

11 USC §109(e)  
Liquidated

In re Hustwaite

Case No. 390-36445-H13

10-29-91

The court held that where an unsecured claim in excess of \$159,913 for special medical damages resulting from the debtor's alleged abuse of the claimant is subject to dispute on the ground the debtor did not abuse the claimant and the dispute is not frivolous but will require an evidentiary hearing to determine, the claim is not "liquidated" as contemplated in §109(e). Thus, the debtor was not rendered ineligible for chapter 13 relief by virtue of this disputed claim.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re )  
 ) Case No. 390-36445-H13  
RUSSELL EDWARD HUSTWAITE )  
JOYCE HUSTWAITE ) OPINION  
 )  
Debtors. )

This matter came before the court upon the objection of Paula Pfiefle ("claimant") to confirmation of the debtor's proposed chapter 13 plan. The debtors are represented by Wayne Godare of Snyder & Associates and the claimant is represented by Thomas Renn of Greene & Markley, P.C.

The limited issue presented to the court at this time is whether the debtors are eligible for relief under chapter 13 pursuant to the provisions of 11 U.S.C. §109(e). The claimant argues that the debtors are not eligible because their liquidated, unsecured debts exceed \$100,000. The basis for this argument is

1 that Mr. Hustwaite is liable for damages resulting from his alleged  
2 sexual abuse of the claimant and others.

3 The claimant argues that the alleged wrongful conduct resulted  
4 in medical damages to her of \$159,913.77 plus other general  
5 damages. The claimant argues that the alleged medical damages can  
6 be readily determined and that, therefore, the claim is  
7 "liquidated", at least to that amount. The claimant's objection is  
8 probably more accurately characterized as a motion to dismiss for  
9 failure to qualify for relief under chapter 13 pursuant to §109(e).  
10 The court will treat it as such. If the claimant were correct, the  
11 court would dismiss the case under §105.

12 The debtors do not presently deny that the claimant has  
13 incurred medical bills in the amount alleged. Rather, the debtors  
14 argue that while the claim for medical damages assumes that Mr.  
15 Hustwaite is liable, he has filed an affidavit in which he flatly  
16 denies having committed any wrongful act against any of the  
17 claimants. Thus, according to the debtors, this claim is  
18 unliquidated because it would require an extensive hearing to  
19 determine whether there is any liability.

20 Neither "noncontingent" nor "liquidated" is defined in the  
21 Code or the legislative history to §109(e). The reason for the  
22 chapter 13 eligibility limitations is not expressed in the  
23 legislative history. Thus, the court must rely on logic to  
24 determine the meaning of those terms.

1           Section 109(e) limits chapter 13 eligibility to individual  
2 debtors with regular income who owe, "on the date of the filing of  
3 the petition, noncontingent, liquidated, unsecured debts of less  
4 than \$100,000 ... ."

5           The word "debt" is defined in §101(12) to mean "liability on  
6 a claim." Thus, the words "debt" and "claim" are co-extensive. In  
7 re Loya, 123 B.R. 338 (Bankr. 9th Cir. 1991).

8           "Claim" is defined in §101(5) to include contingent and  
9 unliquidated debts. Accordingly, the language in §109(e) which  
10 specifically excludes contingent and unliquidated claims must have  
11 been intended by Congress to limit the debts that otherwise would  
12 be included in determining eligibility for chapter 13.

13           While the determination of eligibility is being made, the  
14 automatic stay of §362 remains in effect and delays all creditors  
15 (with only minor exceptions) seeking to recover upon their debts.  
16 If a debtor is determined to be ineligible for chapter 13 relief,  
17 his case would be dismissed, the automatic stay would terminate and  
18 additional delay to creditors and further bankruptcy proceedings  
19 would not occur. Thus, it seems logical that eligibility should be  
20 determined quickly.

21           Proceedings in bankruptcy cases are often expedited because  
22 swift action is deemed desirable.<sup>1</sup> The short time limits for

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<sup>1</sup> This is evident in a number of provisions in the bankruptcy laws which fix relatively short time limits for parties to act.

1 action in bankruptcy cases were adopted in an effort to avoid the  
2 perceived, deleterious effects of delay. In 1970, Congress  
3 appointed the Commission on the Bankruptcy Laws of the United  
4 States (the "Commission") to study and report on necessary changes  
5 in the bankruptcy laws. Act of July 24, 1970, Pub. L. No. 91-354,  
6 84 Stat. 468. The report produced by the Commission was an  
7 important cornerstone upon which the ultimate revision of the  
8 Bankruptcy Act (into the Bankruptcy Code) rested. As the  
9 Commission wrote in its Report:

10 "Delay is critical in cases under the Bankruptcy Act,  
11 particularly in the business cases where litigation is  
12 most likely to occur. This is true because of the  
13 prejudicial effect it might have on prospects for  
14 rehabilitating an enterprise in financial distress and  
15 the aggravated risk of deterioration of the estate in the  
16 course of liquidation." (Footnotes omitted). Report of  
17 the Commission on the Bankruptcy Laws of the United  
18 States, pp.89-92, House Document No. 93-137 (1973).

19  
20 Black's Law Dictionary defines a contingent claim as: "One  
21 which has not accrued and which is dependent on some future event  
22 that may never happen." Black's Law Dictionary, 4th Ed., 1968.

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For example, a claimant has 90 days from the first date set for the meeting of creditors in which to file a claim, FRBP 3002(c); the trustee or debtor has 30 days after the 90 day period in which to file a claim for a claimant that does not timely file, FRBP 3004; a claimant has 60 days from the first date set for the first meeting of creditors in which to file a complaint objecting to discharge or to the dischargeability of a debt, FRBP 8002(a); the time for filing a notice of appeal is 10 days, FRBP 4004(a); a trustee must object to a debtor's claim of exemptions within 30 days of the first meeting of creditors, FRBP 4003; and a chapter 13 debtor has 15 days after the filing of the petition to file a plan, FRBP 3015. The standards for extending these time limits are also strict, FRBP 9006.

1 Black's defines "liquidated debt" as follows: "A debt is  
2 liquidated when it is certain what is due and how much is due."  
3 Black's Law Dictionary, 4th Ed., 1968. Common aspects of  
4 contingent and unliquidated claims are that such claims are  
5 inherently uncertain and that the uncertainty can only be resolved  
6 by the passage of time, in the case of a contingent claim, to see  
7 if the future event does or does not occur, and in the case of an  
8 unliquidated claim, the time to be expended in litigation to  
9 determine if there is a claim, and, if so, in what amount.

10 To determine liability or the amount owing upon an  
11 unliquidated or a contingent debt could require a lengthy trial.  
12 The issues might be such that they would most appropriately be  
13 tried by a jury. For complete certainty it would be necessary to  
14 await the outcome of any appeal that might be taken from the  
15 judgment of the trial court. All of this could involve not just a  
16 period of months, but years. In a trial to establish a debt, as  
17 much or more time could be consumed in determining the question of  
18 liability than in determining the amount of damages.

19 The court believes that Congress adopted the Commission's  
20 philosophy concerning delay when it limited the kinds of debts to  
21 be included in determining eligibility for chapter 13 relief. This  
22 explains why debts that cannot readily be calculated (such as  
23 contingent and unliquidated debts) are not included in the  
24 eligibility limits provided in §109(e).

1           If the reason for excluding unliquidated and contingent claims  
2 from the maximum amount of debt for eligibility is so that  
3 eligibility may be promptly determined, it should make no  
4 difference that the claim is "unliquidated" because it is the  
5 liability rather than the amount of the claim which is not readily  
6 determinable. In either of these situations, delay is the result.

7           The court believes that a claim is "liquidated" under §109(e)  
8 only if it is capable of ready determination. A claim is capable  
9 of ready determination if the debtor's liability and the amount of  
10 the claim can be determined on the basis of the agreed upon facts  
11 without the need for an evidentiary hearing. Any disagreement as  
12 to liability or amount which is asserted to render a claim  
13 unliquidated must not be frivolous nor can the disagreement be  
14 solely one of law as opposed to fact. It should also be noted  
15 that, to the extent liability is admitted, the claim is liquidated  
16 at least in that amount. See, In re King, 9 B.R. 376 (Bankr. D.  
17 Or. 1981). This definition of "liquidated" will give meaning to  
18 the word and will enable a court to make an expedited determination  
19 of a debtor's eligibility for relief under chapter 13.

20           In this case, the claimants allege that Mr. Hustwaite engaged  
21 in certain behavior and Mr. Hustwaite, through counsel, denies all  
22 the allegations of fact supporting the claims of liability. It  
23 appears that Mr. Hustwaite's defense of innocence is not frivolous  
24 and liability will be determined on the basis of the credibility of

1 the testimony of witnesses. In a case such as this where the  
2 credibility of the witnesses will be decisive, it is apparent that  
3 a court could not determine the existence of liability without an  
4 evidentiary hearing. It appears to the court that such a hearing  
5 will be complicated and lengthy. Therefore, the court concludes  
6 that the debt is not liquidated and the claimant's objection on the  
7 basis of §109(e) will be overruled.

8 The claimant has raised other objections which may require  
9 further consideration by the court. The claimant is hereby  
10 directed to advise the court in writing and within 20 days hereof  
11 of any remaining objections. At that time, the court will advise  
12 the parties if further hearings or memoranda will be required.

13 This opinion constitutes the court's findings of fact and  
14 conclusions of law and in accordance with FRBP 7052 they will not  
15 be separately stated.

16 DATED this \_\_\_\_\_ day of October, 1991.

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20 Henry L. Hess, Jr.  
21 Bankruptcy Judge  
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27 cc: Wayne Godare  
28 Thomas Renn