United States Bankruptcy Court
District of New Mexico

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
RICHARD DROVDAL and
CARLA DROVDAL,
Debtors.

No. 13-99-11106 SA

MEMORANDUM OPINION ON
MOTION TO DISMISS

This matter came before the Court on a motion to dismiss filed by creditors Vincent J. Garcia, Dan G. Apostalon, and Factor Plus, Inc. ("Garcia Creditors"). The Garcia Creditors appeared through their attorney Robert Singer. Debtors appeared through their attorney David Thuma.

The Garcia Creditors assert three grounds for dismissal: (1) the debtors' noncontingent, liquidated claims exceed the ceiling limit of 11 U.S.C. § 109(e), (2) there has been an unreasonable delay in the case prejudicial to creditors, and (3) the case was filed in bad faith. The Court requested briefs on the section 109 issues. The Court issues this Memorandum Opinion[1] as its Findings of Fact and Conclusions of Law, pursuant to Bankruptcy Rule 7052. This is a core proceeding, 28 U.S.C. § 157(b)(2)(A).

Facts

Richard Drovdal was involved with Global Resources Company ("Global") from June 1995 to March 1999. The bankruptcy schedules list: (a) the value of the Global stock as zero, (b)

[1]The decision is limited to discussion of the first ground.

$400,000 of secured debt secured by the personal residence worth $425,000, (c) a contingent, unliquidated, and disputed secured claim to the Garcia Creditors in the amount of zero, secured by property worth zero[2], (d) priority taxes to the Internal Revenue Service in an "unknown" amount, with the liability listed as contingent, unliquidated and disputed, and priority taxes to the State Taxation and Revenue Department and Department of Labor in the amount of zero, and (e) ninety-five unsecured creditors, all holding contingent, unliquidated, disputed claims each in the purported amount of zero.

The deadline for filing proofs of claim in this case was June 29, 1999 except for government units, whose deadline was August 24, 1999. To date, twenty claims are on file. They are set out in Appendix A. Debtors filed objections to the Garcia Creditors' claims, claim numbers 11, 12, and 13, (in the amounts of $228,000.00, $665,199.03 and $665,199.03 respectively[3]) arguing: (1) under the New Mexico Mortgage Loan Companies and Loan Brokers Act, N.M.S.A. § 58-21-1 et seq., the debts are

[2]The exhibits attached to the Garcia Creditors proofs of claim 11, 12, and 13 claim security only in the assets of Global Resources. These claims would, therefore, be unsecured in this chapter 13 case by virtue of section 506(a).

[3]Presumably, claims 12 and 13 are the same debt.

uncollectible; and (2) that the debt of Global[4] to the Garcia Creditors has been discharged by agreement of the parties. Debtors ask the Court to disallow the Garcia Creditors claims in full.

Statutes

Section 101(5) defines "claim" as:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

11 U.S.C. § 101(5)(emphasis added.)

Section 101(12) provides that "'debt' means liability on a claim". 11 U.S.C. § 101(12).

Section 109(e), as dollar adjusted per section 104(b)(1), provides:

> Only ... an individual with regular income and such individual's spouse, ... that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $269,250 and noncontingent, liquidated, secured debts of less than $807,750 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e).

Discussion

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[4]Debtors' alleged liability to the Garcia Creditors results from personal guarantees dated August 17, 1995 and May 6, 1997 issued by Richard Drovdal to Daniel G. Apostalon and Vincent J. Garcia, and to Factor Plus, Inc. guaranteeing payment of any obligation of Global to Apostalon, Garcia, or Factor Plus. See Summary attached to proofs of claim 11, 12, and 13.

Bankruptcy Code Section 109(e) expresses a Congressional policy that the broad discharge available in Chapter 13, which includes a discharge from claims that would be nondischargeable in Chapter 7 or 11, should be limited in scope to [$269,250] for unsecured debt and [$807,750] for secured debt. In re Crescenzi, 53 B.R. 374, 377 (Bankr. S.D.N.Y. 1985) aff'd, 69 B.R. 64 (S.D.N.Y. 1986). This limitation on Chapter 13 eligibility will preclude its use by some debtors to their apparent detriment, but Congress is free to limit this eligibility. Id.

The parties assume, and it is clear from the claims on file, that if any of the claims held by the Garcia Creditors are noncontingent, liquidated claims then Debtors are ineligible for relief under Chapter 13 because their debt would exceed the limits of section 109(e). Debtors dispute their liability to the Garcia Creditors. Section 109(e) does not mention "disputed" debts, however, or how those debts should be treated in the section 109 analysis[5].

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[5]Compare 11 U.S.C. 303(b)(1): "An involuntary case against a person is commenced by the filing ... by three of more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute ..." This section indicates that Congress was aware of the concept of disputed debts. See also 11 U.S.C. §1111(a) (A claim scheduled as disputed is not deemed filed under section 501.) The Court finds it significant that disputed debts were not excluded from consideration in section 109(e). "Congress 'says in a statute what it means and means in a statute what it says there.'" Hartford Underwriters Insurance Company v. Union Planters Bank, N.A., 120 S.Ct. 1942, 1947 (2000)(citing

Debtors' basic argument is that the debts to the Garcia Creditors are not "owed," so these non-debts should not be included in the section 109 calculation. Essentially, the debtors claim an affirmative defense to the claims. Procedurally, debtors urge the Court to rule on their claims objection before making any determination under section 109(e).

The Garcia Creditors' basic argument is that the term "claim" includes "disputed claim", so whether or not the debtors dispute their claims they are nevertheless debts[6] that must be added into the eligibility calculation of section 109(e). Procedurally they ask the Court to dismiss the bankruptcy without ruling on the merits of the claims objections.

Connecticut National Bank v. Germain, 530 U.S. 249, 254 (1992)). See also In re Kaufman, 93 B.R. 319, 322 (Bankr. S.D. N.Y. 1988)("[U]nlike the rule under 11 U.S.C. § 303(b)(1) where claims which are subject to a bona fide dispute may not be counted for purposes of filing an involuntary petition, 11 U.S.C. § 109(e) merely refers to noncontingent, liquidated unsecured debts and does not exclude disputed debts for purposes of eligibility under Chapter 13.") But see In re Lambert, 43 B.R. 913, 920 n.6 (Bankr. D. Ut. 1984)("Section 109(e) contains no express language with respect to 'disputed' or 'undisputed' debts ... no inference can be drawn from Congress' silence.")

[6]In section 101(5), Congress intended "to adopt the broadest available definition of 'claim'." Johnson v. Home State Bank, 501 U.S. 78, 83 (1991). "A debt under the Code is simply 'liability on a claim.'" Rake v. Wade, 508 U.S. 464, 475 n.11 (1993)(citing 11 U.S.C. § 101(12).) "The terms 'debt' and 'claim' are coextensive: a creditor has a 'claim' against the debtor; the debtor owes a 'debt' to the creditor. ... By defining a debt as a 'liability on a claim,' Congress gave debt the same broad meaning it gave claim." Matter of Knight, 55 F.3d 231, 234 (7th Cir. 1995)(citations omitted.)

The first issue for the Court, then, is whether it should determine the merits of the claims objections before ruling on the motion to dismiss. Debtors acknowledge that the general rule is that, if the amount of a disputed claim is easily ascertainable it is included in the section 109(e) eligibility count. Debtors suggest, however, that there is an exception when the disputed claim is "hotly contested" by a debtor, citing several bankruptcy cases, including two from the Eastern District of Pennsylvania: In re Gordon, 127 B.R. 574 (Bankr. E.D. Pa. 1991) and In re Berenato, 226 B.R. 819 (Bankr. E.D. Pa. 1998). Debtors argue that hearing the claims objection before making the 109(e) ruling will result in judicial economy and fairness, because the litigation over these claims has been ongoing for over a year. The Court finds, however, that it should not rule on the claims objections before determining chapter 13 eligibility.[7]

[7]In their May 8 brief, Debtors' argue that the Court should rule on the claims objections first because the parties have already briefed those issues. As the body of this opinion explains, there are several reasons for determining first whether the Debtors should even be in a chapter 13 proceeding. Should this case convert, Debtors might seek to contest the claims in a chapter 7 or chapter 11 proceeding, so that the briefing will not have been "wasted". Of course, the Court is not ruling on any of the issues that might arise from such an attempt, such as standing to contest claims or whether Debtors could convert back to a chapter 13 proceeding if the claims are successfully contested.

First, a Chapter 13 eligibility hearing is not the proper forum for lengthy and complex litigation. Crescenzi, 53 B.R. at 377 ("Distributions to creditors are to begin immediately after confirmation, which is to occur within a few months after the case is filed. The process does not contemplate or accommodate lengthy and complex litigation. . . .") See also Henrichsen v. Scovis (In re Scovis), 231 B.R. 336, 341 (9th Cir. B.A.P. 1998)(There is a "need for expediency in determining eligibility [for Chapter 13 relief]... Accordingly, at the eligibility stage, a bankruptcy court is not required to conduct proceedings to determine the allowance of specific claims.")

Second, while the line of Eastern District of Pennsylvania Bankruptcy Court cases does indicate that "in certain circumstances" it may be necessary to decide the validity of a claim prior to making a section 109(e) determination, Berenato, 226 B.R. at 823; Gordon, 127 B.R. at 578 n.2, those same cases also acknowledge that this procedure is not the "norm". Berenato, 226 B.R. at 823.[8]

[8]The language in Gordon appears to be dicta because there was no "bona fide" dispute; a judgment in the form of a state-court criminal sentence had already been entered. Gordon, 127 B.R. at 578-79. And Berenato specifically states that "[T]o the extent that Gordon implies that this procedure is the norm, we recede from same." Berenato, 226 B.R. at 823. Gordon and Berenato were decided by the same judge.

Next, the Court finds that having a claims objection hearing as a prelude to the eligibility process would add a gloss to section 109(e) which is not there. That is, the statute would, in effect, read:

> Only ... an individual with regular income and such individual's spouse, ... that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that are not subject to a bona fide dispute that aggregate less than $269,250 and noncontingent, liquidated, secured debts not subject to a bona fide dispute of less than $807,750 may be a debtor under chapter 13 of this title.

As a policy reason, the Court finds that it should not rewrite the statute.

> Congress sets the limits as to who qualifies to file for bankruptcy under Chapter 13. This Court cannot find in any legislative history where Congress contemplated allowing disputed claims to be excluded from the calculation of the maximum allowable debt. This Court can only speculate that any such statutory language would cause a flood of 'disputes' over liabilities which, if allowed to translate a claim into an unliquidated claim could utterly thwart the judicial process in bankruptcy proceedings. It is easy to envision debtors regularly using such a 'dispute' technique as a stalling device. If such a device were given judicial recognition it would create havoc. The unscrupulous would file a chapter 13 petition and then 'dispute' the unsecured debts, force the litigation to continue under chapter 13, and then after months of costly delay the bankruptcy court would find that all had been in vain because the 'disputes' were only imagined. . . .

In re Pennypacker, 115 B.R. 504, 507 (Bankr. E.D. Pa. 1990), quoting Vaughn v. Central Bank of the South (In re Vaughn), 36

B.R. 935, 938-39 (N.D. Ala. 1984).[9] The Court is not suggesting that the debtors in this case have been unscrupulous, have engaged in stalling, or that their dispute is other than honest and in good faith. However, it is the duty of Congress, not this Court, to amend the wording of the statute. And, the Court is obliged to determine chapter 13 eligibility "as a threshold issue, to preserve the use of our resources to cases involving debtors eligible to file. We should not decide issues which, like the Objection, are presented in the context of cases not properly before us." Berenato, 226 B.R. at 823 (refusing to decide debtor's liability to Internal Revenue Service despite apparent willingness of both debtor and IRS to have court decide the issue).

The starting point for the Court's eligibility analysis is the debtors' schedules and the proofs of claim filed in the case[10]. In re Michaelsen, 74 B.R. 245, 247 (Bankr. D. Nv. 1987).

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[9]In citing to Vaughn, this Court does not necessarily subscribe to the dire consequences predicted therein.

[10]Some cases rule that the Court is to examine only the debtors' statements and schedules, and to use this information to determine eligibility if the filing was in good faith, in order to avoid claim litigation that would be expensive for the debtor and delay the beginning of payments under a confirmed plan. See e.g., Comprehensive Accounting Corporation v. Pearson (In re Pearson), 773 F.2d 751, 756-57 (6th Cir. 1985). The Court finds this approach unsatisfactory, because it allows a debtor to circumvent the debt limits by "artful manipulation" (which might slip by the good faith test). In re McGovern, 122 B.R. 712, 714 (Bankr. N.D. In. 1989). Similarly, the Court should not be bound

The Debtors' schedules indicate that every unsecured debt and the Garcia Creditors' "secured" debts are unliquidated, disputed, contingent and in the amount of zero. Presumably the ninety-five listed unsecured creditors hold claims against Global on which the debtors disavow liability. In summary, debtors admit only the mortgage debt on their residence.

The proofs of claim on file, however, total $274,718.51 in unsecured debt[11], excluding the Garcia Creditors' claims 11, 12, and 13, and excluding the New Mexico Department of Labor's claim 20 (which is unclear whether it is secured or unsecured). The Court notes that claims 4 and 6 are both held by the same creditor and may be duplicative. To the extent claim 6 replaces claim 4, the actual unsecured total would be $270,818.51 (still in excess of the Section 109(e) limit of $269,250). The Internal Revenue Service's claim includes an estimated liability of

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by the claims as creditors have chosen to assert them. Id.

[11]Claim 19 was filed after the claims deadline. It is included in the total because, given its size ($5,281.32), it makes no difference whether the claim is included in the calculation or not. Cf. Lamar v. United States (In re Lamar), 111 B.R. 327, 330 (D. Nv. 1990) (lateness of a claim is irrelevant in the section 109(e) analysis, which considers only debts owed on the date of the petition). Including this claim in the 109 calculation does not mean that the Court would consider the holder of the claim to have standing or that the holder would be entitled to any distribution from a chapter 13 estate. See In re Luna, No. 13-99-13304 SS, Memo Opinion (Bankr. D. N.M. April 12, 2000)(Creditor who files untimely claim has no standing in chapter 13.)

$96,931.08 for Internal Revenue Code Section 6672 liability, and a $10,000 estimated liability for an unfiled 1998 income tax return. This leaves $163,887.43 in presumptively noncontingent, liquidated debt[12].

Debtors' first argument, that they do not "owe" a debt to the Garcia Creditors, was also an issue in Matter of Knight, 55 F.3d 231, 234 (7th Cir. 1995). Referring to the definitions of debt and claim, and noticing that "debt" was virtually synonymous with "claim", the Seventh Circuit concluded that a disputed claim was nevertheless a debt to include in the section 109(e) requirements. Id. This Court agrees.

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[12]Neither the debtors or the Garcia Creditors focused on the other claims in the case, and consequently did not address the issue of whether the Internal Revenue Service's claim was contingent or liquidated, or in what amount. The Court would find that the debt is not contingent. See footnote 13 below. Because the face of the claim lists $106,931.08 as an "estimated liability", the Court will tentatively, for the purpose of this opinion, find it unliquidated. However, if the Service could demonstrate a logical basis for the calculations the debt may very well be liquidated. See text at pages 12-14 below. See also United States v. Dallas, 157 B.R. 912, 913 (S.D. Al. 1993)(Disputed claim for IRC §6672 penalty tax was liquidated for purposes of §109(e).); Lamar v. United States (In re Lamar), 111 B.R. 327, 329 (D. Nv. 1990)("A definite sum of money is owed by the Debtor to the IRS unless and until the Debtor proves otherwise." (Holding that IRC §6672 penalty tax was liquidated for §109 purposes.)); Mazzeo v. United States (In re Mazzeo), 131 F.3d 295, 304 (2nd Cir. 1997)(State tax liability of person responsible for employee withholding taxes is not contingent or unliquidated.)

The Bankruptcy Code does not define the terms “contingent” or “liquidated.” Instead, those definitions come from the case law interpreting various sections of the Code.

“[A] contingent debt is ‘one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.’” Fostvedt v. Dow (In re Fostvedt), 823 F.2d 305, 306 (9th Cir. 1987)(citing Brockenbrough v. Commissioner, 61 B.R. 685, 686 (W.D. Va. 1986)). A debt is noncontingent when all of the events giving rise to liability for the debt occurred prior to the debtor’s filing for bankruptcy[13]. Mazzeo v. United States (In re Mazzeo), 131 F.3d 295, 303 (2nd Cir. 1997). The fact that a debtor might have counterclaims, setoffs, affirmative defenses, or mitigating circumstances does not make a claim contingent because it “does not obviate the basic claim or negate the fundamental right to payment on the claim.” In re Clark, 91 B.R. 570, 575 (Bankr. D. Co. 1988). The debtors’ liability to the Garcia Creditors is not contingent; on the day they filed their petition all events that would have triggered Global’s liability, and therefore debtors’ liability, had occurred[14].

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[13]For this reason, the Court would find that the IRS claim in this case is not contingent. It is for taxes accrued before the filing of the case.

[14]The debtors, while disputing that the Garcia creditors are owed over $650,000, do admit in their May 8, 2000 brief that

A debt is "liquidated" if the amount of the debt is "readily determinable." Slack v. Wilshire Insurance Company (In re Slack), 187 F.3d 1070, 1073 (9th Cir. 1999). The United States Court of Appeals for the Ninth Circuit found that a debt is "readily determinable" if it requires only "a simple hearing to determine the amount of a certain debt" as opposed to an "extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability." Id. at 1073-74. The United States Bankruptcy Appellate Panel of the Eight Circuit expressed a different perspective: "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." Barcal v. Laughlin (In re Barcal), 213 B.R. 1008, 1014 (8th Cir. B.A.P. 1997). Under Barcal, the calculation process may be time-consuming and difficult, but if the amount can be determined by reference to a specific standard it results in a liquidated claim. Gaertner v. McGarry (In re McGarry), 230

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there were "actual loans made in late 1996 and early 1997 of approximately $442,650" and that approximately $168,000 was repaid. In effect, the debtors dispute the significance of these facts; see e.g., the argument on page 3 of the debtors' May 18 brief. The resulting figure, $274,650, together with the $163,887.43 (see page 10), totals $438,537.43, easily in excess of the section 109 limit.

B.R. 272, 275-76 (Bankr. W.D. Pa. 1999)(citing Barcal, 213 B.R. at 1014). See also United States v. Verdunn, 89 F.3d 799, 802 (11th Cir. 1996)("A liquidated debt is that which has been made certain as to amount due by agreement of the parties or by operation of law... If the amount of the debt is dependent, however, upon a future exercise of discretion, not restricted by specific criteria, the claim is unliquidated." (Citations omitted.))

The concept of liquidation relates only to the amount of liability, not to the existence of the liability. Verdunn, 89 F.3d at 802 n.10. Thus, even if a debtor disputes the existence of liability, if the debt is calculable with certainty, the debt is liquidated. Slack, 187 F.3d at 1074-75. See also Matter of Knight, 55 F.3d at 235 (fact that debtor contested a claim, and denied it even existed, did not remove it as a claim under 109(e) or render it unliquidated) and Mazzeo, 131 F.3d at 305 ("The Code uses both 'unliquidated' and 'disputed' in its definition of 'claim'; to rule that a claim ... is unliquidated whenever it is disputed would be to render the term 'unliquidated' mere surplusage.") But see In re Lambert, 43 B.R. 913, 921 (Bankr. D. Ut. 1984)("If there arises a dispute as to the underlying liability of the debtor, then the entire debt is unliquidated until the liability is determined by a court of competent jurisdiction.")(minority view).

The Garcia Creditors' claims in this case are contract claims[15]. Little more would be required to determine the amount due than examining the contract, calculating interest, examining the payment history, and computing the remaining balance. The affirmative defenses raised by the debtors may be more involved and require some discretion, but the existence of an affirmative defense does not render a claim unliquidated[16]. Under the

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[15]This fact alone would lead many courts to find that the claim was liquidated. See e.g., In re Pennypacker, 115 B.R. 504, 505 (Bankr. E.D. Pa. 1990)("The majority of courts that have considered this issue have held ... that debts of a contractual nature, even though disputed, are liquidated.")

[16]A majority of courts addressing the issue have found that if a debtor asserts an affirmative defense or counterclaim, the liquidated amount of the debt does not become unliquidated, nor is it reduced, on account of the defense or counterclaim. See Sylvester v. Dow Jones and Company, Inc., 19 B.R. 671, 673 (9th Cir. B.A.P. 1982); Matter of DeBrunner, 22 B.R. 36, 36-37 (Bankr. D. Nb. 1982); In re Troyer, 24 B.R. 727, 730 (Bankr. N.D. Oh. 1982); Craig Corp. v. Albano (In re Albano), 55 B.R. 363, 368 (N.D. Il. 1985); In re Burgat, 68 B.R. 408, 411 (Bankr. D. Co. 1986); In re Crescenzi, 69 B.R. 64, 65-66 (S.D.N.Y. 1986); In re Kaufman, 93 B.R. 319, 322 (Bankr. S.D.N.Y. 1988). Compare Quintana v. Internal Revenue Service (In re Quintana), 107 B.R. 234, 239-40 (9th Cir. B.A.P. 1989) aff'd, 915 F.2d 513 (9th Cir. 1990)(Chapter 12 debtors' "aggregate debt" not reduced by value of counterclaim in computing eligibility for Chapter 12.) This treatment of counterclaims appears elsewhere in the code. For example, under section 362, which is designed to provide a speedy remedy, counterclaims are generally not tried. See Grella v. Salem Five Cents Savings Bank, 42 F.3d 26, 33 (1st Cir. 1994)("The statutory and procedural schemes, the legislative history, and the case law all direct that the hearing on a motion to lift the stay is not a proceeding for determining the merits of the underlying substantive claims, defenses, or counterclaims. Rather, it is analogous to a preliminary injunction hearing, requiring a speedy and necessarily cursory determination of the reasonable likelihood that a creditor has a legitimate claim or

"simple hearing" inquiry of Slack, the "process" inquiry of Barcal, or the "specific criteria/lack of discretion" inquiry of Verdunn, the Court must find that the debts owed to the Garcia Creditors in this case are liquidated[17].

Therefore, the Court finds that the Garcia Creditors' claims are noncontingent, liquidated debts that should factor into the section 109(e) eligibility calculation. The case should be

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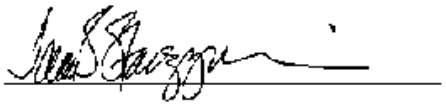
lien as to a debtor's property."); In re Quality Electronics Centers, Inc. 57 B.R. 288, 290 (Bankr. D.N.M. 1986) (relief from stay proceedings limited to whether the moving creditor has a colorable claim to a perfected security interest); Vastola v. Milks, 14 B.R. 15, 16 (W.D. N.Y. 1981)(Debtor may not bring voidable transfer claim as counterclaim to motion to lift automatic stay.) Section 303 is also supposed to provide an expedited decision on an involuntary petition. Chicago Title Insurance Company v. Seko Investment, Inc. (In re Seko Investment, Inc.), 156 F.3d 1005, 1008 (9th Cir. 1998) cert. denied, 119 S.Ct. 1458 (1999)("[T]he existence of a counterclaim against a creditor does not automatically render the creditor's claim the subject of a 'bona fide dispute.' So long as the petitioning creditor has established that there is no dispute regarding the debtor's liability on the creditor's claim, the creditor has standing under section 303(b)."). But a claim or defense of recoupment (rather than mere setoff) might be permissible to defend against an involuntary petition. Id. at 1008-09. And see Bankruptcy Rule 1011(d): "A claim against a petitioning creditor may not be asserted. . . except for the purpose of defeating the petition." But even treating Debtors' defenses, that the loans which are the basis of the Garcia Creditors' claim are void or were released, as more similar to recoupment than setoff, does not make the claims contingent or unliqidated for purposes of the statute.

[17]The fact that the debtors may only be guarantors of Global's debts, and that there may be an uncertainty in how much Global will pay, also does not render the debt unliquidated. See Fostvedt, 823 F.2d at 306.

dismissed or converted[18] to a chapter for which the debtors are eligible.

For the reasons set forth above, the Court will enter an Order allowing the debtors to convert or dismiss their case within ten days[19]. If the debtors do neither in that time, the Court will enter an Order of Dismissal.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on the date file stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, mailed, or delivered to the listed counsel and parties.

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[18]"The overwhelming weight of authority is thus squarely in favor of allowing conversion [by an ineligible Chapter 13 debtor]." Federal Deposit Insurance Corporation v. Wenberg (In re Wenberg), 94 B.R. 631, 636 (9th Cir. B.A.P. 1988) aff'd, 902 F.2d 768 (9th Cir. 1990)(quoting In re Tatsis, 72 B.R. 908, 911 (Bankr. W.D. N.C. 1987).)

[19]The debtors received a discharge in case 7-95-10384 MA, which was filed February 10, 1995, so presumably would not receive a discharge in this case if it were a chapter 7. See 11 U.S.C. § 727(a)(8).

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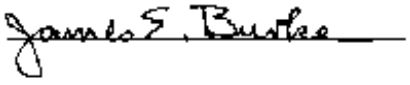

APPENDIX A

	Creditor	**Amount**	**Type**
1.	Charles Pariseau	$40,447.95	Unsecured
2.	Peli	436.08	Unsecured
3.	Sandia Safe & Lock	582.51	Unsecured
4.	R&E Sanchez 5th Family	3,900.00	Unsecured
5.	New Mexico Dept. of Labor		amended by 20.
6.	R&E Sanchez 5th Family	5,850.00	Unsecured
7.	Kinko's	483.62	Unsecured
8.	Charles Pecsok		amended by 17.
9.	Internal Revenue Service		amended by 14.
10.	American Express	896.51	Unsecured
11.	Factor Plus, Inc.	228,000.00	Secured in unknown amount[20]
12.	Vincent J. Garcia	665,199.03	Secured in unknown amount
13.	Daniel Apostalon	665,199.03	Secured in unknown amount
14.	Internal Revenue Service	109,550.20 1,034.17	Priority Unsecured
15.	New Mexico Taxation	1,457.60	Unsecured
16.	Nova Elec. Materials	2,433.22	Unsecured
17.	Charles Pecsok		amended by 18.
18.	Charles Pecsok	102,414.83	Unsecured
19.	Astec America, Inc.	5,231.82	Unsecured
20.	New Mexico Dept. of Labor	6,126.14	Secured

[20]But see footnote 2 above.