

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions for Publishing and Posting on Website

Will This Opinion be Published? Yes

Bankruptcy Caption: In re James and Alicia Allegretti

Bankruptcy No.: 17 B 17844

Date of Issuance: January 22, 2018

Judge: A. Benjamin Goldgar

Appearances of Counsel:

Attorney for debtors James and Alicia Allegretti: Maura G. Zalc, Bernicky Law Firm,
Naperville, IL

Attorney for Webster Bank, N.A.: Lauren Newman, Thompson Coburn LLP, Chicago, IL

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 13
)
JAMES ALLEGRETTI and) No. 17 B 17844
ALICIA ALLEGRETTI,)
)
Debtors.) Judge Goldgar

MEMORANDUM OPINION

Before the court for ruling is the motion of Webster Bank, N.A. to dismiss this chapter 13 bankruptcy case on the ground that debtors James and Alicia Allegretti are ineligible to be debtors under chapter 13. For the reasons discussed below, the motion to dismiss will be denied.

1. Background

The background facts are drawn from the parties' papers and the court's docket. No facts are in dispute. The Allegrettis have their principal residence on Walters Avenue in Northbrook, Illinois. The Walters Avenue property is encumbered by a first mortgage in favor of Ocwen Loan Servicing, a second mortgage in favor of Webster, and a lien in favor of the Illinois Housing Development Authority. The priority of the IHDA lien is unclear, but it makes no difference to the outcome here.

The Allegrettis filed their chapter 13 petition in June 2017. Their Schedule D valued the Walters Avenue property at \$350,000. The Allegrettis listed the Ocwen debt at \$381,506.18, which they bifurcated into a \$350,000 secured portion and a \$31,506.18 unsecured portion. The Webster debt was scheduled as \$199,050, all of it unsecured. The IHDA claim was scheduled as \$35,000, all of it secured. The Allegrettis' Schedule E/F listed a total of \$41,512.69 in general unsecured debt. No unsecured debt was asserted to be contingent, unliquidated, or disputed.

The Allegrettis proposed a chapter 13 plan that, among other things, treated the Webster debt as entirely unsecured. The plan proposed to strip off Webster's lien once plan payments were completed. Webster objected to the plan, arguing that (1) a chapter 13 debtor cannot strip off a wholly unsecured junior lien on his principal residence, and (2) in any event the Allegrettis had grossly undervalued the Walters Avenue property.

Webster also filed a proof of claim asserting a secured claim of \$441,522.66. The proof of claim alleged that the Walters Avenue property had a value of \$503,000. The Allegrettis have objected to Webster's claim. That objection is pending.

Meanwhile, the Allegrettis moved under Bankruptcy Rule 3012 for a valuation of the Walters Avenue property. In the undersigned's absence, Judge Hunt held an evidentiary hearing on the motion, and on December 15 she issued a written decision in which she ruled that the property had a value of \$350,000, Webster's claim was wholly unsecured, and Webster's lien could be stripped off. Webster has appealed the decision to the district court. The appeal is pending.

After the notice of appeal was filed, Webster moved to dismiss the Allegrettis' case. Webster argues that in light of Judge Hunt's ruling, the Allegrettis "no longer qualify" for relief under chapter 13 because their unsecured debt exceeds the debt limits in section 109(e) of the Bankruptcy Code. Webster bases its argument on the valuation decision and its proof of claim.

2. Discussion

The motion to dismiss will be denied. The relevant facts show the Allegrettis are well within the debt limits and so are eligible to proceed under chapter 13.

The Code makes chapter 13 available only to people whose debts, secured and unsecured,

are below certain amounts. Where unsecured debts are concerned, section 109(e) provides in part: “Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 . . . may be a debtor under chapter 13 of this title.” 11 U.S.C. § 109(e). The same unsecured debt limit applies to a married couple in a joint case. *In re Miller*, 493 B.R. 55, 58 (Bankr. N.D. Ill. 2013).

The Seventh Circuit has never addressed the proper method for deciding eligibility – not, at least, in any comprehensive fashion. The majority rule, however, is that eligibility depends entirely on the amounts shown in the debtor’s schedules; other evidence is considered only to ensure the schedules were prepared in good faith. *See, e.g., In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001); *Comprehensive Accounting Corp. v. Pearson (In re Pearson)*, 773 F.2d 751, 757 (6th Cir. 1985); *Miller*, 493 B.R. at 56 n.1; *In re Hansen*, 316 B.R. 505, 508 (Bankr. N.D. Ill. 2004) *see generally* Keith M. Lundin & William H. Brown, *Chapter 13 Bankruptcy*, 4th ed., § 13.1 at ¶ 2 (Sec. Rev. Mar. 5, 2009), www.Ch13online.com.

All unsecured debt that is noncontingent and liquidated counts toward the eligibility limit. That includes priority unsecured debt. Lundin & Brown, *supra*, § 17.2 at ¶ 1. It also includes the unsecured portions of secured debts bifurcated under section 506(a) of the Code, 11 U.S.C. § 506(a). *In re Day*, 747 F.2d 405, 406-07 (7th Cir. 1984).

The unsecured debt disclosed in the Allegrettis’ schedules is well within the statutory limit. All of their secured debts have the Walters Avenue property as collateral. The Allegrettis value the property at \$350,000. The secured debts total \$615,556.81, leaving a total of \$265,556.18 as the unsecured portions. The Allegrettis have no priority unsecured debt. Their general unsecured debts total \$41,512.69. Adding the unsecured portions of secured debts to the general unsecured debts (\$265,556.18 plus \$41,512.69) brings the grand total to \$307,068.87,

\$87,656 below the statutory limit. The call is not a close one.

In arguing otherwise, Webster looks to the result of the valuation hearing and its own proof of claim. Because the court valued the Walters Avenue property at \$350,000 and Webster filed a claim for \$441,522 (an amount that standing alone exceeds the debt limit in section 109(e)), Webster contends the Allegrettis' unsecured debts total \$549,540, well over the limit.

But the \$350,000 property value is nothing new. The Allegrettis listed that value in their Schedule A/B, in their Schedule D, and in each of the plans they have proposed (the plan has been amended several times). The result of the valuation hearing served only to confirm the value the Allegrettis had always maintained. It does not show the Allegrettis "no longer qualify" for chapter 13.

As for Webster's proof of claim, it has no effect on the Allegrettis' eligibility. Eligibility is determined as of the petition date, something evident from the statute itself. The debt limits in section 109(e) are based on what a debtor owes "on the date of the filing of the petition." 11 U.S.C. § 109(e); *see also In re Slack*, 187 F.3d 1070, 1073 (9th Cir. 1999); Lundin & Brown, *supra*, § 12.1 at ¶ 1. Post-petition events are therefore irrelevant – including "allowed claims, filed claims, or treatment of claims in a confirmed Chapter 13 plan." *In re De Jounghe*, 334 B.R. 760, 768 (B.A.P. 1st Cir. 2005); *see also Slack*, 187 F.3d at 1075 (refusing to consider post-petition judgment determining debt); *In re Pantazelos*, 540 B.R. 347, 351 (Bankr. N.D. Ill. 2015); *In re Rios*, 476 B.R. 685, 688 (Bankr. D. Mass. 2012); *Hansen*, 316 B.R. at 509. This, too, is evident from the statute itself. Section 109(e) "speaks in terms of 'debts,' not in terms of 'allowed claims.'" Lundin & Brown, *supra*, § 12.1 at ¶ 3.

The prohibition on considering proofs of claim is consistent with the function of section 109(e) "as a gatekeeper." *Miller*, 493 B.R. at 61. A debtor's eligibility under this section is

determined “on a summary basis without the need for extensive evidence.” *In re Salazar*, 348 B.R. 559, 564 (Bankr. D. Colo. 2006); *see also In re Nicholes*, 184 B.R. 82, 87 (B.A.P. 9th Cir. 1995). Considering proofs of claim – especially where, as here, those claims have drawn objections – would make it “nearly impossible for a court to determine a debtor’s eligibility at the outset of the case.” *In re Cannon*, 521 B.R. 686, 695 (D. Utah 2014). As Judges Lundin and Brown note in their authoritative treatise: “[E]ngaging the claims allowance process to determine the amount of debt for eligibility purposes destroys what Chapter 13 does best – getting money to creditors quickly and efficiently.” Lundin & Brown, § 12.1 at ¶19.

In support of its motion, Webster relies almost entirely on *In re Day*, 747 F.2d 405 (7th Cir. 1984). But *Day* holds only that the unsecured portion of a secured debt (after bifurcation under section 506(a)) should be considered in deciding eligibility, and that a court can examine “the true value of collateral” rather than rely on the debtor’s representation. *Id.* at 406. In the Allegrettis’ case, the “true value of the collateral” is the same as the value they represented in their schedules and plans.

Day pointedly does not hold that post-petition events can be considered in deciding a chapter 13 debtor’s eligibility. In decisions since *Day*, the Seventh Circuit appears to have endorsed the opposite rule. In *In re Turner*, 574 F.3d 349 (7th Cir. 2009), the court (citing *Scovis* and *Pearson*) noted that the debtor’s financial situation as of the petition date is what governs. *Id.* at 355. And in *In re Lybrook*, 951 F.2d 136, 139 (7th Cir. 1991), the court said that post-petition events could not affect a debtor’s eligibility. *Id.* at 139; *see also 2 Collier on Bankruptcy* ¶ 109.06[3] at 109-45 (Richard Levin & Henry J. Sommer eds., 16th ed. 2017) (citing *Lybrook* and grouping the Seventh Circuit with those circuits holding that courts should not “look beyond the amounts asserted by the debtor in the schedules” unless they were not filed

in good faith).

The inquiry here might be broader had Webster contended the Allegrettis filed their schedules in bad faith. But that is not Webster's contention. Webster has premised its motion to dismiss strictly on the math: that given Webster's proof of claim and the value of the Walters Avenue property, the Allegrettis have too much unsecured debt to be chapter 13 debtors. Because the proof of claim is out of bounds, Webster's argument literally does not add up.

3. Conclusion

The motion of Webster Bank to dismiss the case of James and Alicia Allegretti on the basis of ineligibility under section 109(e) is denied.

Dated: January 22, 2018

A. Benjamin Goldgar
United States Bankruptcy Judge