

BACKGROUND

In their stipulation of facts, the parties state as follows:

1. The Debtor, James A. Nepple, filed a voluntary Petition for Relief under Chapter 13 of the United States Bankruptcy Code on September 20, 1999. Mr. Nepple is a practicing attorney in the Quad City area.

2. The Debtor's spouse, Jeannine Nepple, did not join in his bankruptcy filing.

3. On January 19, 1993 a non-dischargeable judgment was entered against the Debtor in favor of David G. Kundel. Mr. Kundel filed an unsecured claim in this proceeding totaling \$253,730.35.

4. The Debtor's Chapter 13 Plan proposed monthly payments to the Trustee in the sum of \$800.00 for a term of 36 months. The only claim addressed in the Chapter 13 Plan is that held by David Kundel. The Debtor proposes the direct payment of all other secured and unsecured claims. Objections to the Debtor's Plan were lodged by the Chapter 13 Trustee, David G. Kundel and American Bank & Trust Co.

5. The Chapter 13 Trustee challenged the Debtor's eligibility for relief under Chapter 13 in his objection to Plan filed on or about October 7, 1999. A Motion to Dismiss the Debtor's case based upon the Debtor's ineligibility for relief has now been filed by the Chapter 13 Trustee.

6. The Debtor's Schedule F on file herein reflects five unsecured non-priority claims totaling \$258,065.35. None of these claims are marked contingent, unliquidated or disputed. Each of these claims, but for the judgement held by David Kundel, are joint obligations of the Debtor and his non-filing spouse.

7. The Debtor's Schedule D on file herein reflects six secured claims totaling \$246,600.00. None of these claims are marked contingent, unliquidated or disputed. But for the obligations to American Bank and Mercantile Bank, each of these claims are joint obligations of the Debtor and his non-filing spouse.

8. As collateral for the scheduled secured claims, the Debtor lists the following on Schedule D:

- 33 1/3 % of outstanding stock of Nepple, Vanderkamp & Flynn
- 1993 Park Avenue
- 1993 Saturn
- Single Family residence

- Vacant lot
- 100 % business interest – James A. Nepple, P.C.

9. Debtor's Schedule A does not reflect an interest in a vacant lot. The attorney's Certificate of Title prepared for the Community Bank reflects that the title to this real property is in the name of Jeannine Nepple.

10. Debtor's Schedule B does not reflect an interest in a 1993 Saturn vehicle. The Certificate of Title to said vehicle reflects only one owner, Jeannine Nepple.

11. The balance owing to Community Bank on the loan secured by the vacant lot referenced in paragraph 9 is \$23,530.99. The value of said vacant lot exceeds the indebtedness to Community Bank. Community Bank filed a secured claim in this proceeding. An objection to said claim has been filed by the Trustee.

12. The balance owing to Central State Bank on the loan secured by the 1993 Saturn vehicle referenced in paragraph 10 is \$5,558.21. An unsecured claim has been filed on behalf of Central State Bank by the Trustee. The value of the 1993 Saturn vehicle securing repayment of said loan exceeds the balance owed.

13. The Trustee asserts that the above debts of the Community Bank and Central State Bank are not secured by property in which the estate of James Nepple has an interest and therefore are unsecured for purposes of calculating total unsecured debts. The Debtor asserts that because the value of the property securing repayment of said debts exceeds the balance owed on such debts, the debts in question are secured.

14. In addition to the above obligations, the Debtor has two outstanding accounts with Mercantile Bank. Mercantile Bank was scheduled as a secured creditor. The balances on these accounts are \$19,402.70 and \$16,302.88. As collateral for these obligations, the Bank asserts a security interest in the stock of James A. Nepple, P.C. and an interest in the Officer's Employment Agreement between Nepple, Vanderkamp & Flynn and James A. Nepple.

15. Debtor's Schedule B reflects that he owns 23 percent of the outstanding stock in James A. Nepple, P.C. The Debtor has not indicated an interest on Schedule B in an Officer's Employment Agreement between Nepple, Vanderkamp & Flynn and himself. Rather, he indicates an interest in one-third of the outstanding stock of this corporation. Combined on Schedule D these assets are valued at \$28,100.00.

16. Based upon the Debtor's valuation of his own property, the claim of Mercantile Bank is secured to the extent of \$28,100.00 and unsecured to the

extent of \$7,605.58. A claim has been filed on behalf of Mercantile Bank by the Trustee.

17. The Debtor owns an undivided $\frac{1}{2}$ interest in real property consisting of a single family residence, the total value of which is \$190,000.00, and all of which is secured by a mortgage loan having an approximate unpaid balance of \$179,000.00 in favor of Central State Bank. On Schedule C the Debtor has claimed an exemption in this property to the extent of \$12,000.00, the equity in said real property. No objection to the claim of exemption has been filed. The Debtor's non-filing spouse is the co-owner of this real property.

18. The judgement held by David Kundel was registered in Muscatine County, the county in which the Debtor's real property is situated.

19. According to all of the information provided to the Trustee, the Trustee asserts that the Debtor's unsecured debts on the date of filing total \$300,230.38. The following is a summary of unsecured debts in this proceeding:

1.	David Kundle judgement (claim #2)	\$253,730.35
2.	American Bank & Trust (claim #4)	\$ 5,040.68
3.	Norwest/Wells Fargo (claim #5)	\$ 1,640.51
4.	Community Bank (claim #6)	\$ 23,530.95 ¹
5.	Yunker's (claim #7)	\$ 343.70 ²
6.	Mercantile Bank (claim #8 filed by Trustee)	\$ 7,605.58
7.	Central State Bank (claim #9 filed by Trustee)	\$ 1,872.89
8.	Central State Bank (claim #10 filed by Trustee)	\$ 5,558.21
9.	J.C. Penny's (claim #11 filed by Trustee)	\$ <u>907.51</u>
	Total	\$300,230.38

The Debtor asserts that the debts listed above as number 4, 6, 7 & 8 are fully secured. The claims of Mercantile and Central Bank are secured by property of the Debtor and the claim of Community Bank by property of the Debtor's spouse.

20. Counsel for American Bank & Trust has submitted a letter indicating a desire to withdraw the claims filed on behalf of the Bank because the Plan proposes direct payment of said claims. No order withdrawing said claim has been entered.³

¹ The proof of claim filed with the Court sets the amount at \$23,530.99.

² The proof of claim filed with the Court sets the amount at \$343.79.

³ To date, the Clerk of Court has not issued a "Notice Regarding Withdrawal of Claim," giving interested parties 30 days to object. Even if no party objected and the Court entered an Order accordingly, the amount of this debt would be considered in the eligibility determination because it was a noncontingent and liquidated debt as of the petition date. Neither the withdrawal of the claim nor the stated reason for the withdrawal changes that fact.

(Parties' Stipulation of Facts at 1-4.) In their Supplemental Stipulation of Facts, the parties submitted copies of two mortgages that evidenced Central State Bank's liens on the Debtor's residence. The parties disagreed on the ramification of the "dragnet clause" contained in the senior mortgage. The Trustee later stated "that for purposes of determining eligibility in this proceeding the unsecured claims of the Central State Bank in the amounts of \$1,872.89 and \$5,558.21 can be considered as secured. With the reduction of unsecured obligations by these amounts, the Trustee now asserts that the Debtor's unsecured debts in this proceeding total \$292,799.28." (Trustee's Statement of Clarification at 2.)

APPLICABLE LAW

11 U.S.C. section 109(e) sets forth the eligibility requirements for Chapter 13 relief. That section provides:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$269,250 and noncontingent, liquidated, secured debts of less than \$807,750, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$269,250 and noncontingent, liquidated, secured debts of less than \$807,750 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e) (1998).⁴ The statute indicates eligibility is determined as of the petition date. The eligibility determination typically entails a canvass and review of the schedules, the proofs of claims, and other relevant and material evidence offered by the parties to the controversy and focuses on whether such information was filed or offered in

⁴ In 1994 Congress amended 11 U.S.C. section 104, governing the adjustment of dollar amounts in certain sections of the Code, by adding a provision that required the existing dollar amounts set forth in section 109(e) to be adjusted on April 1, 1998, and at each 3-year interval ending April 1 thereafter, to reflect changes in the Department of Labor's most recent Consumer Price Index for urban consumers.

good faith. See In re Barcal, 213 B.R. 1008, 1015 (B.A.P. 8th Cir. 1997). Cf. Miller v. U.S. Through Farmers Home Admin., 907 F.2d 80, 82 (8th Cir. 1990) (finding it unnecessary to look beyond a debtor’s filings when those documents clearly indicated the unsecured debt exceeded the statutory limit).

“[T]he test of 11 U.S.C. § 506(a) should be used to determine the character of debts for purposes of 11 U.S.C. § 109(e).” Miller v. U.S. Through Farmers Home Admin., 907 F.2d 80, 82 (8th Cir. 1990). Section 506(a) provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a). Though section 506(a) speaks in terms of “claims” as opposed to “debt,” Miller clearly requires bifurcation of debt for purposes of eligibility in the same way section 506(a) bifurcates allowed claims. See Ficken v. United States on Behalf of Farmers Home Admin. (In re Ficken), 2 F.3d 299, 300 (8th Cir. 1993).

DISCUSSION

The Court has reviewed the record and file contents and has determined that the parties’ stipulation and supplement were accurate as of the date they were filed.⁵ As of the submission date, the parties agreed the Debtor had at least \$292,799.28 unsecured debt on the petition date. They disagreed only over the characterization of the full

⁵ The thirteen cents difference between the stipulated amounts for claims 6 and 7 and the amounts reflected on the proofs of claims is *de minimis*.

amount the Debtor owed Community Bank (\$23,530.95) and a portion of the amount he owed Mercantile Bank (\$7,605.58).

The Debt Owed Mercantile Bank

The debt owed to Mercantile Bank is secured only by property in which the Debtor's estate has an interest. The parties stipulated the debt exceeded the value of the property as of the petition date. In accordance with the Miller decision, the Court must treat the *undersecured* portion of the Mercantile Bank debt as an unsecured debt for the purpose of section 109(e).

The Debt Owed Community Bank

Citing In re Maxfield, 159 B.R. 587 (Bankr. D. Idaho 1993), In re Tomlinson, 116 B.R. 80 (Bankr. E.D. Mich. 1990), and 1 Keith M. Lundin, Chapter 13 Bankruptcy § 1.79 (2nd ed. 1994), the Trustee argues the joint debt owed Community Bank is unsecured because the Debtor's estate does not have an interest in the collateral provided by the Debtor's non-filing spouse. Relying on In re Belknap, 174 B.R. 182 (Bankr. W.D.N.Y. 1994), In re Gorman, 58 B.R. 372 (Bankr. E.D.N.Y. 1986), and 5 William L. Norton, Norton Bankruptcy Law and Practice 2d § 115:5, the Debtor contends the concept of "a secured debt" under section 109(e) should not be equated with the concept of "a secured claim" under section 506(a).

At this juncture, it should be noted that no party in interest filed an objection to the Trustee's bar date noticed objection to Community Bank's proof of claim. Accordingly, the Court entered an order on March 1, 2000 granting the Trustee's objection and holding the claim be allowed only as a general unsecured claim in the

amount of \$23,530.99. No party in interest filed an appeal from that order or sought relief pursuant to Federal Rules of Bankruptcy Procedure 7052(b), 9023 or 9024.

However, further consideration of the pending controversy over the debt owed to Community Bank and the impact, if any, of the March 1, 2000 Order will not change the outcome of this case. That is, Debtor's eligibility for Chapter 13 relief requires a finding that both the debt owed Mercantile Bank and the debt owed Community Bank are secured.⁶

CONCLUSION

WHEREFORE, the Court finds that:

(1) The Debtor's unsecured debts exceed the statutory limitation for Chapter 13 eligibility; and therefore

(2) The Trustee's Motion to Dismiss must be granted.

An Order shall be entered accordingly.

Dated this 19th day of April, 2000.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE

⁶ Compare [$\$292,799.28 + \$0.13 - \$23,530.99 = \$269,268.42$] and [$\$292,799.28 + \$0.13 - \$7,605.58 = \$285,193.83$] with [$\$292,799.28 + \$0.13 - \$23,530.99 - \$7,605.58 = \$261,662.84$]. The first two calculations yield amounts that exceed the statutory cap of \$269,250.00.