

Chapter 13 threshold debt limit
Noncontingent and liquidated

Daniel and Victoria Doyle, Case No. 605-71238-fra13

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Debtors pled guilty in state court to violation of election laws. The Elections Division reviewed campaign records and determined civil penalties for the years 2000, 2002, and 2004. Debtors filed a joint chapter 13 case and the Elections Division shortly thereafter issued proposed civil penalty notices. The Elections Division objected to confirmation of Debtors' plan of reorganization on the grounds that Debtors' scheduled unsecured debts, when added to the civil penalties imposed by the Elections Division, exceeded the threshold limitation at Code § 109(e) for noncontingent, liquidated, unsecured debts.

The civil penalties were of two varieties: (1) "personal use" penalties for converting campaign funds to personal use, and (2) "new transaction" penalties imposed for the failure to report contributions and/or expenditures on campaign finance reports.

Because the events giving rise to the penalties occurred pre-petition, the penalties were noncontingent. Debtors argued, however, that the debts were not liquidated at the petition date. Whether a debt is liquidated depends in the Ninth Circuit on whether the amount of the debt is readily determinable. Ready determination depends on whether the amount is easily calculable or whether an extensive hearing is needed to determine the amount of the debt.

The Bankruptcy Court determined that "personal use" penalties, because their calculation would require extensive documentary and testimonial evidence, were not liquidated at the petition date. "New transaction" penalties, on the other hand, could be determined by comparing bank account and ledger information with campaign finance reports, and calculating the penalty based on guidelines in the Campaign Finance Manual. Debtors argued that they had a possible defense to imposition of penalties for 2000 and 2002. However, a disputed claim can be liquidated if it is readily determinable. The Court held that "new transaction" penalties were liquidated and, when added to other scheduled unsecured debts, put the Debtors over the threshold limitation. The case would be dismissed unless Debtors decided to convert to another chapter.

1 violations of ORS 260.232 for failure to report certain contributions
2 and/or expenditures and alleged violations of ORS 260.407 for converting
3 campaign funds for personal use. The Elections Division asserts that the
4 total claim for civil penalties under these two statutes is \$128,789.79.
5 A Chapter 13 plan followed and was submitted to the court on November 3,
6 2005. The Elections Division filed an objection to confirmation of the
7 Debtors' chapter 13 plan. It asserts that, as of the date of the
8 petition, the Debtors' noncontingent, liquidated, unsecured debt, when
9 the civil penalties are combined with other debt, is in excess of
10 \$307,675.00 - the chapter 13 threshold limit of 11 U.S.C. § 109(e).

11 A confirmation hearing was held on January 24, 2006. The
12 Elections Division argued that the Debtors are ineligible for chapter 13
13 relief and the Debtors countered that the civil penalties were not
14 liquidated at the petition date. The parties were invited to provide
15 post-hearing memoranda and the matter was taken under advisement.

16 ISSUES

17 1) Do the civil penalties imposed by the Elections Division, in
18 whole or in part, constitute noncontingent and liquidated debts for
19 purposes of Code § 109(e)?

20 2) If so, do total unsecured debts exceed the chapter 13
21 threshold limitation of Code § 109(e)?

22 DISCUSSION

23 11 U.S.C. § 109(e)

24 Only an individual with regular income that owes, on
25 the date of the filing of the petition, noncontingent,
26 liquidated, unsecured debts of less than \$307,675 . .
. or an individual with regular income and such
individual's spouse . . . that owe, on the date of the

1 filing of the petition, noncontingent, liquidated,
2 unsecured debts that aggregate less than \$307,675 . .
3 . may be a debtor under chapter 13 of this title.

4 Contingent

5 A debt is noncontingent at the petition date if all events
6 giving rise to liability occurred prior to the debtor's bankruptcy
7 filing. In re Brown, 302 B.R. 913, 916 (Bankr D. Or. 2003). A debt is
8 contingent if it does not become an obligation until the occurrence of a
9 future event. "The concept of contingency relates to the time or
10 circumstances under which the liability arises" and "does not mean the
11 same as judgment or remedy." Mazzeo v. USA (In re Mazzeo), 131 F.3d 295,
12 303 (2d Cir. 1997)(internal citations omitted). It is, instead, a
13 condition of being obligated to answer for a claim and does not depend on
14 whether the claim has been reduced to judgment. Id.

15 The violations of campaign finance law, for which civil
16 penalties were assessed against the Debtors, occurred prior to the
17 petition date. At the petition date, the Debtors were "obligated to
18 answer" for the claim, even though the Election Division had yet to issue
19 its notices of proposed civil penalties. The claim was noncontingent at
20 the petition date.

21 Liquidated

22 A debt is liquidated if "the amount of the debt is readily
23 determinable." In re Slack, 187 F.3d 1070, 1073 (9th Cir. 1999). Ready
24 determination depends on "whether the amount due is fixed or certain or
25 otherwise ascertainable by reference to an agreement or by a
26 computation." In re Nicholes, 184 B.R. 82, 89 (BAP 9th Cir. 1995).

1 "Whether a debt is subject to 'ready determination' depends on whether
2 the amount is easily calculable or whether an extensive hearing is needed
3 to determine the amount of the debt." In re Ho, 274 B.R. 867, 873 (BAP
4 9th Cir. 2002). Generally, disputes as to the debtor's liability for a
5 debt do not render a debt unliquidated unless the dispute precludes the
6 ready determination of a debt. In re Ho, 274 B.R. at 875 (citing
7 Nicholes at 90-91).

8 For Chapter 13 eligibility purposes, the total amount of
9 noncontingent, liquidated, unsecured debt cannot exceed \$307,675.00. In
10 their petition, the Debtors scheduled \$223,733.00 of such debt, excluding
11 civil penalties imposed by the Elections Division. A determination that
12 civil penalties greater than \$83,942.00 were liquidated at the petition
13 date will render Debtors ineligible for Chapter 13 relief.

14 Personal Use Penalties

15 "Personal Use" penalties imposed under ORS 260.407 total
16 \$35,054.47 and reflect Debtors' conversion of campaign funds for personal
17 use. Personal Use penalties are assessed at \$75 for the first offense,
18 \$150 for the second offence, and each succeeding offense is penalized at
19 \$250. While the matrix for violations is clear enough, a determination
20 as to whether a particular payment should be characterized as made for a
21 prohibited personal use is, as the Elections Division clarified, based on
22 the totality of the circumstances. Based on circumstances which it
23 believed showed that Mr. Doyle's campaign records could not be trusted,
24 the Elections Division chose to treat all checks which did not show the
25 name of the payee and the amount and purpose of each expenditure, or were
26 otherwise "irregular" in some way, as personal use expenditures.

1 While the penalty matrix for Personal Use penalties could be
2 easily used by the court in a hearing to determine the amount of the
3 claim, the identification of personal use expenditures would present a
4 more difficult problem. As the Elections Division stated, it based its
5 determination as to what constituted an impermissible expenditure on the
6 totality of the circumstances. Because there is no presumption of
7 impermissibility with regard to types of checks written¹, in a hearing
8 before the court, the court would be required to go through each
9 expenditure using documentary and testimonial evidence to determine its
10 purpose. Personal Use penalties thus would not have been capable of
11 "ready determination" at the petition date and cannot be described as
12 liquidated.

13 New Transactions Penalties

14 "New Transactions" penalties assessed against the Debtors under
15 ORS 260.232 total \$93,735.32. These penalties reflect Debtors' failure
16 to report certain contributions and/or expenditures on their campaign
17 finance reports. Penalties for New Transactions are assessed

18 at 1% per business day of the dollar amount of the
19 addition, deletion or change for each individual new
20 transaction, beginning on the day following the new
21 transaction deadline and accruing daily up to 100
22 business days. The penalty will not exceed the amount
23 of the change or the applicable maximum penalty,
24 whichever is less. In the case of the inability to
25 reconcile the committee's accounts, the penalty is the
26 amount of the difference between the committee's cash
balance on the most recently filed contribution and
expenditure report and the bank balance. If the new
transaction is the direct result of an error by an
elections filing officer, the violation is waived and
no penalty is assessed.

¹ State of Oregon Post-Hearing Brief, p. 5, line 20.

1 2004 Oregon Campaign Finance Manual, page 106. The penalty matrix also
2 defines maximum penalties, which are dependent on the amount of
3 contributions or expenditures which were omitted.

4 The failure to report contributions and expenditures to and
5 from a campaign is determined by comparing cancelled checks, bank
6 statements, and ledgers to the campaign finance report filed by the
7 campaign committee. The penalty matrix is applied to omitted
8 contributions and expenditures to determine assessed penalties. I find
9 that the calculation of such penalties could be made without the need for
10 an extensive hearing and the New Transaction penalties were thus "readily
11 determinable" at the petition date.

12 Debtors state in their post-hearing memorandum² that the
13 Elections Division relied on ORS 260.345(8) to impose penalties for years
14 2000 and 2002, when it would otherwise have been limited to the 2004
15 campaign year. That provision provides that a filing officer must impose
16 penalties within two years of the later of the alleged violation or the
17 election for which alleged violations occurred. However, the time period
18 is increased to five years in certain circumstances, including where a
19 filing officer has not proceeded within two years because of fraud, as
20 the filing officer in this case testified. The fact that the Debtors may
21 thereafter contest the basis for the Election Division's ability to
22 impose penalties for 2000 and 2002 does not render the debt unliquidated.
23 The fact that a claim may be disputed does not "per se exclude the claim
24 from the eligibility calculation under § 109(e), since a disputed claim
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26 ²Memorandum of Law In Support of Confirmation, p.5, lines 15-22.

1 is not necessarily unliquidated. So long as a debt is subject to ready
2 determination and precision in computation of the amount due, then it is
3 considered liquidated and included for eligibility purposes under §
4 109(e), regardless of any dispute." In re Nicholes, 184 B.R. 82, 90-91
5 (BAP 9th Cir. 1995). The Elections Division made its determination that
6 alleged violations were based on fraud³. The fact that Debtors may have
7 a potential defense to liability does not render the claim unliquidated.
8 See In re Sulvester, 19 B.R. 671, 673 (BAP 9th Cir. 1982).

9 CONCLUSION

10 The Court finds that penalties imposed by the Elections
11 Division in the amount of \$93,735.32 were liquidated at the petition
12 date. When combined with other scheduled noncontingent, liquidated,
13 unsecured debts, the total exceeds the chapter 13 threshold limitation of
14 Bankruptcy Code § 109(e). Accordingly, confirmation of Debtor's chapter
15 13 plan of reorganization is denied.

16 Because Debtors do not qualify to be debtors in chapter 13, the
17 case will be automatically dismissed in 21 days unless the Debtors file a
18 motion prior to that date to convert to another chapter. An order will
19 be entered by the court consistent with the foregoing.

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23 FRANK R. ALLEY, III
24 Bankruptcy Judge

25 ³The Penalty Summary Notice (Exh. 1, page 1 to the Elections Division Objection
26 to Confirmation) is dated September 8, 2005, meaning the determination that violations
were based on fraud occurred prior to the petition date.