

IT IS SO ORDERED.

Dated: 05:18 PM April 01 2010


MARILYN SHEA-STONUM
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 09-54887
)	
LAURA POLLAUFG,)	CHAPTER 13
)	
DEBTOR(S))	JUDGE MARILYN SHEA-STONUM
)	
)	ORDER SUSTAINING OBJECTION TO
)	CONFIRMATION OF PLAN [DOCKET
)	#41]

This matter is before the Court on an objection to confirmation of plan [docket #41] filed by creditor, General Title and Trust Company, Inc. (“General Title”). Pursuant to that objection General Title contends, *inter alia*, that Ms. Pollauf is not eligible to be a chapter 13 debtor because her secured debts exceed the eligibility limits established by 11 U.S.C. § 109(e). Pursuant to a preliminary hearing on the objection the Court instructed the parties to file supplemental briefing to address the chapter 13 eligibility issue. Those pleadings were filed [docket #72 and #77] and the matter was taken under advisement. Resolution of this issue is a core matter pursuant to 28 U.S.C.

§157(b)(2)(A), (L) and (O) over which this Court has jurisdiction pursuant to 28 U.S.C. §1334(b).

DISCUSSION

Section 109(e) of the Bankruptcy Code provides, in part, that “[o]nly an individual with regular income that owes, on the date of the filing of the petition . . . , noncontingent, liquidated and secured debts of less than \$1,101,650 . . . may be a debtor under chapter 13 of this title.” 11 U.S.C. § 109(e). Generally, chapter 13 eligibility is determined by the information listed in the schedules. *In re Glance*, 487 F.3d 317, 321 (6th Cir. 2007); *In re Pearson*, 773 F.2d 751, 756 (6th Cir. 1985). When, however, such eligibility is called into question, the Court is not bound by how an individual chooses to characterize her debt but must, instead, make an independent determination of the nature of the listed debt. *See, e.g., In re Smith*, 365 B.R. 770, 780 (Bankr. S.D. Ohio 2007).

On her Schedule D - Creditors Holding Secured Claims, Ms. Pollauf lists 14 creditors holding secured claims totaling \$2,408,608.35. Of those 14 secured claims, all but 3 are listed as “contingent,” “unliquidated” and “disputed.” The 3 that are not listed as “contingent,” “unliquidated” and “disputed” total \$472,870.00.

Of the 11 claims listed as “contingent,” “unliquidated” and “disputed,” five arise from consensual loan obligations secured by real property (collectively, the “Consensual Mortgage Obligations”):

<u>Creditor</u>	<u>Description of Property Subject to Lien</u>	<u>Amount of Claim</u>
Central Mortgage Co.	4025 Keller Hanna Drive, Brunswick OH	\$109,294.00
Central Mortgage Co.	4456 Wyndham Way, Copley OH	\$63,611.00
Countrywide Home Lending	4456 Wyndham Way, Copley OH	\$243,223.00
First Horizon Home Loans	4348 Spruce Run, Copley OH	\$984,851.00
Home Comings Financial	4456 Wyndham Way, Copley OH	\$263,726.00

According to Ms. Pollauf, she listed the Consensual Mortgage Obligations as “contingent,” “unliquidated” and “disputed,” because of her intention to surrender the real estate securing the loans. As to the 3 secured claims against property located at 4456 Wyndham Way, Ms. Pollauf states the following in support of her argument that these debts were properly listed as “contingent,” “unliquidated” and “disputed”:

The value of these creditors’ claims was derived from Debtor’s credit report. Debtor is surrendering this property. Therefore, the actual value of these claims in the bankruptcy case is dependent upon the outcome of future litigation between the parties, including but not limited to: (1) fair market value of this property ascertained through the foreclosure case for purposes of setting the minimum bid at sale; (2) one or more of the creditors receiving full payment from the sale of the property; [and] (3) whether or not a Court of competent jurisdiction determines that these creditors have a valid claim against this Debtor or otherwise seeks relief against another person or entity for any deficiency balance that may exist. As a result, the values owed to these creditors (collectively, \$570,560.00) were omitted from the calculation of the secured debt limit for a Chapter 13 Debtor.

Pollauf Statement at pg. 2-3 [docket #72]. Similar arguments were made as to the other Consensual Mortgage Obligations.

A claim in bankruptcy is considered “noncontingent,” when all the events giving rise to liability for the debt occurred prior to the debtor’s filing for bankruptcy. *In re Glance*, 487 F.3d 317, 322 (6th Cir. 2007). Ms. Pollauf has not disputed that she is liable on the Consensual Mortgage Obligations nor does she contend that any future event needs to occur in order for the listed creditors to have a claim against her and an interest in her property. Creditors loaned money to Ms. Pollauf and she granted mortgages to those creditors to secure the loans long before Ms. Pollauf’s bankruptcy petition was filed. Accordingly, Ms. Pollauf has no valid basis to characterize the Consensual Mortgage Obligations as “contingent” claims. *Cf. In re Glance*, 486 F.3d 317 (6th Cir. 2007) (debtor

inappropriately listed as “contingent” and “unliquidated” property interests that lenders possessed against debtor’s interest in real property that he owned jointly with non-debtor wife resulting from debtor’s joining with wife in executing mortgages for property in order to secure wife’s obligation on mortgage notes that she alone signed).

A claim in bankruptcy is considered “liquidated” if the amount due the creditor is “readily ascertainable.” *In re Glance*, 487 F.3d 317, 321 (6th Cir. 2007). Ms. Pollauf does not contend that the amount she owes on the Consensual Mortgage Obligations cannot be determined without difficulty. Instead she claims that the actual amount these creditors will receive in a bankruptcy case is not yet known. These are two separate issues and the fact that the creditors to whom she is obligated on the Consensual Mortgage Obligations may not, through bankruptcy, receive the full amount they are owed does not render those obligations “unliquidated.” To find otherwise would be to find that virtually all claims listed in a bankruptcy petition are “unliquidated.”

CONCLUSION

Based upon the foregoing the Court finds that the Consensual Mortgage Obligations were inappropriately listed as “contingent,” “unliquidated” and “disputed” on Ms. Pollauf’s Schedule D. Therefore, those claims must be taken into consideration in determining whether Ms. Pollauf is eligible to be a chapter 13 debtor. Because Ms. Pollauf’s secured claims exceed the secured debt cap set forth in § 109(e) of the Bankruptcy Code she is not eligible to file a chapter 13 bankruptcy petition. Accordingly, General Title’s objection to confirmation is sustained. Ms. Pollauf is hereby granted until April 16, 2010 to convert this case to one under Chapter 7 or Chapter 11. Otherwise the Court will enter a separate order dismissing this case for Ms. Pollauf’s ineligibility to be a chapter 13 debtor.

#

cc (*via* electronic mail):

BRIAN MALONE, Counsel for Laura Pollauf

MICHELLE DIBARTOLO, Counsel for Laura Pollauf

JEFFREY TUMLIN, Counsel for General Title

KEITH RUCINSKI, Chapter 13 Trustee