

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
Roger E. Tracy and Tacey L. Tracy,) Case No. 24-12071
)
Debtor(s).)

ORDER DISMISSING DEBTOR TACEY L. TRACY FROM CASE

Husband-and-wife debtors Roger and Tacey Tracy filed this chapter 13 case jointly. The chapter 13 trustee has moved to dismiss the case under Bankruptcy Code § 109(e) as over the debt limit. The problem is an unsecured debt of \$314,289 Tacey Tracy – but not her husband – owes to the U.S. Small Business Administration. For the reasons discussed below, the court finds that Tacey Tracy is ineligible for chapter 13 protection.

An individual debtor is ineligible for chapter 13 protection if her debts are above a certain dollar amount set by Code § 109(e). *See, e.g., United States v. Archibald*, 212 F. App'x 788, 789 n.1 (11th Cir. 2006). Under § 109(e), an individual's "noncontingent, liquidated, unsecured debts" must be "less than \$465,275" as of the petition date.¹ In a joint case, both debtors must be individually eligible (which eligibility includes joint debts). *See, e.g., In re Hannon*, 455 B.R. 814, 815-17 (Bankr. S.D. Fla. 2011). The court may look to the proofs of claim filed in a case to determine a debtor's eligibility. *See, e.g., In re Steffens*, 343 B.R. 696, 697 (Bankr. M.D. Fla. 2005).

Contingent debts are not included in the debt limit. "A contingent debt depends upon a future event to give rise to liability." *In re Wachs*, No. 8-21-BK-00470-RCT, 2021 WL 3162641, at *1 (Bankr. M.D. Fla. May 25, 2021); *see also, e.g., In re Piovanetti*, 496 B.R. 57, 63 (Bankr. D.P.R. 2013) ("Contingent debts have been defined by case law as those in which a liability is dependent upon a future extrinsic event."). "A liquidated debt is a debt made certain, or readily ascertainable,

¹ The eligibility limits changed on April 1, 2025, but the debtors filed this case in August 2024.

by operation of law or agreement.”² See *In re Stephens*, No. 8-21-BK-03761-RCT, 2021 WL 5150155, at *2 (Bankr. M.D. Fla. Oct. 4, 2021).

“[C]ontingency of [a] debt does not depend on default, rather it depends on whether all of the events giving rise to liability for the debtor occurred prior to the debtors filing for bankruptcy.” *In re Cox*, No. 16-00701-FPC13, 2016 WL 5854214, at *3 (Bankr. E.D. Wash. Oct. 6, 2016). “The question of contingency is not whether the creditor may extract full repayment from the debtor (or his property) immediately; the question is whether the creditor had a ‘right to payment’ . . . from the debtor (or his property) at the time the debtor filed his petition.” See *id.* (citing 11 U.S.C. § 101(5)).

Court “have consistently held that debts arising from a debtor’s personal guaranty of corporate debt are included in the eligibility computation under § 109(e).” See *In re Taylor*, No. 08-00526-JDP, 2008 WL 2945621, at *5 n.13 (Bankr. D. Idaho July 25, 2008). In terms of such guaranties, “unlike a conditional guarantee, an absolute guarantee imposes no duty upon the creditor to attempt collection from the principal debtor before looking to the guarantor.” See *id.* If a guaranty “does not contain any provisions making liability contingent on an event other than default[,]” then the debt is noncontingent and “must be included in the court’s § 109(e) analysis.” See *In re Cox*, 2016 WL 5854214, at *3. “[A] demand for payment is not essential to the existence of liability for a guaranteed debt.” See *In re Taylor*, 2008 WL 2945621, at *4. A “demand serves solely as a request for payment as opposed to the creation of liability.” See *In re Wilson*, 9 B.R. 723, 725 (Bankr. E.D.N.Y. 1981).

The SBA’s claim no. 26 is unsecured in the amount of \$314,289.98 based on Mrs. Tracy’s personal guaranty of a loan to her company, A-Affordable Remodeling. Mrs. Tracy does not contend that the loan is not in default – only that the debt is contingent and should not be counted towards her eligibility because the SBA has not made a demand for payment. The court rejects this argument

² The debtors have not argued that the SBA debt is not a liquidated debt. They listed the debt in their schedules only as “contingent,” not as “unliquidated.”

because Mrs. Tracy signed an “Unconditional Guarantee” of the SBA loan to her company.³

Paragraph 1 of the “Unconditional Guarantee” states:

Guarantor(s) unconditionally guarantee(s) payment to SBA of all amounts owing under the Note and any modifications of the Note. This Guarantee remains in effect until the Note and any modifications of the Note is paid in full. Guarantor(s) must pay all amounts due under the Note and any modifications of the Note when SBA makes written demand upon Guarantor(s). SBA is not required to seek payment from any other source before demanding payment from Guarantor(s).

(Emphasis added). Mrs. Tracy, in paragraph 6J, also waives notice of demand, although this court finds that the SBA debt is noncontingent even without that waiver.

Mrs. Tracy’s liability on the SBA debt was not contingent on any event other than default and thus must be included in the eligibility analysis. When claim no. 26 is combined with her other debts, Mrs. Tracy is over the \$465,275 unsecured debt limit and thus ineligible to be a chapter 13 debtor. The court therefore dismisses Tracy from this chapter 13 bankruptcy. The trustee has not identified unsecured debts which would push debtor Roger Tracy over the limit, so the court denies the motion to dismiss without prejudice as to him.

Dated: June 18, 2025


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE

³ The “Unconditional Guarantee” is included with the documents filed in support of proof of claim no. 26.