

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION

IN RE:

PAUL ANDREW LASURE and  
JANICE HOOVER LASURE

CASE NO. 10-51383

DEBTORS

**ORDER**

This matter having come before the Court by the Chapter 13 Trustee's Motion to Dismiss (Doc. 56), and the Debtors' objection to the proof of claim of Little Distributors (Doc. 66), and a hearing having been held on January 20, 2011, the Court hereby FINDS that Little Distributors' claim against the Debtors is liquidated for all purposes before the Court.

The Debtors and Little Distributors were involved in litigation in Boyle County Circuit Court concerning the Debtors' alleged breach of an oil supply contract. Little Distributors obtained a judgment against the Debtors for \$615,092.41. This judgment was secured by a judgment lien on property owned by the Debtors. A Charging Order was entered by the state court on February 17, 2010, and a Judgment and Order of Sale was entered on March 9, 2010. The Debtors filed their bankruptcy petition with this Court on April 23, 2010.

The Trustee has filed a motion to dismiss the Debtors' chapter 13 case (Doc. 56). The motion to dismiss is based upon the Debtors' schedules which list unsecured claims in the amount of \$696,164.36, far exceeding the \$360,525.00 limit on unsecured debt imposed by section 109(e). A majority of the Debtors' unsecured debt comes from the judgment lien obtained by Little Distributors for \$615,092.41. In their objection (Doc. 67), the Debtors argue that Little Distributors' judgment lien, upon which the Trustee's motion is based, is currently under appeal. As such, the Debtors claim the amount is in dispute and "unliquidated" within the meaning of section 109(e) and therefore should not be included in the eligibility calculation.

In Schedule D, the Debtors list Little Distributors' claim as a "Judgment Lien – being

appealed” for \$615,092.41. The boxes have been checked for “unliquidated” and “disputed.” The full amount is listed as unsecured, even though the debt itself is listed among secured claims in Schedule D. Little Distributors filed a proof of claim (8-1) for a secured claim of \$615,092.41. The Debtors have filed an objection to this proof of claim, arguing that because the judgment is being appealed the claim should be disallowed without prejudice to allow Little Distributors to refile as an unsecured claim (Doc. 66). In response, Little Distributors argues that a claim is liquidated if its value can be readily ascertained whether or not the Debtors’ underlying legal liability is in dispute (Doc. 82). Because its claim is liquidated and non-contingent, Little Distributors submits that the Debtors’ objection should be overruled.

Section 109(e) sets forth monetary debt limits that a debtor may not exceed if he is to be eligible for relief under chapter 13. When determining whether a debt is to be included in this calculation, section 109(e) itself provides guidance by requiring the debt to be “noncontingent” and “liquidated.” 11 U.S.C. 109(e). The Bankruptcy Code does not define these terms, but the Sixth Circuit has held that “[a] claim is liquidated if the amount has been agreed to by the parties or is fixed by operation of law.” *McMahan & Co. v. Po Folks, Inc.* 206 F.3d 627, 634 (6th Cir. 2000). Entry of a judgment is an example of a claim being fixed by operation of law. Therefore, if a claim results from entry of a judgment, the claim is liquidated if the judgment amount is a fixed sum. *Id.*

The Debtors, however, contend that because the judgment is under appeal it is contingent and unliquidated. Indeed, although the Debtors listed Little Distributors’ judgment lien among secured claims in Schedule D, they also marked the boxes indicating that it is “disputed” and “unliquidated.” In support of their position, the Debtors rely on *In re Lambert*, 43 B.R. 913 (Bankr. D. Utah 1984), in which the bankruptcy court held that a disputed debt is unliquidated and should not be included in the eligibility calculation. *Id.* at 917. However, the court’s decision in *Lambert* has been strongly criticized and is at variance with the holdings of nearly all bankruptcy courts that have determined this issue.

Although the Sixth Circuit has not taken a position on whether a claim may be deemed “liquidated” if the debtor’s liability on the claim is in dispute, see *In re Dow Corning Corp.*, 215 B.R. 346, 357 (Bankr. E.D. Mich. 1997) (noting that the Sixth Circuit has “explicated both the majority and minority viewpoints, but did not adopt either position.”), other bankruptcy courts

within this circuit have held that an underlying dispute as to liability does not affect the characterization of the claim. *See Id.* (“[E]very circuit and nearly every other court required to decide the issue has held that a claim is liquidated if its value can be readily ascertained whether or not the debtor’s underlying legal liability on that claim is in dispute.”); *see also In re Faulhaber*, 269 B.R. 348, 355 (Bankr. W.D. Mich. 2001) (“The broad consensus among these courts is that the debtor’s liability is irrelevant to the determination of whether a debt is liquidated or not.”).

The proper focus, therefore, is not whether a claim is disputed, but whether the amount of the claim can be readily ascertained. Notwithstanding the pending appeal in the state court system, the amount of Little Distributors’ claim is readily ascertainable because it results by operation of law from entry of a judgment. *See McMahan* 206 F.3d at 634. The judgment is a fixed sum; therefore, Little Distributors’ claim is “liquidated.”

Copies to:

John M. Simms, Esq.  
Ellen Arvin Kennedy, Esq.  
Chapter 13 Trustee

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Tuesday, January 25, 2011**  
**(jms)**