

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:) CHAPTER 13
LESA BENEDICT,) CASE NO. 03-41438-JDW
DEBTOR.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtor: John E. Pytte
P.O. Box 949
Hinesville, GA 31310

For Creditor: Mark Bulovic
P.O. Box 9026
Savannah, GA 31412

MEMORANDUM OPINION

This matter comes before the Court on F/S Manufacturing, Inc.'s motion to dismiss Debtor Lesa Benedict's bankruptcy case. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(A). The Court held a hearing on December 3, 2003, and invited the parties to submit briefs. The Court now enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

For purposes of this motion, Debtor does not dispute that she is liable to F/S in some amount. Two courts entered orders with respect to the amount of liability. The order of one court determined liability to be approximately \$80,000. The order of a second court determined Debtor's liability to be approximately \$450,000. Debtor filed a Chapter 13 petition. F/S filed a motion to dismiss the bankruptcy case on the ground that Debtor exceeds the debt limits for Chapter 13.

Conclusions of Law

Not all debtors are eligible for Chapter 13.

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$290,525 and noncontingent, liquidated, secured debts of less than \$871,550, 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 \$290,525 and noncontingent, liquidated, secured debts of less than \$871,550 may be a debtor under chapter 13 of this title.

11 U.S.C.A. § 109(e) (West Supp. 2003). Thus, if Debtor's noncontingent, liquidated, unsecured debt exceeds \$290,525, she is ineligible for Chapter 13 relief. The two court orders determining Debtor's liability represent an unsecured debt, and Debtor does not dispute that the debt is noncontingent. However, she argues that the debt is unliquidated. Debtor argues that the order determining liability to be \$450,000 can be set aside due to improper service of summons, and this Court has the authority to do so.

For purposes of this Opinion, the Court will assume that it can set aside the \$450,000 order due to improper service. With that assumption in place, the Court must determine whether or not the debt is liquidated.

Although neither the Bankruptcy Code nor its legislative history defines "liquidated debt," the Eleventh Circuit Court of Appeals has done so in the context of Section 109(e). The court stated,

A liquidated debt is that which has been made certain as to amount due by agreement of the parties or by operation of law. Therefore, the concept of a liquidated debt relates to the amount of liability, not the existence of liability. *If the amount of the debt is dependent, however, upon a future exercise of discretion, not restricted by specific criteria, the claim is unliquidated.*

United States v. Verdunn, 89 F.3d 799, 802 (11th Cir. 1996) (citations omitted) (emphasis added).

In Verdunn, the Internal Revenue Service had issued a deficiency notice to the debtor prior to his bankruptcy filing. The debtor challenged the notice in tax court. Prior to the trial in tax court, the debtor filed a Chapter 13 petition. Id. at 800. The debtor argued that the deficiency

notice was insufficient to render the tax debt liquidated. Id. at 802. The court disagreed because “established Internal Revenue Code criteria were used to calculate Verdunn’s tax debt.” Id. at 803. “[T]he amount of Verdunn’s \$297,000 deficiency was easily ascertainable, *i.e.*, it was computed through the application of fixed legal standards set forth in the tax code.” Id. Thus, because the tax deficiency was determined not by the IRS’s discretion, but rather by reference to “specific criteria,” it was a liquidated debt.

In a similar case, In re Sanders, No. 03-41176 (Bankr. S.D. Ga. 12/5/03) (Walker, J.) (slip op.), the debtor argued that debt arising out of a jury verdict was unliquidated because she had filed bankruptcy before the court could reduce the verdict to judgment. Id. at 5. This Court rejected that argument because the judge had no discretion to reject the verdict. Id. He could only deviate from the judgment if certain standards set out by the Official Code of Georgia were met. Id. “[C]hanges to the verdict are not subject to the judge’s discretion, but are ““restricted by specific criteria.”” Id. (quoting Verdunn, 89 F.3d at 802).

The same is true in this case. Assuming this Court has the authority to set aside the judgment, it does not have unfettered discretion to do so. See id. at 6. Even Debtor’s assertions would require this Court to, at a minimum, determine that service of process was improper. Because this Court could affect the amount of debt by following set standards, the \$450,000 order represents a liquidated debt. As a result, Debtor’s noncontingent, liquidated, unsecured debt exceeds the limits for Chapter 13, and her case must be dismissed.

An Order in accordance with this Opinion will be entered on this date.

Dated this 12th day of January, 2004.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

John E. Pytte
P.O. Box 949
Hinesville, GA 31310

Mark Bulovic
P.O. Box 9026
Savannah, GA 31412

Sylvia Ford Brown
Chapter 13 Trustee
P.O. Box 10556
Savannah, GA 31412

This 12th day of January, 2004.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:) CHAPTER 13
LESA BENEDICT,) CASE NO. 03-41438-JDW
DEBTOR.)

ORDER

In accordance with the Memorandum Opinion entered on this date, the Court hereby
GRANTS F/S Manufacturing, Inc's motion to dismiss Lesa Benedict's Chapter 13 case.

So ORDERED, this 12th day of January, 2004.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

John E. Pytte
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