

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

IN RE:

JOSE W. ALZADON

CASE NO. 12-70008
CHAPTER 13

DEBTOR

MEMORANDUM OPINION AND ORDER

This Chapter 13 case was filed on January 6, 2012. A Chapter 13 confirmation hearing was held on June 13, 2012 [Doc. 77]. The issue is whether Debtor is eligible to be a chapter 13 debtor. He is not.

Section 109(e) of the Bankruptcy Code 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 \$360,475 and noncontingent, liquidated, secured debts of less than \$1,081,400, 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 \$360,475 and noncontingent, liquidated, secured debts of less than \$1,081,400 may be a debtor under chapter 13 of this title.

Consolidated Health Systems, Inc. d/b/a Highlands Health System and Highlands Hospital Corporation, Inc. d/b/a Highlands Regional Medical Center ("Highlands") contend that the Debtor's unsecured debts exceed the \$360,475 threshold [Doc. 72, 84] and the Debtor is thus ineligible to be a Chapter 13 debtor. In support, Highlands relies on its proof of claim [POC 5-1] that asserts a claim of \$400,863.77, \$388,697.77 of which is listed as an unsecured claim. Highlands' claim is based on a state court judgment entered on November 17, 2011 which awarded Highlands a judgment against the Debtor as follows:

Plaintiffs shall recover from Defendant Jose Wenceslao Alzadon, M.D. a/k/a Jose Wenceslao Alzadon, the principal sum of \$230,217.00, said sum to bear prejudgment

interest at the statutory rate of 8% per annum from September 27, 2006, through the date of this Judgment, and post-judgment interest at the statutory rate of 12% per annum from the date of this Judgment until paid, plus attorneys' fees in the amount of \$67,015.17 and court costs in the amount of \$ __--__.

The claim calculated the amount due pursuant to the judgment as follows:

Principal: \$230,217.00
Interest: 8% interest from 9/27/06 through 11/17/11-\$94,763.88
12% interest from 11/17/11 through 2/8/12 - \$8,867.72
Attorney Fees: \$67,015.17

Excluding the post-judgment interest (approximately half of which is accrued post-bankruptcy), this amount totals \$391,996.05. Highlands' claim also includes a Notice of Judgment Lien to support its contention that of its total claim \$12,166.00 is secured.

In contrast, Debtor contends that his unsecured debts do not exceed the \$360,475 threshold [Doc. 75, 85]. Debtor argues that he only listed \$292,695.17 of non-priority unsecured debt in his bankruptcy schedules [Doc. 1, p. 23, Statistical Summary of Certain Liabilities and Related Data (28 U.S.C. § 159)] and that this listing controls the eligibility issue.

Debtor's original Schedule D listed the Highlands debt as only being \$297,232.17 (a total presumably arrived at by adding the principal balance of \$230,217.00 and the attorney fees of \$67,015.17 pursuant to the Judgment with no inclusion of pre-judgment interest as awarded by the Judgment), of which \$12,166.00 is listed as the secured portion and \$285,066.17 is listed as the "unsecured" portion. The claim is listed as non-contingent, liquidated and undisputed.

In May, 2012, following Highlands' filing objections to confirmation of Debtor's plan, Debtor amended his Schedule D to change the characterization of the Highlands' debt to "disputed." [Doc. 52 page 5].

Following a hearing held on June 13, 2012, the parties filed further memoranda regarding the Debtor's eligibility and the matter was submitted for decision.

Discussion.

The parties disagree as to the appropriate analysis in which the Court should engage to determine the Debtor's eligibility for Chapter 13. The Debtor argues that his schedules should control the eligibility issue whereas Highlands contends that the Court may consider its Proof of Claim as well.

"[A] court should rely primarily upon the debtor's schedules checking only to see if the schedules were made in good faith on the theory that section 109(e) considers debts as they exist at the time of the filing, not after a hearing. . . It would be possible of course to spell out detailed procedures by which the question of Chapter 13 eligibility may be resolved including what kinds of proof would be minimally sufficient and what burdens of proof must be met by one side or the other. We believe, however, that it would be inappropriate to do so. It is plain that section 109(e) indicates a congressional intent to limit those eligible for the benefits of Chapter 13 and uses language that is somewhat in the form of a jurisdictional requirement. . . ." Matter of Pearson, 773 F.2d 751, 756-757 (6th Cir. 1985). The Court may look to any part of the schedules when determining eligibility. In re Hurtt, 454 B.R. 733, 736 (Bankr. E.D.Ky. 2011). "[T]he Court is not necessarily bound by the information contained in a debtor's schedules where it appears to a legal certainty that the amount owed is other than what the debtor says is owed . . . a debtor may not intentionally manipulate either the schedules or the treatment of claims to qualify for Chapter 13." In re De Jounghe, 334 B.R. 760, 768 (1st Cir. BAP 2005).

Here, the issue is NOT whether Highlands' debt may be bifurcated into a secured/unsecured debt for the eligibility analysis—this issue was previously resolved in Hurtt, 454 B.R. at 737. There is no dispute between the parties as to the secured portion of the debt, Highlands Proof of Claim incorporates the Debtor's bifurcation set forth on his Schedule D. What IS at issue is the Debtor's unexplained omission of the prejudgment interest awarded to

Highlands in the Judgment. Debtor does not address and simply ignores this omission. A debtor's designation of debt does not make it so. In re Stern, 266 B.R. 322, 326 (Bankr. D. Md. 2001). As reviewed above, the Highlands prepetition, unsecured debt is \$379,830.05 (principal of \$230,217.00 plus prejudgment interest of \$94,763.88 plus attorneys fees of \$67,015.17 less the agreed to secured portion of the claim \$12,166.00). The amount alone exceeds the threshold for eligibility and when the remaining unsecured debt scheduled by the Debtor is included (Schedule F, at Doc. 1 p. 17, \$2,340.00), his total unsecured debt (\$382,170.05) clearly exceeds the threshold for Chapter 13 eligibility. Moreover, the Debtor's late amendment of Schedule D to list the Highlands debt as "disputed" does not alter this conclusion. A debt evidenced by a judgment is not a disputed debt notwithstanding the pendency of an appeal. Merely because a debtor labels a claim as "disputed" does not make it so, where the state court already adjudicated it and entered a money judgment on it against the debtor. Even claims that are disputed as to liability must be counted in determining the debtor's eligibility for Chapter 13 relief. Stern, 266 B.R. at 327 (*citations omitted*).

In conclusion, Debtor's noncontingent, liquidated, unsecured debts exceed the unsecured debt threshold set forth in 11 U.S.C. § 109(e) and therefore, Debtor is not eligible to be in a Chapter 13 proceeding.

IT IS HEREBY ORDERED that Debtor has 14 days from the date of this Order to convert to a chapter of the Bankruptcy Code under which he is eligible, or the case shall be dismissed.

COPIES TO:

Debtor
MaLenda S. Haynes, Esq.
Emily Kirtley Hanna, Esq.
Beverly M. Burden, Esq.

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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:**  
***Tracey N. Wise***  
**Bankruptcy Judge**  
**Dated: Wednesday, July 18, 2012**  
**(tnw)**