

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:) CHAPTER 13
) CASE NO. 03-41176
DAVID A. SANDERS and,)
GWENDOLYN SANDERS,)
)
)
DEBTORS.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtors: Judson C. Hill
12 W. State Street
Savannah, Georgia 31401

For Movant: Richard J. Harris
Post Office Box 2784
Savannah, Georgia 31402

MEMORANDUM OPINION

This matter comes before the Court on Miriam E. Sheppard's objection to confirmation and motion to dismiss on the ground that Debtors David and Gwendolyn Sanders do not satisfy the debt limitations for Chapter 13. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(A). The Court held a hearing on this matter on October 8, 2003, and considered letter briefs submitted by the parties. 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

The parties have agreed upon the following facts: Prior to his death on April 25, 2001, Harold M. Waterhouse had lived with Debtors, and his financial affairs had been handled by his niece, Debtor Gwendolyn Sanders, who held three separate general powers of attorney signed by Mr. Waterhouse in 1998. Following his death, Movant Miriam Sheppard, also a niece, was appointed as administratrix of Mr. Waterhouse's estate by the Probate Court of Bryan County, Georgia, on January 13, 2002.

On April 29, 2002, Mrs. Sheppard filed a civil action in the Superior Court of Bryan County, Georgia, in her representative capacity, against Debtors, seeking restitution for monies belonging to Mr. Waterhouse that allegedly had been misappropriated by Debtors, plus expenses of litigation and punitive damages. The case was tried before a twelve-person jury on March 27-28, 2003.

Using special verdict forms, the jury rendered a verdict in favor of Mrs. Sheppard in the

following amounts: (1) restitution due from Mrs. Sanders, \$75,075; (2) punitive damages due from Mrs. Sanders, \$25,000; (3) restitution due from Mr. Sanders, \$75,075; (4) punitive damages due from Mr. Sanders, \$25,000. After subtracting \$13,500 previously received by Mrs. Sheppard, the total verdict (exclusive of expenses of litigation) was \$186,650. In addition, the jury awarded attorney fees and expenses to paid in equal shares by Debtors.

The parties agreed on record at the conclusion of Mrs. Sheppard's case that the amount of Mrs. Sheppard's expenses of litigation, based on time and expense records of her counsel, would be the subject of stipulation if awarded by the jury. A stipulation based on those records showing attorney fees and expenses of \$31,494.94 was prepared and signed by Mrs. Sheppard's counsel. The stipulation was delivered to Debtors' trial counsel on April 9, 2003, together with a proposed judgment totaling \$217,995.94. (This amount was actually \$150 less than the jury's verdict because Mrs. Sheppard's counsel failed to include in his calculations the \$75 each included in the \$75,075 restitution verdicts.) The stipulation regarding expenses of litigation totaling \$31,495.94 was not returned to Mrs. Sheppard's counsel prior to the filing of the bankruptcy case, and the automatic stay prevents it from being signed and returned and prevents the taking of a final judgment.

The amount of the proposed judgment was used by Debtors in preparing their Statement of Financial Affairs - Amended, which was signed on April 16, 2003. Schedule F shows a "judgment" in favor of Mrs. Sheppard as personal representative of Mr. Waterhouse's estate in the amount of \$217,996. The Chapter 13 case was filed on April 17, 2003. The total amount due the creditors holding unsecured nonpriority claims, including Mrs. Sheppard, shown in

Schedule F is \$330,917. Excluding Mrs. Sheppard's expenses of litigation still leaves a balance of \$299,421.06.

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). Debtors have not disputed that the debt to Mrs. Sheppard is noncontingent and unsecured. If the debt is also liquidated, then Debtors will exceed the statutory maximum for unsecured debts and will be ineligible for Chapter 13.

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 the case at bar, a jury has rendered a verdict for a specific dollar amount. However, that verdict has not been reduced to a judgment. The question, then, is whether the trial judge has discretion to alter the verdict, in which case, the amount of the debt would remain unliquidated.

Georgia law provides that, “[j]udgment and execution shall conform to the verdict.” O.C.G.A. § 9-12-9 (1993). The law further provides for amendment or molding of the verdict, but only in particular circumstances. See, e.g., O.C.G.A. § 9-12-5 (allowing court to mold verdict “to do full justice to the parties”); O.C.G.A. § 9-12-6 (allowing verdict to be amended to conform to pleadings); O.C.G.A. § 9-12-7 (allowing amendment of verdict in form but not substance). In addition, the trial judge may enter judgment notwithstanding a verdict or grant a new trial, but such actions also are limited to particular circumstances. See O.C.G.A. §§ 9-11-50; 9-11-60. In other words, any changes to the verdict are not subject to the judge’s discretion, but are

“restricted by specific criteria.”

In fact, this Court is unable to hypothesize any circumstances in which a judge would have unfettered discretion to determine the amount of a debt. Black’s Law Dictionary defines judicial and legal discretion as “discretion bounded by the rules and principles of law, and not arbitrary, capricious, or unrestrained. . . . [It] is not to give effect to the will of the judge, but to that of the law.” Black’s Law Dictionary 467 (6th ed. 1990). Judges must make decisions by applying legal principles, so any discretion a judge may have to alter the amount of the debt is “restricted by specific criteria.”¹

Because any alteration of the jury verdict is subject to the application of specific criteria in the form of legal principles, such alteration is not discretionary as contemplated by the court in Verdunn. Thus, the debt created by the jury verdict in this case is liquidated. As a result, Debtors’ total noncontingent, liquidated, unsecured debts exceed the statutory maximum, and they are ineligible for Chapter 13 relief. Therefore, their case must be dismissed.

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

Dated this 5th day of December, 2003.

James D. Walker, Jr.
United States Bankruptcy Judge

¹ Similarly, a pending appeal of a judgment is not sufficient to render the debt arising from such judgment unliquidated. In re Cluett, 90 B.R. 505, 506-07 (Bankr. M.D. Fla. 1988).

CERTIFICATE OF SERVICE

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

Judson C. Hill
12 W. State Street
Savannah, Georgia 31401

Richard J. Harris
Post Office Box 2784
Savannah, Georgia 31402

Sylvia Ford Brown
Post Office Box 10556
Savannah, Georgia 31412

This 5th day of December, 2003.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:) CHAPTER 13
) CASE NO. 03-41176
DAVID A. SANDERS and,)
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ORDER

In accordance with the Memorandum Opinion entered on this date, the Court hereby GRANTS Miriam E. Sheppard's motion to dismiss and ORDERS that the above-captioned case be dismissed.

So ORDERED, this 5th day of December, 2003.

James D. Walker, Jr.
United States Bankruptcy Judge

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This 5th day of December, 2003.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court