

11 U.S.C. § 109(e)
Liquidated Debt
Non-contingent debt

In re Ronald L. and Linda E. Sailstad Case No. 395-30591-psh13

7/24/95

PSH

Unpublished

The debtors filed a chapter 13 petition in which they listed non-contingent, liquidated unsecured debt in the amount of \$158,744. The amount included \$45,845 owed to Tax Pros, Inc.

Tax Pros contended that the true amount of the debt owed to it, which included accrued unpaid interest and attorney fees, was \$147,949.83, raising the debtors total unsecured debt to an amount in excess of \$250,000. Consequently, Tax Pros moved to dismiss the Chapter 13 filing on the grounds that the debtors were ineligible for Chapter 13 relief because their total unsecured debt exceeded the statutory limit set forth in § 109(e)

The bankruptcy court concluded that the attorney fees and interest were non-contingent and liquidated despite the fact that the fees had not been awarded by the court and that there was a dispute between the parties as to whether interest on the account should be compound or simple.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re)
) Case No. 395-30591-psh11
RONALD R. SAILSTAD)
LINDA E. SAILSTAD)
) OPINION
)
Debtor(s).)

This matter came before the court of the motion of Tax Pros, Inc., (Tax Pros) to dismiss the debtors' chapter 13 case on the grounds that the debtors' total liquidated, noncontingent, unsecured debt exceeds the statutory limit set forth in 11 U.S.C. § 109(e). That section states, 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 \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000 ... may be a debtor under chapter 13 of this title." emphasis added

The debtors' schedules list unsecured debt of \$158,744. Tax Pros is listed as an unsecured creditor with a total claim of \$45,845. Tax Pros contends that the debt owed to it is actually \$147,949.83 or \$102,104.83 higher than listed by the debtor.

Consequently, Tax Pros contends that the debtors' actual unsecured debt is \$260,848.83.

The debtors' obligation to Tax Pros arises from a personal guarantee executed by both debtors guaranteeing the obligations of Sunset Technical, Ltd to Tax Pros. Sunset entered into a factoring agreement with Tax Pros whereby Tax Pros agreed to purchase some of Sunset's accounts receivable for 95% of their face value. Under the agreement, if Tax Pros were unable to collect a purchased account within 58 days of purchase, it was entitled to sell the account back to Sunset and Sunset was obligated to repurchase it. The agreement provides that if Sunset fails to repurchase past due accounts, Tax Pros would charge interest on those accounts at the rate of 2.5% per month.

Tax Pros contends that as of March 31, 1994, it held \$94,562.00 in uncollectible Sunset accounts. The debtors do not dispute this figure. It further contends that, despite its request, Sunset failed to repurchase those accounts. Consequently, from March 31, 1994 to the petition date Tax Pros continued to charge interest on this account at the rate of 2.5% per month, compounded monthly. Tax Pros contends that, as of January 31, 1995, the date the debtors filed their bankruptcy petition, the debt had accrued unpaid interest of \$28,150.49.

Further, under the Agreement between Sunset and Tax Pros, Sunset agreed to pay

"any and all legal costs incurred by Tax Pros in ... the enforcement of the agreements between Tax Pros and [Sunset]; and any and all legal fees incurred by Tax Pros in defending or prosecuting any lawsuit arising out of the relationship between Tax Pros and [Sunset], including but not limited to this agreement."

Tax Pros contends that as of January 31, the date the order for relief was entered, it had incurred \$25,237.34 in fees in attempting to enforce the debtors obligations under the agreement with Sunset.

Tax Pros arrived at its final debt figure of \$147,949.83 by adding the principal, accrued unpaid interest and attorney fees as follows:

Principal:	\$94,562.00
Interest:	\$28,150.49
Attorney Fees:	\$25,237.34
TOTAL:	\$147,949.83

The debtors contend that Tax Pros' claims for interest and attorney fees are contingent and or/unliquidated. Consequently, they contend that the amount of the interest and fees should not be included in the 109(e) calculation.

Only "noncontingent" and "liquidated" debts are included in the total unsecured debt allowed under § 109(e) Therefore resolution of this dispute turns on the meaning of those terms.

In In Re King 9 BR 376 (D. OR 1981) the bankruptcy court defined the terms "liquidated" and "contingent" as follows:

"Whether a claim is contingent deals with the certainty of the liability. Whether a claim is liquidated involves

whether the amount due can be determined with sufficient precision."

In In Re Nickens Civil No. 94-1249 (D. Or. Nov. 2, 1994), the district court, relying on In Re Sylvester 19 BR 671 (9th Cir BAP 1982) rejected the King definition of a contingent debt, concluding that a "'contingent' debt [is] one to 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." Id at 7 Citations omitted. The Nickens court also rejected the King court's definition of "liquidated", finding that the definition "confused the term with a 'disputed' claim which is properly included in a 109(e) determination." The district court held that "a debt is 'liquidated' if the amount of the claim is 'readily ascertainable,' either because it is of a 'contractual nature', or is otherwise subject to 'ready determination'".

In the instant case the debtors' obligation to Tax Pros was contingent upon two extrinsic events: 1) Sunset's default under its agreement with Tax Pros; and 2) Tax Pros incurrance of attorney fees in enforcing Sunset's obligations. Both events have occurred. Consequently, the claim, which was contingent at its inception, was noncontingent on the date the debtors filed their petition.

The debtors argue that the attorney fees are unliquidated because they have not been awarded by the court or found to be reasonable. This argument is without merit. There is no dispute that Tax Pros has a contractual right to attorney fees arising from its

relationship with the debtors. In In Re Wenberg 94 BR 631 (9th Cir BAP 1988) the court determined that an award of "reasonable" attorney fees was a liquidated debt despite the fact that the bankruptcy court had to conduct a hearing to determine the reasonableness of the attorney fees requested. Wenberg filed his petition for relief after entry of a state court judgment against him awarding attorney fees to the prevailing party but before the court had determined the amount of those fees. The bankruptcy court held that the debt for attorney fees was liquidated and gave the debtor an opportunity to object to the amount of the fees. The court held a hearing on the objection at which it took "testimony" regarding the reasonableness of the fees.

On appeal the BAP held that the fee debt was subject to ready determination and thus liquidated. In reaching this conclusion the court noted that:

"the definition of 'ready determination' turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability."

Here Tax Pros has a contractual right to reasonable fees arising from its relationship with the debtors. The amount of fees incurred here is readily determinable although not yet determined by a court to be reasonable. Therefore, under Wenberg the fees are liquidated.

The debtors argue that the interest on the Sunset account is unliquidated because the contract calls for simple interest and Tax

Pros has improperly compounded interest on it. This argument confuses a disputed debt with an unliquidated debt.

As noted above, a debt is liquidated if it is readily ascertainable. The interest on this account can be ascertained by reference to the contract and use of simple mathematical formulas. It is, therefore, liquidated.

The debtors contend that even if the interest is liquidated, the true amount of the interest, calculated as simple interest, is substantially less than the amount claimed by Tax Pros. They further contend that if the interest were properly calculated their total unsecured debt would not exceed \$250,000. This is incorrect.

Simple interest on \$94,562.00 at 30% per annum (2.5% per month) from March 31, 1994 to January 31, 1995 (305 days) is \$23,705.26, \$4,445.74 less than the amount claimed by Tax Pros.

Assuming, arguendo, that the debtors are correct in their assertion that the contract did not allow Tax Pros to compound interest on the account, the debt owed to Tax Pros would be as follows:

Principal:	\$94,562.00
Interest:	\$23,705.26
Attorney Fees:	\$25,237.34
TOTAL:	\$143,504.60

On their schedules the debtors list their debt to Tax Pros at \$45,845.00, \$97,659.60 less than the amount owed under the above calculation. The debtor's list total unsecured debt of \$158,744. If

the above calculation is correct, the debtors' total unsecured debt is actually \$256,403.60. (\$158,744.00 + \$97,659.60)

The interest and attorney fees included in the debt the debtors' owe to Tax Pros are liquidated and noncontingent. If those sums are added to the total unsecured debt set forth in the debtor's schedules, their total unsecured debt totals at least \$256,403.60. Under §109(e) a debtor is only eligible for relief under Chapter 13 if the debtors' total unsecured, noncontingent liquidated debt does not exceed \$250,000. The debtors are, therefore, not eligible for relief under this chapter and Tax Pros motion to dismiss will be granted. An order consistent with this opinion will be issued.

POLLY S. HIGDON
Bankruptcy Judge