the Court turns to whether the debt arising from the judgments against the Debtor is a liquidated debt. Again, applying *Parking Management*, the Court finds that it is.

Whereas the contingent or noncontingent characterization depends on the *existence* of liability, the liquidated or unliquidated characterization depends on whether the *amount* of the liability is readily determinable or quantifiable as of the date of the bankruptcy filing. "Courts generally hold that 'the key factor in distinguishing liquidated from unliquidated claims is not the extent of the dispute nor the amount of evidence required to establish the claim, but whether the process for determining the claim is fixed, certain, or otherwise determined by a specific standard.'" *Parking Mgmt.*, 620 B.R. at 559 (quoting *Barcal*, 213 B.R. at 1014). In other words, to be a liquidated claim the amount of the debt must be "readily determinable." *Parking Mgmt.*, 620 B.R. at 559 (citing *Slack*, 187 F.3d at 1073).

After the multi-day trial on the merits, the State Court determined that the Debtor is liable to Cantwell-Cleary in the amount of $273,004.72, individually, and in the amount of $867,335.44, jointly and severally with Mr. Ingram. The amount of the debt is more than "readily determinable" as required by *Parking Management* to find a debt liquidated; the State Court actually determined the amount of the debt. Adding the two judgments together results in a total debt owed to Cantwell-Cleary in the amount of $1,140,340.16, far in excess of the Chapter 13 unsecured debt limit of $419,275 set forth in Section 109(e).

Finally, the Court notes that it will not address whether Cantwell-Cleary's claim for attorneys' fees was noncontingent and/or liquidated as of the Petition Date. The Court need not make that determination for purposes of the issue before the Court because the two judgments in favor of Cantwell-Cleary exceed the Chapter 13 unsecured debt limit without consideration of the alleged debt for attorneys' fees. Although the Debtor included the requested attorneys' fees on his Schedule E/F, the record confirms that the State Court had not ruled on Cantwell-Cleary's petition for attorneys' fees as of the Petition Date and, for the reasons stated above, the State Court's denial of the petition after the bankruptcy filing is not material to the Court's eligibility analysis.

D. Significance (or Lack Thereof) of the Judgments Being Appealable

At the February 10, 2022 hearing before this Court, the Debtor argued that the debt arising from the judgments awarded to Cantwell-Cleary was contingent and unliquidated on the Petition Date because the judgments were not "final judgments." The Debtor maintained that any judgment on which a creditor is unable to collect – either because the judgment is not entered on the docket or because the judgment is on appeal – gives rise to a contingent, unliquidated debt. The crux of the Debtor's argument is that the Court should read into Section 109(e) that only a judgment debt represented by a final, nonappealable judgment can be a

noncontingent, liquidated debt for purposes of determining a Chapter 13 debtor's eligibility under Section 109(e).[12] The Debtor was unable to cite any case law or other authority to support this position.

The Court, however, found ample case law holding that a debt arising from a judgment is not rendered contingent or unliquidated simply because it may be subject to modification or reversal on appeal after the petition date. For example, in *In re Letterese*, 397 B.R. 507 (Bankr. S.D. Fla. 2008), creditors moved to convert the debtor's Chapter 13 case, arguing that the debtor was not an eligible Chapter 13 debtor based on a judgment entered against the debtor that was appealed prior to the petition date. *Id*. at 510. The court concluded that the debt arising from the appealed judgment was noncontingent and liquidated. *Id.* at 514. The court stated "[a]lthough the Debtor challenges the [ ] judgments, they nonetheless count toward the statutory maximum. … A judgment which establishes monetary liability in favor of a party is noncontingent and liquidated as to the sum owed. The pendency of an appeal does not affect the outcome. … [T]he judgment is in full force and effect during the pendency of any appellate process in state court." *Id.* at 513-14.

[12] The language of Section 109(e) is clear and unambiguous and does not impose this requirement. The task of applying and interpreting a statute "begins where all such inquiries must begin: with the language of the statute itself." *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). The statutory language "is also where the inquiry should end, for where … the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Id.* (citation omitted). The United States Supreme Court has "stated time and again that courts must presume that a legislature says in a statute when it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citation omitted).

Although the Bankruptcy Code does not define the terms "noncontingent" and "liquidated," it does not render the statute ambiguous. Congress knows how to draft statutes without making them more complicated than they need to be. Congress "does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). Moreover, courts must forego any invitation to import words into statutes that are simply not there. *See, e.g., Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004) (declining to enlarge a statute where a plain, non-absurd meaning is "in view"). "[W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms." *Id.* at 534.

Similarly, in *In re Vidal*, No. 04-11957 BKC-RAM, 2004 WL 2656893 (S.D. Fla. Oct. 13, 2004), the court concluded "that the pendency of an appeal of an otherwise final money judgment does not render the judgment as 'contingent' or 'unliquidated' for purposes of [Section] 109(e)." *Id.* at *1. In support of its conclusion, the court stated:

> [m]ost, if not all courts, considering this issue have concluded that an otherwise final judgment for an amount certain, is not rendered as "contingent" or "unliquidated" merely because an appeal has been filed and is prosecuted during the Chapter 13 case. *Gould v. Gregg, Hart, Farris & Rutledge,* 137 B.R. 761 (W.D. Ark. 1992) (pendency of appeal of attorney's fees did not make debt contingent); *In re Albano,* 55 B.R. 363 (N.D. Ill. 1985) (pendency of appeal did not render debt reduced to judgment unliquidated and contingent within meaning of Bankruptcy Code); *In re Slomnicki,* 250 B.R. 531 (Bankr. W.D. Penn. 2000); *In re Cluett,* 90 B.R. 505 (Bankr. M.D. Fla 1988) (pendency of appeal of state court judgment against debtors for $412,000 did not make judgment debt unliquidated contingent debt so as to be excluded from computation of unsecured or secured debt limitations on eligibility for relief under Chapter 13). The rationale presented in the cited cases is logical given the clear mandate that the eligibility of a debtor is determined as of the filing date.

Id.

In re Mitchell, 255 B.R. 345 (Bankr. D. Mass. 2000), is also illustrative. *Mitchell* involved a prepetition judgment entered by a state court against joint debtors. *Id.* at 358. The debtors appealed the judgment and filed for bankruptcy relief while the appeal was pending. *Id.* In their schedules, the debtors listed the judgment creditor as a creditor that did not have a valid claim. *Id.* at 349-50. The court issued an order to show cause why the case should not be dismissed for ineligibility under Chapter 13, and before the court determined the debtors' eligibility, it dismissed the case because the debtors failed to timely file a Chapter 13 plan. *Id.* at 354-55. The debtors moved to vacate the dismissal order and responded to the order to show cause, arguing that the judgment was a contingent and unliquidated debt that should not be

considered in determining the total amount of their debt for purposes of Section 109(e). *Id.* at 354-55, 358.

As part of its initial analysis of whether the debtors were eligible for relief under Chapter 13, the court examined the meaning of "final judgment" in the context of California law. *Id.* at 358. The court explained that "while it is pending on appeal a judgment is both 'final' in the sense that it is appealable and not 'final' in the sense that the appeal remains unresolved." *Id.* at 359 (quoting *Sullivan v. Delta Air Lines, Inc.*, 935 P.2d 781, 791 (Cal. 1997)). The court continued, saying "although California does not give *res judicata* effect to judgments that are on appeal, it recognizes that without some degree of finality a judgment would not be appealable." *Mitchell*, 255 B.R.at 359.

The *Mitchell* court discussed at length case law analyzing whether an appeal of a prepetition judgment renders the debt contingent and/or unliquidated. *Id.* at 359-360. The court adopted the majority view which is that a judgment debt is not contingent or unliquidated simply because the judgment may be disputed by an appeal. *Id.* at 360. In doing so, the court rejected the minority view set forth in *In re Lambert*, 43 B.R. 913 (Bankr. D. Utah 1984), which held that the existence of a dispute, without more, is sufficient to render a debt unliquidated. The court stated:

> [a]s of the date of the Debtors' Chapter 13 filing, [the plaintiffs] in the [state court] action had obtained a judgment and thus the amount of their claims are readily calculable. Therefore, the claims are liquidated, regardless of whether the Debtors dispute the liability. This Court specifically rejects the reasoning of the court in *Lambert* as it represents a discredited minority view that would merely serve to encourage manipulation of the Bankruptcy laws by debtors.

Mitchell, 255 B.R. at 360.

In the Matter of Redburn, 193 B.R. 249 (Bankr. W.D. Mich. 1996), also lends support. In *Redburn*, the court said, "[a] majority of courts have correctly concluded that a state court judgment against the debtor, on appeal on the date of the petition, is not contingent, though it may be still subject to dispute. That the debtor has counterclaims, setoffs, affirmative defenses or mitigating circumstances does not render the underlying claim against the debtor contingent." *Id.* at 259 (citing 1 Norton, Norton Bankruptcy Law & Practice 2D § 18:12 at 18-45 (1994)).

Finally, the Court cites to *In re Cluett,* 90 B.R. 505 (Bankr. M.D. Fla. 1988). The *Cluett* court was faced with the decision of whether to sanction the debtors and/or their counsel for moving to convert the debtors' case from Chapter 11 to Chapter 13 when there was a sizable judgment against the debtors on appeal as of the petition date. *Id.* at 506. The court concluded that a prepetition appeal of a judgment did not render the debt contingent or unliquidated and stated "the judgment obtained by [the judgment creditor] clearly represents a liability which is fixed and which is noncontingent and remains a final and enforceable judgment until it is reversed, if ever, upon appeal." *Id.* at 507. The court concluded that the debtors violated the certification rule in Bankruptcy Rule 9011 when they filed the motion to convert but did not impose monetary sanctions against them. *Id.* However, the court did impose monetary sanctions against the debtors' counsel for filing a schedule of liabilities in connection with the motion to convert because counsel was fully aware of the existence of the outstanding judgment. *Id.*

The majority of courts analyzing a Chapter 13 debtor's eligibility, when there is a prepetition judgment subject to postpetition modification or reversal on appeal, have held that the debt arising from the judgment is not rendered contingent or unliquidated simply because

the judgment is not final and nonappealable on the petition date. This Court adopts the majority view on this issue.

E. Significance (or Lack Thereof) of the Judgments Not Being Docketed Until After the Petition Date

The Debtor also argued at the February 10, 2022 hearing that the debt arising from the judgments in favor of Cantwell-Cleary was contingent and unliquidated on the Petition Date because the State Court had not yet signed and entered the judgments. This is somewhat duplicative of the Debtor's argument addressed in the prior section, but the Court addresses it separately because there is an different, independent body of case law on this issue. Again, the Debtor maintained that the debt arising from the judgments is contingent and unliquidated for purposes of an eligibility analysis under Section 109(e) because Cantwell-Cleary is unable to collect from the Debtor on account of the judgments.[13] As with the Debtor's other argument, the Debtor was unable to cite any case law or other authority to support his position.

The Court, however, was able to find well-reasoned case law contradicting the Debtor's position and holding that, when a debtor's liability is determined prepetition and the judgment is not entered until after the petition date, it does not render the debt contingent or unliquidated for purposes of a Chapter 13 eligibility determination under Section 109(e).

The Court views *In re Wiencko*, 275 B.R. 772 (Bankr. W.D. Va. 2002), to be the most factually analogous and instructive case addressing this issue. As in the case before the Court, *Wiencko* involved a prepetition state court determination of several debtors' liability and the amount of damages and a postpetition entry of judgment. *Id.* at 775. In *Wiencko*, the state court determined the liability and damages in two documents, one called a "Decree Nisi" and the other an "Order and Adjudication." *Id.* at 774-75. The Decree Nisi found the debtors

[13] See footnote 11 above.

jointly and severally liable and directed them to pay the plaintiff a certain amount. *Id.* at 775. The Decree Nisi stated that it would become final unless post-trial relief was sought within a specified period of time. *Id.*

The debtors timely filed post-trial motions and lost. *Id.* A few days later, the debtors filed a Chapter 13 petition. *Id.* On the same day that the debtors filed their Chapter 13 petition (but after the bankruptcy filing), the state court entered a document called "Adjudication and Final Decree," which awarded the creditor damages in the amount determined in the Decree Nisi. *Id.* The Chapter 13 debtors moved for a determination that the state court judgment was void as having been entered in violation of the automatic stay, and the judgment creditor moved to dismiss the debtors' bankruptcy cases based on their alleged ineligibility for Chapter 13 relief. *Id*. at 776.

The *Wiencko* court began its analysis by determining whether the debtors were eligible for Chapter 13 relief given the debt limits set forth in Section 109(e). *Id.* at 776-77. The court viewed eligibility under Section 109(e) as the threshold issue for it to resolve. *Id.* The court concluded that the state court judgment was noncontingent and liquidated, saying the debtors "cannot escape the ceiling of § 109(e) due to the apparent lack of finality and the potential for modification." *Id.* at 779.

As part of its analysis, the court reasoned:

> It is clear that litigation in the state court has defined the amount of the debt; therefore, the debt appears to be liquidated under both the "readily determinable" and "readily ascertainable" standards. Substantial hearings or review of evidence are not required to verify the amount of the instant debt. Only the slightest modicum of effort is required to determine the amount of the debt; indeed, the court need only survey the money judgment which was figured down to the penny. It is also sufficient under § 109(e) that the debt is based on a non-final adjudication (including the decree nisi). Nowhere in the Bankruptcy Code does it require that a debt be based on a final

> order to be determined liquidated. To the contrary, the Bankruptcy Code defines debt (co-extensively from claim) to encompass obligations well outside the realm of finality.
>
> Furthermore, merely because the amount of the debt was potentially changeable by operation of post-trial motions does not make the debt unliquidated. The court does not believe that there is a principal distinction between a debt that can be modified by operation of post-trial motions or one that can be changed by appellate review. *See, e.g., In re Keenan*, 201 B.R. 263 (Bankr. S.D. Cal. 1996) (recognizing that under California law a judgment is not final and is given no preclusive effect if an appeal is pending but still holding that the claim based on an appealed judgment is not unliquidated); *In re Aye*, 1992 WL 236160 (Bankr. M.D. Fla. 1992) (holding that debt based on a state court judgment is liquidated even though judgments on appeal from Florida state courts are not final). If appellate review does not affect the liquidity of a claim, the potential for modification at the trial level should not affect liquidity either. In both instances the debt is not permanently carved in stone and is potentially modifiable.

Id.

Therefore, the *Wiencko* court held that the prepetition award to the creditor was a noncontingent, liquidated debt – even though the state court entered the judgment postpetition – thereby rendering the debtors ineligible for relief under Chapter 13. *Id.* at 781. The court then granted the judgment creditor's motion to dismiss and denied as moot the debtors' motion for a determination that the entry of judgment was a violation of the stay. *Id.* at 782.

The Court also finds *IBT Int'l., Inc. v. Northern (In re Int'l. Admin. Servs., Inc.)*, 408 F.3d 689 (11th Cir. 2005), instructive. There, the court said:

> [t]here is also the matter of the alleged gap between September 3 and September 17, where the bankruptcy court orally granted a second extension at the hearing of the Special Master [on September 3], but did not enter a written order until September 17. In this instance, the time at which the written order was entered by the court and file-stamped by the clerk is irrelevant to the time of its effectiveness. "A judgment is not what is entered but what was directed by the court ... In the very nature of things, the act must be perfect before its history can be so; and the

> imperfection or neglect of its history fails to modify or obliterate the act." *In re Ackermann,* 82 F.2d 971, 973 (6th Cir.1936) (citation omitted). Other courts have treated oral orders similarly. *See, e.g., Noli v. Commissioner,* 860 F.2d 1521, 1525 (9th Cir.1988) (holding a bankruptcy's court oral order binding and effective despite the court's failure to enter it on the docket). *Thus, a court's order is complete when made, not when it is reduced to paper and entered on the docket. See also Dalton v. Bowers,* 53 F.2d 373, 374 (2d Cir.1931) ("Entry is for most purposes not necessary to the validity of an order.")

Id. at 700 (emphasis added). *See also In re Golan*, 600 B.R. 697, 712-13 (Bankr. S.D. Fla. 2019) (quoting and applying *Int'l. Admin. Servs.*).[14]

In the present case, whether the State Court entered a judgment on the docket, whether the State Court's judgment was final and nonappealable and whether the State Court said the judgment would not be final until the request for attorneys' fees was determined are not relevant to the eligibility determination. The issue before the Court is whether the debt to Cantwell-Cleary is noncontingent and liquidated. The Court finds it is. Simply put, Section 109(e) does not require that a debt be supported by a written judgment – let alone a final, nonappealable judgment – as argued by the Debtor. The fact that the Debtor continues to dispute the debt has no bearing on the eligibility analysis because Congress did not include disputed debts in Section 109(e).

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[14] At the October 25, 2021 hearing on Cantwell-Cleary's motions for relief from stay filed in Mr. Ingram's bankruptcy case (Case No. 21-15869-DER) and in Mr. Barstow's bankruptcy case (Case No. 21-15870-DER), the Court rejected Cantwell-Cleary's argument that the docketing of the judgments was a "ministerial" act by the State Court which did not violate the automatic stay. Accordingly, the Court has not considered and does not adopt the line of cases holding that the postpetition entry of a judgment on a docket after a prepetition determination of liability is a ministerial act that does not render a judgment debt contingent and unliquidated for purposes of an eligibility analysis under Section 109(e). The Court took judicial notice of the transcript of the Court's ruling at the February 10, 2022 hearing. *See* page 8 above. The transcript appears at Dkt. No. 60 in Mr. Ingram's case and Dkt. No. 69 in Mr. Barstow's case.

IV. CONCLUSION

For the reasons set forth above, the Court determines that the Debtor is not eligible to be a debtor under Chapter 13 of the Bankruptcy Code. Because the Debtor is not eligible for Chapter 13 relief, cause exists to convert or dismiss this case. Therefore, the Court will grant the Trustee's and Cantwell-Cleary's Motions subject to further proceedings to determine whether conversion or dismissal is in the best interests of creditors and the estate as required by Section 1307(c) of the Bankruptcy Code. The Court will enter a separate order contemporaneously herewith.

cc: Debtor – Denis Stanton Ibbott
Debtor's Counsel – Richard B. Rosenblatt
Debtor's Counsel – Linda Dorney
Creditor – Cantwell-Cleary Co., Inc.
Creditor's Counsel – Steven L. Goldberg
Chapter 13 Trustee – Rebecca A. Herr
Office of the United States Trustee
All creditors and parties in interest

END OF MEMORANDUM OPINION