

ENTERED

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

JUL 12 2001

U.S. Bankruptcy Court  
Greensboro, NC

ME

IN RE:

Gary I. Terry,  
Debtor.

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)  
) Case No. 01-10713C-13G  
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ORDER

This case came before the court on June 26, 2001, for hearing upon the Chapter 13 Trustee's motion to dismiss. Jeffrey P. Farran appeared on behalf of the Debtor and Anita Jo Kinlaw Troxler appeared on behalf of the Trustee. James Curt Bohling and John Stone appeared on behalf of the United States of America and argued in support of the motion. Having considered the motion, the arguments of counsel and the other matters of record in this case, the court finds and concludes as follows:

FACTS

1. This Chapter 13 case was filed on March 19, 2001.
2. On May 16, 2001, the United States of America filed a proof of claim in this case in the amount of \$1,845,283.60 based upon alleged violations by the Debtor of the False Claims Act, 31 U.S.C. § 3729 et seq. This claim is the subject of a pending civil action against the Debtor in the United States District Court for the Western District of Missouri ("the Civil Action"). A copy of the amended complaint in the Civil Action is attached to the proof of claim. The Amended Complaint reflects that the amount of the claim was calculated by trebling the amounts of the allegedly false

claims submitted by the Debtor and SCAT, Inc., his wholly-owned corporation, and adding the minimum penalty of \$5,000.00 for each such claim.

3. The Civil Action was filed on October 29, 1999, and was pending when this Chapter 13 case was filed. Hence, the United States of America was a creditor<sup>1</sup> when this case was filed and should have been listed in the schedules. Inexplicably, the schedules do not list the United States as a creditor nor refer to the Civil Action, suggesting a lack of good faith on the part of the Debtor.

4. On May 23, 2001, the Trustee moved to dismiss this case on the grounds that under § 109(e) of the Bankruptcy Code the debtor does not qualify to be a debtor under Chapter 13.<sup>2</sup>

5. Section 109(e) limits Chapter 13 to individuals with regular income that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than

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<sup>1</sup>Section 521 of the Bankruptcy Code requires that a debtor file a list of creditors. Under § 101(10) a creditor includes an entity that has a claim against the debtor that arose at the time of or before the order for relief. Under § 101(5) a claim means 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.

<sup>2</sup>The United States of America filed a motion to dismiss on the same grounds on June 15, 2001. Although that motion was not scheduled for hearing until July 17, 2001, the United States appeared at the June 26 hearing and argued in support of the Trustee's motion to dismiss.

\$269,250.00.<sup>3</sup>

6. For Chapter 13 eligibility purposes, a debt is noncontingent if all events giving rise to a debtor's liability occurred prior to the filing of the bankruptcy petition. United States v. Verdunn, 89 F.3d 799, 801 n.7 (11th Cir. 1996) (citing In re Knight, 55 F.3d 231, 236 (7th Cir. 1995)). "Nor, by a future 'event,' do we refer to a judicial determination as to liability and relief, for a claim may be contingent even though it has not been reduced to judgment." Mazzeo v. United States (In re Mazzeo), 131 F.3d 295, 303 (2d. Cir. 1997). Moreover, debt is not contingent merely because the debtor disputes the claim. Id.

7. A debt is "liquidated" for Chapter 13 eligibility purposes if the value of the claim is easily ascertainable, notwithstanding that existence of liability is disputed by the debtor. Verdunn, 89 F.3d 799, 802-803 (disputed federal tax deficiencies as well as interest and penalties stated in a deficiency notice were liquidated debts because they were readily ascertainable and calculable using fixed legal standards); Mazzeo, 131 F.3d 295, 304-305 (disputed "responsible person" liability of a corporate officer for withholding taxes neither contingent nor unliquidated); In re Knight, 55 F.3d 231 (7th Cir. 1995) (readily

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<sup>3</sup>Pursuant to 11 U.S.C. § 104, the limitation set forth in § 109(e) for noncontingent, liquidated, unsecured debts was upwardly adjusted to \$290,525.00 effective April 1, 2001. However, the revised debt limit only applies to cases filed after the effective date of the upward adjustment.

determinable statutory penalty not unliquidated even though it was disputed by the debtor); In re Berenato, 226 B.R. 819, 822 (Bankr. E.D. Pa. 1998) ("where the 'process for determining the claim is fixed, certain, or otherwise determined by a specific standard,' the claim will be considered liquidated"); In re Claypool, 142 B.R. 753, 754 (Bankr. E.D. Va. 1990) ("This court interprets 'liquidated' in § 109(e) to mean a debt that is certain as to amount, regardless of whether the debtor disputes ultimate liability.").

8. In the present case, all the events giving rise to the debtor's liability occurred prior to the filing of the bankruptcy petition. In addition, the damage amount is readily ascertainable from the invoices and other paperwork generated in connection with the payments from the General Services Administration to SCAT, Inc. The additional amounts owed, treble damages and penalties under the False Claims Act, are fixed by reference to formulas set forth in the applicable statutes. Thus, the \$1,845,283.60 unsecured claim of the United States of America is noncontingent and liquidated.

9. Since Debtor's noncontingent, liquidated, unsecured debts far exceed the limitations set forth in 11 U.S.C. § 109(e), this Chapter 13 case should be dismissed.

IT IS SO ORDERED.

This 12<sup>th</sup> day of July, 2001.

William L. Stocks

WILLIAM L. STOCKS  
United States Bankruptcy Judge