IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

IN RE: JAMES KEITH CURRIE, DEBTOR **CASE NO.: 6:25-bk-70221**
CHAPTER 13

MEMORANDUM OPINION

The Chapter 13 Standing Trustee, Jack W. Gooding ("Trustee"), filed his *Trustee's Motion to Dismiss* ("Motion to Dismiss") at docket entry 16 on February 27, 2025. Thereafter, on May 29, 2025, the Trustee filed his *Motion for Summary Judgment and Brief in Support of Trustee's Motion to Dismiss* ("Motion for Summary Judgment") at docket entry 109 and *Statement of Material Facts* ("Statement") at docket entry 110. James Keith Currie ("debtor") filed his *Response to Motion for Summary Judgment on Motion to Dismiss Filed by Jack W. Gooding [w]ith Brief in Support* ("Response") at docket entry 113 on June 3, 2025. For the reasons stated herein, the Motion for Summary Judgment is denied, and the Motion is Dismiss is denied.

I. Jurisdiction

This court has jurisdiction over this eligibility matter under 28 U.S.C. §§ 1334 and 157. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rules of Bankruptcy Procedure 9014, 7052, and 7056.

II. Findings of Fact

The parties must plead facts sufficient for the court to determine whether summary judgment is appropriate. The Trustee's Statement was not disputed by the debtor. As such, the facts from the Statement are accepted as follows.

1. The debtor, James Currie, filed this Chapter 13 case on February 10, 2025.

2. That the claims scheduled in this case show the amount of unsecured debt to be $716,372.00. Ex. A: Debtor's Summary of Assets and Liabilities, docket no. 71[.]
3. That 11 U.S.C. §109(e) states that "only a person with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $465,270.00 . . . may be a debtor under Chapter 13."
4. That Debtor filed amended schedules on 2/28/2025 amending to note the debt with the U.S. Small Business Administration [("USSBA")] of $500,000.00 as contingent. Ex. B: Amended Schedule E and F, docket no. 19.
5. That Debtor filed amended schedules on 5/01/2025, that still reflect a[] total unsecured obligation of $716,732.00 which still lists the debt with the [USSBA] of $500,000 as contingent. See Ex. C: Amended Schedule E and F, docket no. 71.
6. That a proof of claim (claim #8) was filed on 4/2/2025 by the [USSBA] which states the claim is for the amount of $499,782.11 and provides a note evidencing debtor James Currie as a personal guarantor of this debt. Further, the attached Note provides that all individuals and entities signing the Note are jointly and severally liable. Ex. D: Claim #8.
7. That the debtor proposes this debt be paid under 5.2 of his amended [C]hapter 13 plan as a special class of unsecured debts with the primary obligor making payments. The plan provision provides the [USSBA] obligation as a special unsecured claim to be paid prior to the payment of other nonpriority unsecured claims. Ex. E: Chapter 13 plan, docket no. 73.

(*Statement of Material Facts*, at 1-2, ECF No. 110.)

III. Analysis

(1) Summary Judgment

Federal Rule of Bankruptcy Procedure 7056 incorporates Federal Rule of Civil Procedure 56(a) and provides that summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting FED. R. CIV. P. 56(c)(1)(A)). The movant for summary judgment "has the initial burden of proving that there is no genuine issue

as to any material fact." *Pummill v. McGivern* (*In re Am. Eagle Coatings, Inc.*), 353 B.R. 656, 660 (Bankr. W.D. Mo. 2006) (citation omitted). "Once the moving party has met this initial burden of proof, the non-moving party must set forth specific facts sufficient to raise a genuine issue for trial, and may not rest on its pleadings or mere assertions of disputed facts to defeat [the] motion." *Id*. (citation omitted). "[A] genuine issue exists when the evidence is such that a reasonable fact finder could find for the non-movant." *Id*. (citation omitted). There are no disputed facts; the Statement is accepted as filed.

(2) Eligibility and Contingent Debts

For an individual to be eligible for Chapter 13 relief, the debtor's "*noncontingent*, liquidated, unsecured debts" must be no greater than the statutory limit of $465,275. 11 U.S.C. § 109(e) (emphasis added). A debtor whose debts exceed the statutory limit must convert to a different chapter or suffer dismissal. Contingent debts, however, are excluded from the eligibility computation in Chapter 13 cases. *Barcal v. Laughlin* (*In re Barcal*), 213 B.R 1008, 1012 (B.A.P. 8th Cir. 1997). Contingent debt is not statutorily defined but has been interpreted by courts to mean "a class of liabilities in which the obligation to pay does not arise until the occurrence of a 'triggering event or occurrence . . . reasonably contemplated by the debtor and creditor at the time the event giving rise to the claim occurred.'" *Id*. at 1013. (citation omitted). A debt is not contingent "if all events giving rise to liability occurred prior to the filing of the bankruptcy petition." *Id*. (citation omitted). One example of a contingent debt is where no liability exists unless a condition precedent occurs, such as a "guarantee-default by a principle." *Id*. (citation omitted).

The Trustee argues that the debt owed to the USSBA is not contingent. The Trustee suggests that the debtor was a "signor" on the USSBA note[1]; the debtor, however, is a guarantor. The debtor's signature appears solely as a representative of the primary obligor, Currie Family Chiropractic, Inc.[2] The Trustee correctly notes that "a contingent debt requires a triggering event or dependency on a future event." (*Motion for Summary Judgment*, at 3, ECF No. 109). Here, the USSBA obligation does require a triggering event: the primary obligor—who is not the debtor, but rather a corporation—defaulting on the obligation. In a situation where the primary obligor has not defaulted, the debtor's dormant liability for the USSBA obligation remains contingent. The debtor's personal obligation on this debt does not arise until the primary obligor defaults. Unless and until that time, the debtor has only contingency liability. It is of no import that the debtor guaranteed the USSBA obligation before he filed bankruptcy. The debtor correctly takes the position that the USSBA note is not in default and should not be included in his eligibility computation. The liability on a guaranty where the underlying debt is not in default is plainly a contingent debt. The condition precedent is the underlying debt's default.

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[1] The Trustee refers to the debtor as a signor on the USSBA note four times in his Motion for Summary Judgment: "[T]he debtor owes [the USSBA obligation] as a signor of the note"; "Mr. Currie is a signor on the note with the [USSBA]"; "Whereas Mr. Currie as one of the individual signors of the note accepted a personal obligation . . ."; and "[T]he [USSBA] will look to all the signors of the note for repayment of the full claim, including the debtor Mr. Currie." (*Motion for Summary Judgment*, at 2-4; ECF No. 109).

[2] Each note, security agreement, and amendment contain at least one paragraph that creates some uncertainty with respect to the signors and could be read to imply maker liability. *See Id*. at 22, 26, 30, and 35. The better interpretation, however, is that each simply references potentially multiple makers and not a signature as an agent or representative. This interpretation is rendered conclusive by the fact that the guarantee references only Currie Family Chiropractic, Inc. as the borrower. *See Id.* at 36.

The Trustee argues that the debtor has unsecured debts totaling $722,704.04[3] which makes him ineligible to be a Chapter 13 debtor since that amount of debt exceeds the statutory limit. *Id*. at 2. When the $499,782.11 of contingent debt is not included in the eligibility calculation, the debtor's unsecured debt amount totals $222,291.93, which is substantially below the statutory limit. Thus, the proper eligibility calculation reflects that the debtor is clearly eligible for relief under Chapter 13.

IV. Conclusion

For the reasons stated above, the relief sought in the Motion for Summary Judgment is denied. The Motion to Dismiss is also denied. The debtor is eligible for relief under Chapter 13.

IT IS SO ORDERED.

Dated this this 18th day of June 2025.

HONORABLE RICHARD D. TAYLOR
UNITED STATES BANKRUPTCY JUDGE

cc: James Keith Currie
Jack W. Gooding
David G. Nixon
U.S. Trustee

[3] The stipulated total of unsecured debts from the Statement is $716,732.00. This discrepancy does not alter the result.