

the Bankruptcy Code. Pursuant to the terms of the financing and guaranty agreements, Ford then declared its entire indebtedness immediately due and confessed judgment in the Schuylkill County Common Pleas Court against the debtor and the other owner of PGF who had also executed a guaranty. The Court entered judgment in favor of Ford on June 6, 1997 in the claimed amount of \$947,466.98.

The debtor voluntarily filed for bankruptcy under Chapter 7 on January 26, 1998.¹ Ford then filed an adversary complaint against the debtor and other guarantor on October 13, 1998 requesting the Bankruptcy Court to declare that the debt be deemed non-dischargeable. On November 23, 1999 the Court scheduled a hearing for January 26, 2000.

On December 21, 1999, the debtor and fellow debtor filed motions to convert their bankruptcies from Chapter 7 to Chapter 13 which the Bankruptcy Court granted. On April 7, 2000, Ford filed an amended motion to reconvert the bankruptcies to Chapter 7 which the Bankruptcy Court later granted upon finding that these debtors did not qualify under Chapter 13. The Bankruptcy Court concluded that as of the date of the filing of the petitions, the debtor owed a non-contingent, liquidated and

¹The other owner and guarantor had done the same on April 16, 1998.

unsecured debt in excess of the statutory limit of \$250,000.² It is this order which the debtor appeals.

The debtor's argument is essentially as follows. Ford's judgment is a confessed judgment and as such is subject to challenge by the debtors. It should thus be viewed as disputed and cannot be categorized as final. Since the judgment cannot be categorized as final, the amount owed is not ascertainable and thus Ford's claim is not liquidated. The Bankruptcy Court thus erred in considering it when calculating the debtor's eligibility for Chapter 13.

The parties agree that Ford's judgment is unsecured. To qualify under Chapter 13, a debtor's unsecured debt must be noncontingent, liquidated and less than \$269,250. See 11 U.S.C.A. § 109(e).

A debt is contingent where "the debtor 'will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor'". In re Weiss, 251 B.R. 453, 465 (Bankr. E.D. Pa. 2000) (quoting In re Fostvedt, 823 F.2d 305, 306 (9th Cir. 1987)). A noncontingent debt is one where "all events giving

²The \$250,000 limit referenced by the Bankruptcy Court had actually been adjusted to \$269,250 effective April 1, 1998. The debtor's motion to convert the bankruptcy from Chapter 7 to Chapter 13 was filed on December 21, 1999. This is of no moment, however, as the amount of the judgment at issue far exceeds \$269,250.

rise to the liability for the debt occurred prior to the debtor's filing for bankruptcy." Id. (quoting In re Mazzeo, 131 F.3d 295, 303 (2d Cir. 1997)). A debt is liquidated if "the value of the claim is easily ascertainable." Id.

The debtor failed to include Ford's judgment in the bankruptcy schedules. Rather, the debtor listed the personal guaranty of PGF's debt. The debtor listed this as contingent, unliquidated and for an unknown amount.³

The debtor contends that because he never received an accounting from Ford for collateral sold by Ford and because Ford may not have disposed of the collateral in a commercially reasonable manner, the amount of Ford's claim is "unknown." The debtor also contends that since Ford never filed a proof of claim, the only evidence of the amount owed is the judgment which is subject to challenge and thus not a final judgment that can be easily valued.⁴

³The debtor marked the boxes designating the guaranty as "Contingent" and "Unliquidated," but did not check the box labeled "Disputed." Under the column labeled "Amount of Claim," the debtor filled in "Unknown."

⁴The debtor has never challenged the confessed judgment. A debtor has thirty days with written notice to seek to strike or open a confessed judgment. See Pa. R. Civ. P. 2959(a)(3). Ford has presented a copy of such notice to the debtor of the entry of judgment and the relief he may seek. In any event, a debtor must move to strike or open the judgment "promptly." See PNC Bank v. Balsamo, 634 A.2d 645, 649 (Pa. Super. 1993); Haggerty v. Fetner, 481 A.2d 641, 647 (Pa. Super. 1984).

The possibility that a judgment or obligation may be cancelled upon future legal determinations does not alter the noncontingent or liquidated nature of the obligation. See e.g., In re Douglas, 1994 WL 736423, at *3-4 (D.D.C. Oct. 12, 1994); In re Pennypacker, 115 B.R. 504, 506-7 (Bankr. E.D. Pa. 1990); In re Crescenzi, 58 B.R. 141, 143 (S.D.N.Y. 1986).⁵ "Debts of a contractual nature, even though disputed, are liquidated." In re Pennypacker, 115 B.R. at 505 See also, In re Gordon, 127 B.R. 574, 578 (Bankr. E.D. Pa. 1991); In re Pulliam, 90 B.R. 241, 244 (Bankr. N.D. Tex. 1988); In re Albano, 55 B.R. 363, 368 (N.D. Ill. 1985).

The debt in question is liquidated and noncontingent. Ford obtained a judgment in the amount of \$947,466.98, making the value of the claim easily ascertainable. Even if the amount of the judgment, upon a timely petition to strike or open, could have been modified, "all events giving rise to the liability for the debt occurred prior to the debtor's filing for bankruptcy." In re Weiss, 251 B.R. at 465. Liability for the debt occurred when the debtor defaulted on the personal guaranty. The possibility of a challenge to the validity of a confessed judgment is not an occurrence of an extrinsic event which will

⁵As noted by the Court in In re Pennypacker, the minority view that disputed debts are unliquidated gives the debtor "unbridled authority to determine his eligibility for chapter 13 relief." In re Pennypacker, 115 B.R. at 506.

trigger the liability of the debtor to the creditor, thereby making it contingent.

The debtor's argument that Ford's judgment is not a final judgment is not supported in Pennsylvania law. A confessed judgment does in fact constitute a final judgment. See In re Vitanza, 1998 WL 808629, *10 n.24 (Bankr. E.D. Pa. Nov. 13, 1998) ("a judgment by confession is a final judgment 'on the merits' which operates as res judicata"). See also Zhang v. Southeastern Fin. Group, Inc., 980 F. Supp. 787, 792 (E.D. Pa. 1997).

Ford's judgment was entered against the debtor on June 6, 1997. The debtor never contested the judgment in the Court which entered it, in the PGF bankruptcy case or in the debtor's own Chapter 7 proceedings.

The debtor finally argues that recognizing a confessed judgment for purposes of § 109(e) eligibility would be a denial of due process because "at a minimum the debtor is entitled to a hearing on whether he voluntarily and intelligently executed the agreement containing the cognovit clause upon which judgment was entered."

Pa. R. Civ. P. 2959(a)(2) provides:

The ground [for relief from a judgment by confession] that the waiver of due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only (i) in support of a further request for a stay of execution where the court has not stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of prima facie evidence of a defense; and (ii) as provided by Rule 2958.3 [when personal property

Chapter 13 to Chapter 7, **IT IS HEREBY ORDERED** that said order of the Bankruptcy Court is **AFFIRMED** and this action is closed.

BY THE COURT:

JAY C. WALDMAN, J.