UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	
	:	
SONDRA K. KREHBIEL,	:	Case No. 91-2777-C H
	:	Chapter 13
Debtor.	:	
	:	

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ORDER--OBJECTION TO PLAN

On May 18, 1992, a hearing was held on the motion to modify plan, confirmation of plan and objections thereto. Peter S. Cannon appeared for the Debtor and Elizabeth Goodman for the Chapter 13 Trustee. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). Findings of fact and conclusions are now entered pursuant to Fed.R.Bankr.P. 7052.

The only issues now under advisement are those raised by the Chapter 13 Trustee concerning eligibility pursuant to 11 U.S.C. § 109(e) and good faith. Aetna Casualty and Surety Company withdrew its objection to Debtor's amended plan of reorganization. On May 28, 1992 Debtor filed amended schedules I and J. The Trustee has reviewed these amended schedules and has filed a withdrawal of its objection as it concerns Debtor's employment, income and expenses.

FACTS

1. Debtor filed her petition under Chapter 13 of the Bankruptcy Code on September 20, 1991, and the order for relief was issued on the same date. The petition was filed without schedules, statements, or plan.

2. Debtor filed her schedules on October 15, 1991. Schedule F Creditors Holding Unsecured Nonpriority Claims lists liabilities as follows:

Creditor	Date Incurred	Status	Amount
Accounts Receivable Mgmt.		Unliquidated	Unknown
Aetna		12/15/89	$ 500.00
A.Y. Al-Shash, M.C.	Approx. 10/90		500.00
Elsie Blair	Various		49,000.00
Clerk of Court Polk County		Disputed	11,000.00 Approx.
Farmers Savs. Bk.			173.10
Holmes Oldsmobile		Disputed	Unknown
Iowa Lutheran Hosp.			320.07
Ranae Whitmore			2,000.00
Central Iowa Urology			143.00
Emergent Care, P.C.			58.00
Mercy Hosp.			264.23
TOTAL			$63,958.40

3. Debtor did not schedule creditors holding either secured or unsecured priority claims.

4. Debtor's plan provided that Debtor would pay $270 monthly to the trustee for 48 months plus $100 per month for

attorney's fees until paid. Unsecured creditors would be paid 10 percent of approved and allowed claims.

5. Each of the following creditors have filed a proof of claim for unsecured nonpriority claims in the amount indicated:

Creditor	**Filed**	**Amount**
Elsie Blair	10/2/91	$48,875.00
Mercy Medical Center	10/10/91	250.00
Aetna Casualty & Surety	10/21/91	54,288.31
Iowa Lutheran Hosp.	11/1/91	320.07
Allergy Inst., P.C.	1/6/92	500.00

6. The claim of Aetna Casualty and Surety Company (herein Aetna) in the amount of $54,288.31 (Claim No. 3) incurred from June 1987-April 1988 is based on Debtor's alleged theft/embezzlement from her former employer, Holmes Oldsmobile.

7. On October 30, 1991, Aetna filed an objection to confirmation of Debtor's plan of reorganization.

8. On November 8, 1991, Debtor filed an objection to the allowance of Aetna's claim. Debtor claimed that the maximum debt owed to Aetna and Holmes Oldsmobile was $11,000, which was the amount claimed as restitution by Holmes Oldsmobile.

9. Holmes Oldsmobile was Debtor's former employer. Debtor plead guilty to theft from her employer and as a result of a plea bargain Debtor agreed to make restitution in the amount of $11,000. Holmes Oldsmobile was paid more than that amount by Aetna and Aetna sued Debtor for reimbursement for the monies paid to Holmes Oldsmobile.

10. The chapter 13 trustee filed his objection to the confirmation of the plan on November 12, 1991. As relevant herein, Trustee objected to the plan on the basis of eligibility. Elsie Blair's claim in the amount of $48,875 had been allowed by the trustee and if Aetna's claim in the amount of $54,288.31 was allowed as filed, Debtor's unsecured debts would exceed $100,000.

11. Aetna filed its resistance to Debtor's objection to allowance of its claim on November 19, 1991. Aetna alluded that its claim arose out of the embezzlement of funds by Debtor from her former employer and the amount claimed as restitution in the state criminal proceeding did not reflect the full amount of the debt arising out of the embezzlement.

12. Debtor filed a modified Chapter 13 plan on March 13, 1992. Debtor also filed amended Schedules I and J on the same date.

13. Trustee objected to confirmation of the amended plan on the basis of eligibility to be a debtor under Chapter 13, and incomplete amended schedules. Trustee also objected on

the basis of good faith in that he understood Elsie Blair would be filing an amended claim to allow the total of unsecured claims to be less than $100,000.

14. Aetna filed its objection to the amended plan on April 3, 1992. These objections were failure to comply with the best interest test of § 1325(a)(4); feasibility pursuant to § 1325(a)(6); and, failure to comply with the best efforts test of § 1325(b)(1)(B).

15. Elsie Blair filed a proof of claim on April 13, 1992 intended to replace her previously filed claim. The amended claim was an unsecured nonpriority claim in the amount of $40,000 for money loaned. By an affidavit filed May 29, 1992, Elsie Blair, grandmother of the Debtor, stated that she had voluntarily reduced her claim from $48,875 to $40,000 by forgiving $8,875 in debt.

16. On May 6, 1992, Aetna withdrew its objection to confirmation of Debtor's amended plan.

17. On May 7, 1992, Debtor filed her amended Chapter 13 Plan. The amended plan provided that Debtor would pay $118 per month to the trustee for 60 months. Trustee was to make disbursements for claims entitled to priority under § 507 and after payment of the priority payments under § 507(a) the unsecured claimants are to receive "that percentage of the $118 per month payments to the trustee that equals the fraction that their unsecured claim bears to the total

unsecured claim of the debtor."

18. On May 11, 1992, Debtor withdrew her objection and consented to the allowance of Aetna's claim in the amount of $54,288.31.

19. Trustee filed an objection to the amended plan on May 26, 1992. Trustee objected on the basis that Debtor did not file the amended plan in good faith when she asked one unsecured creditor to reduce the amount of her claim solely for eligibility purposes. Trustee also objected to the amended schedules in that they were incomplete.

20. Debtor's affidavit filed May 29, 1992 states that Debtor agreed to withdraw her objection to Aetna's claim provided that she would not have to pay any more money to the trustee than she would if she were successful in objecting to Aetna's claim; and that Debtor's grandmother agreed to forego and waive her claim in an amount so that Debtor's acquiescence to Aetna's claim would not disqualify Debtor because of debt limitations. Debtor states she has obtained her grandmother's forgiveness of $8,875 in debt and has withdrawn her objections to Aetna's claim.

21. Aetna's attorney also filed an affidavit on May 26, 1992 stating that Aetna and the Debtor had entered into a settlement requiring (1) the Debtor to withdraw her objection and consent to Aetna's claim, (2) Aetna to withdraw its objection to confirmation of Debtor's plan, and (3) amendment

of the plan to increase Debtor's payments and extend the term of such payments. He further stated that the claim of Aetna was disputed, unliquidated and contingent prior to the settlement.

22. The total amount of unsecured, nonpriority claims as evidenced by the filed proofs of claim as amended is $95,358.38.

DISCUSSION

11 U.S.C. § 109(e) provides that "[o]nly an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000 . . . may be a debtor under chapter 13 of this title." The Trustee objects to the Debtor's plan on the basis that the Debtor has not filed her plan in good faith when she has asked one unsecured creditor to reduce the amount of her claim to make the Debtor eligible to be a debtor under 11 U.S.C. § 109(e). Debtor argues that the proofs of claim on file are prima facie evidence of the validity and amounts of the claims; that the determination for eligibility under § 109(e) is calculated from the date of the petition; that only noncontingent debts are counted toward the $100,000 limit of § 109(e); that Aetna's claim was contingent and unliquidated and therefore not to be calculated for purposes

of § 109(e). Debtor further argues that efficiency in Chapter 13 cases would be sacrificed if the Court were to go beyond the schedules and claims to evaluate good faith.

The purpose of § 109(e) is to establish dollar limitations on the amount of indebtedness that an individual with regular income can incur and yet file under chapter 13. L.P. King, 2 Collier on Bankruptcy ¶109.05 at 109-23 (15th ed. 1992). The debtor must owe less than $100,000 in unsecured debts at the time of filing the petition. The dollar limit on unsecured debt applies only to debts that are noncontingent and liquidated at the time of filing.

It is unclear what the debtor's unsecured, noncontingent and liquidated debts were at the time of filing and what the effect of the postpetition forgiveness of debt should be. The schedules indicate that unsecured nonpriority debts totalled $63,958.40 (with the amount of the unliquidated debt to Accounts Receivable Mgmt unknown). When, however, one adds the debt owed to Aetna based on Aetna's proof of claim, then Debtor's total unsecured nonpriority, noncontingent and liquidated debts exceed $100,000. To be on the safe side, Debtor has obtained from her creditor-grandmother the forgiveness of $8,875 so that even if the Aetna claim is included in the eligibility calculation, Debtor's debts will total less than $100,000. The issues then, more narrowly put, are whether the debt to Aetna was a noncontingent and

liquidated debt at the time of filing and whether, assuming the Aetna debt is included in the eligibility calculation, Debtor's grandmother's postpetition forgiveness of debt can cure the ineligibility problem.

Within the meaning of § 109(e), a "liquidated" debt is one that with regard to amount (1) is determined, fixed, settled, adjusted, and made certain and precise, (2) is agreed upon, or (3) is fixed by operation of law. In re Lambert, 43 B.R. 913, 921
(Bankr. D. Utah 1984) (citing In re King, 9 B.R. 376, 378 (Bankr. D. Ore. 1981)). While much criticized, see Gould v. Gregg, Hart, Farris & Rutledge, 137 B.R. 761 (W.D. Ark. 1992); In re Teague, 101 B.R. 57 (Bankr. W.D. Ark. 1989), the Lambert court held that a debt cannot be certain (and therefore liquidated) to the extent there is a bona fide dispute as to its amount or as to the underlying liability of the debtor to pay the debt. Lambert, 43 B.R. at 921. Where Lambert tips the scales in favor of accepting the debtor's characterization of a debt, see Lambert, 43 B.R. at 924, its detractors would hold that all disputed debts should be included in the § 109(e) unsecured debt limitation eligibility calculation thus tipping the scales toward ineligibility. See Gould, 137 B.R. at 765. It appears that under either analysis there are opportunities for manipulation. To make a debtor eligible or ineligible, a party need only dispute a debt or claim in a colorable

fashion.

A claim is "contingent" as to liability if the debt is one that the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event that will trigger the liability of the debtor to the alleged creditor and if such triggering event or occurrence was one reasonably contemplated by the debtor and creditor at the time the event giving rise to the claim occurred. Lambert, 43 B.R. at 922 (citing In re All Media Properties, 5 B.R. 126, 133 (Bankr. S.D. Tex. 1980), aff'd per curiam, 646 F.2d 193 (5th Cir. 1981)). The All Media court gave as an example the case of the commission of an alleged wrongdoing or negligent act, where it is presumed to have been contemplated by the parties that the alleged tortfeasor would be liable only if and when her act or omission were established as a tort and damages determined by a competent tribunal. Lambert, 43 B.R. at 923 (citing All Media, 5 B.R. at 133). The fact that a tort liability is disputed does not require a finding that the liability is contingent, but generally a tort liability that has not been reduced to judgment prior to filing may be regarded as contingent. In re Ramus, 37 B.R. 723, 726 n. 2 (Bankr. N.D. Ga. 1984).

Based on the facts presented by the parties, debtor is eligible for chapter 13 pursuant to § 109(e). While the Chapter 13 Trustee has expressed his concerns and has provided

the court with legal authority, he has failed to prove that Debtor's unsecured, nonpriority, noncontingent, liquidated debts at the time of filing exceeded $100,000. See In re Ramus, 37 B.R. 723, 725-27 (Bankr. N.D. Ga. 1984); Pennsylvania v. Flick (In re Flick), 14 B.R. 912, 915 (Bankr. E.D. Pa. 1981); In re Ratmansky, 7 B.R. 829, 832 (Bankr. E.D. Pa. 1980). It is unclear whether the $54,288.31 debt to Aetna was noncontingent and liquidated at the time of filing. Debtor's schedule lists the debt to Aetna at $500 noncontingent and liquidated. The related debt to Holmes Oldsmobile is listed as unknown and disputed; and Holmes Oldsmobile has not filed a proof of claim. Aetna's proof of claim bases the claim on theft/ embezzlement; states that the debt was incurred June 1987 to April 1988; and leaves blank the form's box for indicating whether a judgment was obtained. Thus, the court cannot determine and the trustee has failed to prove that the debt owed to Aetna in the amount of $54,288.31 was noncontingent at the time of filing. Trustee's objection to confirmation based on ineligibility must therefore fail.

ORDER

IT IS ACCORDINGLY ORDERED that the Chapter 13 Trustee's objection to confirmation is overruled and the Debtor's plan is hereby confirmed.

Dated this 8th day of February, 1993.

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RUSSELL J. HILL
U.S. Bankruptcy Judge