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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 02-16621
)
CAROL O. RAPISARDA,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

The debtor Carol Rapisarda moves to convert her chapter 7 case to chapter 13, a request that is opposed by the chapter 7 trustee. (Docket 18, 25).¹ For the reasons stated below, the debtor's motion is denied.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

PROCEDURAL HISTORY

The court held an evidentiary hearing on the motion on February 17, 2004. The debtor did not introduce any evidence in support of her motion. The trustee introduced two exhibits: the bankruptcy case claims register and a complaint on a cognovit note filed by OSF Properties, Inc. against the debtor. The court advised the parties that it would take judicial notice of the file.

¹ Creditor McIntyre, Kahn & Kruse Co., LPA withdrew its objection at the hearing.

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FACTS**

The debtor filed a chapter 7 case on June 18, 2002. Her schedule D lists secured claims in the total amount of \$1,393,805.00. None of this debt is scheduled as “contingent” or “unliquidated.” Two of the secured debts listed—McIntyre, Kahn & Kruse Co., LPA (\$26,540.00) and OSF Properties, Inc., assignee (\$1,114,676.00)—are listed as disputed. Schedule F lists noncontingent, liquidated general unsecured claims in the total amount of \$62,762.00. Four creditors filed unsecured claims totaling \$455,521.32, including OSF which filed an unsecured claim as an assignee for \$447,299.00. (Plaintiff/trustee’s exh. 1).

OSF Properties, Inc., as the assignee of Huntington National Bank, filed a complaint in Cuyahoga County Common Pleas Court seeking judgment against the debtor on a cognovit note in the amount of \$1,114,676.73 plus interests and costs. (Plaintiff/trustee’s exh. 2). There was no testimony regarding this suit.

The debtor received a chapter 7 discharge on October 7, 2002.

DISCUSSION

The debtor’s motion is based on bankruptcy code § 706(a) which states that a “debtor may convert a case under . . . chapter [7] to a case under chapter . . . 13 . . . at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title.” 11 U.S.C. § 706(a). This court has previously held that “[t]he terms of § 706(a) are not ambiguous and the plain meaning of the section is that a debtor has the automatic right to convert to Chapter 13 so long as the case has not previously been converted to a Chapter 7 and the debtor is eligible for relief under Chapter 13.” *In re Gibbons*, 280 B.R. 833, 835 (Bankr. N.D. Ohio 2002). *See also* 11 U.S.C. § 706(d).

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Because this case has not previously been converted, the only issue is whether the debtor is eligible for chapter 13 relief. Section 109 governs eligibility. Under that section, an individual is eligible for chapter 13 if she has regular income, noncontingent, liquidated, unsecured debt of less than \$290,525.00, and noncontingent, liquidated, secured debt of less than \$871,550.00. *See* 11 U.S.C.A. § 109(e).

The parties focused their arguments exclusively on events that allegedly occurred after the case was filed. The trustee argues that the debtor is ineligible for chapter 13 because the filed unsecured proofs of claim total \$455,521.32, exceeding the statutory limit. The debtor argues that she was initially unable to file a chapter 13 based on OSF's recorded judicial lien which put her secured debt over the statutory limit, but she is now eligible because that lien has been released. These arguments are inapposite because a debtor's chapter 13 eligibility is determined as of "the date of the filing of the petition[.]" 11 U.S.C. § 109(e). And when a debtor seeks to convert a case to chapter 13, her eligibility continues to be determined as of the date the case was filed. *See In re Piszczek*, 269 B.R. 641, 643 (Bankr. E.D. Mich. 2001); *In re Stern*, 266 B.R. 322, 325 (Bankr. D. Md. 2001). *See also* 11 U.S.C. § 348(a) (the conversion of a case to another chapter "does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.").

The more precise issue, then, is whether the debtor was eligible for chapter 13 relief on the date her case was filed. The Sixth Circuit has held that "[c]hapter 13 eligibility should normally be determined by the debtor's schedules checking only to see if the schedules were made in good faith." *Comprehensive Accounting Corp. v. Pearson (In re Pearson)*, 773 F.2d 751, 757 (6th Cir. 1985). As the debtor's trial brief acknowledges, she was not eligible for

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chapter 13 relief when this case was filed because she scheduled secured debt totaling \$1,393,805.00 which is well in excess of the § 109(e) eligibility limit for such debt.


The debtor argues that the OSF secured debt should not be considered because the lien securing the debt has been released and the debt is the subject of litigation that may ultimately result in a determination that she is not liable to OFS. As noted above, eligibility is determined as of the date of the case filing. Even if the debtor had substantiated her statement that the lien has been released (which she did not), that event does not affect her chapter 13 eligibility. *See In re Faulhaber*, 269 B.R. 348, 353 (Bankr. W.D. Mich. 2001) (noting that events which occur after the petition date are of no consequence in determining eligibility). Additionally, to the extent the debtor is now attempting to argue that the OSF debt is unliquidated debt which should not be included in the § 109(e) calculation of secured debt, that argument fails because the debtor's schedules control on this issue. *See Pearson*, 773 F.2d at 758. The debtor scheduled the OSF debt as secured, noncontingent, liquidated debt and "the fact that some later resolution of [the claim] might render more certain the precise nature of the debt itself and the extent to which it is found to be secured is relatively immaterial in determining the debtor's . . . [c]hapter 13 eligibility on the date the petition was filed." *Id.* at 758.

When the debtor filed this case, she scheduled noncontingent liquidated secured debt that exceeds the § 109 secured debt limit for chapter 13 eligibility. Consequently, the debtor is not eligible for chapter 13 relief and her motion to convert her case is denied on that basis.

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CONCLUSION

For the reasons stated, the debtor's motion to convert her chapter 7 case to a chapter 13 case is denied. A separate order will be entered reflecting this decision.

Date: 13 July 2004



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center on:

Mary Ann Rabin, Esq.
Carl Gillombardo, Jr., Esq.
Robert McIntyre, Esq.

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CLEVELAND

In re:) Case No. 02-16621
)
CAROL O. RAPISARDA,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **JUDGMENT**

For the reasons stated in the memorandum of opinion filed this same date, the debtor's motion to convert her chapter 7 case to a chapter 13 case is denied. (Docket 18).

IT IS SO ORDERED.

Date: 23 July 2011

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center on:

Mary Ann Rabin, Esq.
Carl Gillombardo, Jr., Esq.
Robert McIntyre, Esq.