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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

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In re:) BAP No. CC-05-1104-LMaPa
)
7 TERESA A. GUASTELLA,) Bk. No. SV 04-15230 KT
)
8 Debtor.)

9 _____)
10 TERESA A. GUASTELLA,)
11 Appellant,)

12 v.)
13 RICHARD HAMPTON; NANCY)
14 HAMPTON; ELIZABETH F. ROJAS,)
15 Chapter 13 Trustee,)
Appellees.)

O P I N I O N

Argued and Submitted on November 18, 2005
at Los Angeles, California

Filed - April 11, 2006

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Kathleen Thompson, Bankruptcy Judge, Presiding

21 _____
22 Before: LEE,¹ MARLAR and PAPPAS, Bankruptcy Judges.

27 _____
28 ¹ Hon. W. Richard Lee, United States Bankruptcy Judge for the
Eastern District of California, sitting by designation.

1 LEE, Bankruptcy Judge:
2

3 **I. INTRODUCTION**

4 In this appeal, we examine the standard of "good faith" as it
5 relates to the preparation of bankruptcy schedules and its
6 application to the determination of chapter 13 eligibility under
7 11 U.S.C. § 109(e).² Appellant, Teresa A. Guastella
8 ("Guastella"), appeals the bankruptcy court's orders dismissing
9 her chapter 13 case for lack of eligibility and denying her
10 request to vacate the dismissal order. Guastella listed her debt
11 to Appellees, Richard and Nancy Hampton (the "Hamptons"), as
12 \$0.00. The bankruptcy court, after examining the record,
13 determined that Guastella's noncontingent liquidated unsecured
14 debt exceeded the statutory eligibility limit in § 109(e), even
15 though her schedules stated otherwise. Guastella contends that
16 the bankruptcy court erred in finding that the schedules were not
17 prepared in good faith. We AFFIRM.

18
19 **II. FACTS**

20 The State Court Litigation.

21 On July 15, 2004, the Superior Court of California, County of
22 Ventura, (the "State Court") issued a tentative decision (the
23 "Tentative Decision") after a trial on the merits in the civil
24 case of Hampton v. Guastella, et al., Case No. SC027078 (the
25 "State Court Litigation"). In its Tentative Decision, the State

26
27 ² Unless otherwise stated, all statutory references are to
28 the Bankruptcy Code, 11 U.S.C. § 101, et seq., applicable to cases
filed before October 17, 2005, the effective date of the
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

1 Court found, inter alia, that Guastella had conspired with her
2 parents to conceal the proceeds from the fraudulent sale of a
3 house to the Hamptons. The background of the State Court
4 Litigation is summarized from findings of fact in the Tentative
5 Decision and from Guastella's declarations in the record.

6 Guastella's parents, Angelo and Rose Ann Guastella (the
7 "Parents") owned a house located on Appleton Road in Simi Valley,
8 California (the "Appleton House") which had been severely damaged
9 by the 1994 Northridge earthquake. The damage rendered the
10 Appleton House structurally unsound and uninhabitable. In 1997,
11 an inspector advised the Parents that the cost to repair the
12 Appleton House would exceed its value.

13 In 1999, the Parents decided to sell the Appleton House
14 without making the needed repairs. Initially, the Parents
15 answered "yes" to a question on the real estate disclosure
16 statement that they were aware of earthquake damage to the
17 Appleton House. The House did not sell at that time. Later that
18 year, the Parents made cosmetic repairs to the Appleton House and
19 re-listed it for sale. They prepared another disclosure statement
20 and answered "no" to the same question regarding their knowledge
21 of earthquake damage. The Hamptons bought the Appleton House for
22 \$210,000. The purchase agreement required the Parents to disclose
23 all known defects to the House, which they failed to do, and the
24 Hamptons did not discover the defects until after they took
25 possession.

26 The Parents used the proceeds from the Appleton House to
27 purchase another house located on Laguna Drive in Simi Valley (the
28 "Laguna House"). However, after the Hamptons threatened legal

1 action, the Parents sold the Laguna House in March 2000, for
2 \$158,444.68 and gave the proceeds to Guastella.

3 Shortly thereafter, Guastella used the money as a down
4 payment for another house, her current residence, located on El
5 Monte Road in Simi Valley (the "El Monte House"). Guastella
6 qualified for the purchase money financing and bought the El Monte
7 House in her name alone. She subsequently quitclaimed a 50%
8 interest in the El Monte House to her parents for no
9 consideration.

10 The Hamptons filed the State Court Litigation against the
11 Parents and Guastella and sought, inter alia, to trace the
12 proceeds of the Appleton House to the El Monte House. Shortly
13 before trial, in March 2004, Guastella quitclaimed the remaining
14 50% interest in the El Monte House to her Parents in a futile
15 effort to obtain dismissal from the State Court Litigation.
16 Guastella continued to reside in the El Monte House with her
17 Parents, paid substantially all of the mortgage payments, and also
18 paid the property taxes.

19 After a trial, the State Court ruled, in the Tentative
20 Decision, that it would set aside both conveyances of the El Monte
21 House, impose a constructive trust on the El Monte House, issue an
22 injunction against any transfer of the El Monte House, and hold
23 the Parents liable for monetary damages in the amount of \$495,000.
24 The State Court specifically found that the Parents "entered into
25 a conspiracy with [Guastella] to conceal the proceeds that could
26 be traced back to their fraudulent sale of the [Appleton House] by
27 transferring the \$158,444.68 to [Guastella]." The State Court
28 characterized Guastella's purchase of the El Monte House as "a

1 sham transaction to conceal the funds.”

2 The part of the Tentative Decision most pertinent to this
3 appeal is the State Court’s discussion of Guastella’s conduct and
4 why it did not also hold Guastella liable for monetary damages:

5 The Court finds that there was sufficient evidence
6 produced to make defendant Teresa Guastella jointly and
7 severally liable for the tort of fraud committed by her
8 parents, defendants Angelo R. Guastella and Rose Ann
9 Guastella. Under the law in California, a person can be
10 civilly liable for damages resulting from a conspiracy
11 even though he or she was not a member of the conspiracy
12 at the time of its inception.

13 However, in reviewing the 5th Amended Complaint, it does
14 not appear that the plaintiffs are seeking to hold
15 defendant Teresa Guastella jointly and severally liable
16 for the fraud of her parents, so the Court declines to
17 do so. (Emphasis added.)

18 The Hamptons filed a Request for Modification of the
19 Tentative Decision (“Modification Request”) in which they asked
20 the State Court to hold Guastella jointly and severally liable
21 with her Parents for the full amount of the monetary damages.
22 They argued that Guastella’s liability had been properly pled in
23 the Fifth Amended Complaint. Guastella opposed the Modification
24 Request. She countered that joint and several liability had not
25 been pled against her. Guastella asserted that she should only be
26 held liable for the constructive trust remedy. Moreover,
27 Guastella argued that she had prepared her defense based on the
28 belief that she was not being sued for monetary damages.

The Bankruptcy Proceeding.

On August 4, 2004, before the State Court could hold a
hearing on the Modification Request, or enter any further orders,
Guastella filed her bankruptcy petition under chapter 13. In a

1 subsequent pleading (the "Motion for Reconsideration"),³ Guastella
2 explained, "Teresa commenced this bankruptcy case . . . in order
3 to protect herself against the possibility of an adverse ruling by
4 the state court." Guastella is represented in this bankruptcy
5 case by the same attorney who represented the Parents in the State
6 Court Litigation.⁴

7 On August 18, 2004, Guastella filed her original bankruptcy
8 schedules. The schedules listed secured claims in the amount of
9 \$350,000 and unsecured claims of \$20,984. On the face of the
10 schedules, Guastella appeared to be eligible for chapter 13
11 relief. However, Guastella listed the Hamptons as holders of an
12 unliquidated unsecured nonpriority claim in the amount of \$0.00.
13 In a subsequent declaration filed in support of the Motion for
14 Reconsideration, Guastella explained how she estimated the
15 Hamptons' claim:

16 I scheduled my 'debt' to the Hamptons as \$0.00 based on
17 the decision of the state court . . . and because I
18 truly believed the state court would affirm its
19 tentative decision.

20 . . .

21 I was very much surprised by the state court's change of
22 mind in modifying its tentative decision to impose
23 monetary liability against me.

23 ³ See the Notice of Motion & Motion for a New Hearing and/or
24 for Reconsideration of This Court's Order of January 27, 2005
25 Dismissing Debtor's Chapter 13 Case Pursuant to 11 U.S.C.
§ 109(e); Memorandum of Points & Authorities; Declaration of
Teresa Guastella filed on February 4, 2005.

26 ⁴ The Supplemental Declaration of Ann Michelle McKinley, Esq.
27 filed in support of the Modification Request refers to a fee
28 application filed by Mr. Garber in the Parents' chapter 13 case
no. SV-01-20479-KL. Time entries in that fee application state
that he rendered legal services in the State Court litigation.

1 The statement of financial affairs disclosed the State Court
2 Litigation as "pending." The real property schedule also
3 disclosed the Tentative Decision and the "pending" State Court
4 Litigation in pertinent part as follows:

5 Debtor was named as a defendant in a law suit currently
6 pending in the Superior Court of CA, for County of
7 Ventura, SC027078, and the court in said case recently
8 issued a tentative decision a) vacating Debtor's two
conveyances to her parents, and b) imposing a
constructive trust against the property. . . .
(Emphasis added.)

9 On August 26, 2004, the State Court modified its Tentative
10 Decision and on September 24, 2004, a judgment was entered against
11 Guastella. Guastella contends that the State Court acted in
12 violation of the automatic stay, but that issue was not raised in
13 this appeal and is not relevant to our ruling.

14 On October 18, 2004, the Hamptons filed an Objection to
15 Confirmation of Chapter 13 Plan and Request for Judicial Notice
16 (the "Objection to Confirmation"). Based on their claim against
17 Guastella in the State Court Litigation, the Hamptons argued that
18 Guastella was not eligible for chapter 13 relief under § 109(e).
19 They also argued that Guastella's schedules were "knowingly
20 false." In response to the Objection to Confirmation, Guastella
21 looked to the record from the State Court. Based on the Tentative
22 Decision, Guastella argued, that she "was determined to be not
23 liable [to the Hamptons] prior to filing."

24 The Hamptons also objected to the fact that Guastella was
25 continuing to make post-petition payments on the El Monte
26 mortgage, even after having conveyed the House to her Parents.
27 Guastella defended the mortgage payments, arguing that she still
28 had some interest in the El Monte House. In a supplemental

1 response to the Objection to Confirmation, Guastella used the
2 Tentative Decision and claimed ownership of the El Monte House to
3 explain the mortgage payments:

4 There are a number of valid reasons why Teresa would
5 continue making the mortgage payments to Chase despite
6 having transferred her interest in El Monte to her
7 parents. . . . [P]ursuant to the state court judgment,
8 which the Hamptons claim is valid, Teresa remains the
9 owner of El Monte; the state court invalidated both of
10 Teresa's quitclaim transfers to her parents, leaving her
11 as the sole owner of El Monte. (Emphasis added.)

12 The Objection to Confirmation was argued on January 24, 2005.
13 At the hearing, the bankruptcy court found that Guastella was not
14 eligible for chapter 13 relief and sua sponte dismissed the
15 bankruptcy case. Based on the State Court record, the court
16 stated:

17 I don't think the Debtor's eligible because I think the
18 amount [of the Hamptons' claim] is ascertainable
19 [The State Court] said in effect that it found a problem
20 with her conduct. . . . [U]nless you come back and
21 you're able to show me somehow that that was the only
22 opportunity and that the tentative decision somehow
23 makes her not liable for the debt ever, the question on
24 eligibility is not liability. It's whether or not it's
25 contingent, whether or not the amount is ascertainable.

26 Guastella timely filed the Motion for Reconsideration. The
27 court conducted another hearing on February 28, 2005, but denied
28 Guastella's request to vacate the dismissal order. The court
clarified its decision with respect to the issue of chapter 13
eligibility as follows:

29 I think the tentative decision did a couple of things.
30 It gave an amount for the claim, and it made a decision
31 with regard to liability at that stage in time. But on
32 the date that the bankruptcy was filed, while everyone
33 could look to the tentative decision for the amount of
34 the claim -- perhaps subject to dispute, but there had
35 been a hearing -- that the issue of whether or not Ms.
36 Guastella would be liable for that was still at issue,
37 was at issue on the date the case was filed, so that

1 when I go to the next question about, well, if it was at
2 issue, the liability was in doubt, does this Debtor meet
3 the eligibility requirement to drop this debt or not
4 drop this debt on the eligibility requirement.
5 (Emphasis added.)

6 The court addressed the issue of Guastella's good faith as
7 follows:

8 I think that the liquidation -- the amount of the claim
9 was readily ascertainable. The question then, under
10 this scenario, can I find that the Debtor could ignore
11 that claim, the fact that a claim was presently being
12 made on the date of bankruptcy against her personally,
13 could the Debtor ignore that in good faith and list it
14 as zero based on the tentative ruling in the State
15 Court, and I don't think the Debtor could. And I don't
16 think the Debtor could because the claim was clearly in
17 dispute. . . .

18 Guastella timely filed a notice of appeal.

19 **III. ISSUES PRESENTED**

20 A. Whether Guastella was eligible for chapter 13 relief at
21 the time she filed her bankruptcy petition.

22 B. Whether the bankruptcy court properly looked beyond the
23 schedules to determine that Guastella was not eligible for chapter
24 13 relief.

25 C. Whether the court was required to make a finding that
26 Guastella intentionally misrepresented her debts to create the
27 appearance of eligibility.

28 D. Whether the State Court's Tentative Decision created a
"safe harbor" upon which Guastella could rely in preparing her
schedules.

IV. STANDARD OF REVIEW

The appellate court reviews factual findings of the

1 bankruptcy court for clear error and its conclusions of law de
2 novo. See Anastas v. American Savings Bank (In re Anastas), 94
3 F.3d 1280, 1283 (9th Cir. 1996). Findings of fact by the
4 bankruptcy court "shall not be set aside on appeal unless clearly
5 erroneous." Fed. R. Bankr. P. 8013; Johnston v. Webster (In re
6 Johnston), 49 F.3d 538, 540 (9th Cir. 1995). Whether a debt is
7 liquidated involves an interpretation of the Bankruptcy Code and
8 is reviewed de novo. See FDIC v. Wenberg (In re Wenberg), 94 B.R.
9 631, 633 (9th Cir. BAP 1988), aff'd, 902 F.2d 768 (9th Cir. 1990).
10 The liquidated amount of a claim to be included in the eligibility
11 calculation is a finding of fact reviewable for clear error. Loya
12 v. Rapp (In re Loya), 123 B.R. 338, 340 (9th Cir. BAP 1991). The
13 court's determination of good faith is also a finding of fact
14 reviewable for clear error. Smyrnos v. Padilla (In re Padilla),
15 213 B.R. 349, 352 (9th Cir. BAP 1997). We review orders of
16 dismissal for abuse of discretion. Sievers v. Green (In re
17 Green), 64 B.R. 530 (9th Cir. BAP 1986).

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V. JURISDICTION

20 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
21 and 157(b)(1). The jurisdiction of the Bankruptcy Appellate Panel
22 is based on 28 U.S.C. § 158(b)(1).

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24

VI. DISCUSSION

25 A. The Hamptons Held a "Claim" at the Commencement of the Case
26 Even Though the State Court Litigation Was Not Concluded.

27 We begin by confirming that the Hamptons had a "claim"
28 against Guastella, and their claim was a "debt" within the meaning

1 of the Bankruptcy Code at the commencement of this case.
2 Guastella acknowledged the Hamptons' claim by listing them in her
3 schedules as unsecured creditors, yet she argues that she owed
4 nothing to the Hamptons when she filed her petition.

5 A "creditor" is defined in § 101(10) of the Bankruptcy Code
6 as:

7 (A) entity that has a claim against the debtor that
8 arose at the time of or before the order for relief
concerning the debtor[.]

9 A "claim" is defined in § 101(5) as:

10 (A) right to payment, whether or not such right is
11 reduced to judgment, liquidated, unliquidated, fixed,
12 contingent, matured, unmatured, disputed, undisputed,
legal, equitable, secured, or unsecured[.]

13 The term "debt" is defined in § 101(12) as "liability on a
14 claim." The terms "debt" and "claim" are used interchangeably by
15 both Congress and the courts in the context of chapter 13
16 eligibility. The legislative history of § 109(e) indicates that
17 "[t]he terms are coextensive: a creditor has a 'claim' against the
18 debtor; the debtor owes a 'debt' to the creditor." H.R. Rep. No.
19 595, 95th Cong., 1st Sess. 310 (1977), as reprinted in 1978 U.S.
20 Code Cong. & Admin. News at 6267.

21 The term "claim," and thus the existence of a "debt," is
22 broadly construed. See Cal. Dep't of Health Servs. v. Jensen (In
23 re Jensen), 995 F.2d 925, 928 (9th Cir. 1993). Federal law
24 determines when a claim arises for purposes of a bankruptcy
25 proceeding. "[A] claim is ripe as an allowable claim in a
26 bankruptcy proceeding even if it is a cause of action that has not
27 yet accrued." Cool Fuel, Inc. v. Bd. of Equalization of the State
28 of Cal. (In re Cool Fuel, Inc.), 210 F.3d 999, 1006 (9th Cir.

1 2000) (citations omitted).

2 Guastella acknowledged in response to the Objection to
3 Confirmation that she still had an interest in the El Monte House,
4 subject to a constructive trust; the State Court, per the
5 Tentative Decision, intended to invalidate the conveyances to her
6 Parents. Pursuant to § 102(2), the term "claim against the
7 debtor" includes a "claim against property of the debtor." The
8 Hamptons therefore had a claim against Guastella by virtue of the
9 relief against the El Monte House identified in the Tentative
10 Decision.

11 Similarly, the Hamptons had a claim based on the finding of
12 damage and the conspiracy discussed in the Tentative Decision.
13 The Hamptons' claim existed even before they commenced the State
14 Court litigation and reduced their claim to various causes of
15 action. The Tentative Decision was just that, tentative, and it
16 did not extinguish the Hamptons' claim. The Hamptons had a
17 "claim," and that claim was a "debt" within the meaning of the
18 Bankruptcy Code, even though the State Court had not yet reduced
19 the claim to a final judgment when Guastella filed her petition.

20

21 B. The Hamptons' Claim Was Liquidated and Exceeded the Statutory
22 Limit for Chapter 13 Eligibility.

22

23 Under § 109(e), applicable at the commencement of this
24 bankruptcy case, a debtor is eligible for chapter 13 relief if the
25 sum of his or her noncontingent, liquidated, unsecured debts does
26 not exceed the statutory limit of \$307,675. The determination of

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28

1 eligibility under § 109(e) must be based on pre-petition events.⁵
2 Scovis v. Henrichsen (In re Scovis), 249 F.3d 975, 982 (9th Cir.
3 2001). Guastella does not contend in this appeal that the
4 Hamptons' claim for money damages in the amount of \$495,000 is
5 contingent or secured, and she does not dispute that it exceeds
6 the statutory limit for chapter 13 eligibility. Guastella listed
7 the claim in her bankruptcy schedules as "disputed," but disputed
8 claims are not excluded from the eligibility calculation.
9 Nicholes v. Johnny Appleseed of Washington (In re Nicholes), 184
10 B.R. 82, 90-91 (9th Cir. BAP 1995) (holding that "the fact that a
11 claim is disputed does not per se exclude the claim from the
12 eligibility calculation under § 109(e), since a disputed claim is
13 not necessarily unliquidated"). The resulting issue, therefore,
14 is whether the Hamptons' claim constituted a "liquidated debt" at
15 the commencement of the bankruptcy case.

16 In the Ninth Circuit, a debt is liquidated for purposes of
17 calculating chapter 13 eligibility if the amount of the debt is
18 readily determinable. Slack v. Wilshire Ins. Co. (In re Slack),
19 187 F.3d 1070, 1073-75 (9th Cir. 1999) (holding that "a debt is
20 liquidated if the amount is readily ascertainable, notwithstanding
21 the fact that the question of liability has not been finally
22 decided" (emphasis added)).

23 The Slack court follows our decision in Wenberg, 94 B.R. 631
24

25 ⁵ The record confirms that the bankruptcy court based its
26 decision on the pre-petition record from the State Court:

27 "I do not think subsequent events matter. I think it's
28 immaterial what happened subsequently in this case. On
the date of bankruptcy, the amount was readily
ascertainable"

1 where we held "[t]he definition of 'ready determination' turns on
2 the distinction between a simple hearing to determine the amount
3 of a certain debt, and an extensive and contested evidentiary
4 hearing in which substantial evidence may be necessary to
5 establish amounts or liability." In re Slack, 187 F.3d at 1073-
6 74, (quoting In re Wenberg, 94 B.R. at 634).

7 Guastella argues that at the time she filed her petition, the
8 Hamptons' claim was not a "debt" for eligibility purposes because
9 the State Court declined to hold her liable for monetary damages
10 in its Tentative Decision, and no judgment had been entered
11 against her. The argument misstates the applicable rule and it
12 mischaracterizes the Tentative Decision. The Tentative Decision
13 quantified the Hamptons' damages in an amount certain. There is
14 nothing in the Tentative Decision that exonerates Guastella from
15 being liable for those damages. Indeed, the bankruptcy court
16 correctly observed that the Tentative Decision was not the final
17 word on Guastella's liability.

18 The bankruptcy court applied the correct test. It considered
19 the record from the State Court and found from the Tentative
20 Decision that the Hamptons had a "readily ascertainable" claim
21 against Guastella in an amount that made her ineligible for
22 chapter 13 relief. The State Court made a finding that Guastella
23 conspired with her Parents to conceal the proceeds from the
24 Appleton House. It also noted that under California law,
25 Guastella could be civilly liable for damages resulting from the
26 conspiracy even though she was not a member of the conspiracy at
27 the time of its inception. Applied Equip. Corp. v. Litton Saudi

28

1 Arabia Ltd., 7 Cal. 4th 503, 510-11 (1994).⁶

2 The "extensive and contested evidentiary hearing in which
3 substantial evidence may be necessary to establish amounts or
4 liability" (In re Slack, 187 F.3d at 1073-74) had already taken
5 place in the State Court. The decision to limit Guastella's
6 liability in the Tentative Decision was based on a procedural
7 issue, not a substantive one. All that stood between Guastella
8 and monetary liability was an adverse ruling on the Modification
9 Request. Guastella opposed the Modification Request on the
10 merits, but then filed this bankruptcy petition in an effort to
11 prevent the State Court from ruling on the issue. The bankruptcy
12 court properly determined that the Hamptons' claim was
13 "liquidated" at the commencement of this case and, based thereon,
14 that Guastella was not eligible for chapter 13 relief.

15
16 C. The Bankruptcy Court Properly Decided that Guastella Did not
17 Prepare her Schedules in Good Faith.

18 The bankruptcy court has the inherent power to sua sponte
19 dismiss a case if the debtor is not eligible for relief. Hammers
20 v. IRS (Matter of Hammers), 988 F.2d 32, 34-35 (5th Cir. 1993).

21
22 ⁶ The court in Applied Equip. Corp. explained the conspiracy
doctrines,

23 Conspiracy is not a cause of action, but a legal
24 doctrine that imposes liability on persons who, although
25 not actually committing a tort themselves, share with
the immediate tortfeasors a common plan or design in its
26 perpetration. By participation in a civil conspiracy, a
coconspirator effectively adopts as his or her own the
27 torts of other coconspirators within the ambit of the
conspiracy. In this way, a coconspirator incurs tort
liability co-equal with the immediate tortfeasors.

28 7 Cal. 4th at 510-11 (citations omitted).

1 Guastella contends that the bankruptcy court should have
2 determined the eligibility issue based solely on the debts as
3 listed in her schedules. The Ninth Circuit in Scovis held,
4 "eligibility should normally be determined by the debtor's
5 originally filed schedules, checking only to see if the schedules
6 were made in good faith." 249 F.3d at 982.

7 The Scovis court followed the Sixth Circuit's decision in In
8 re Pearson, 773 F.2d 751 (6th Cir. 1985). Pearson endorsed an
9 eligibility analysis in which the bankruptcy court relies
10 primarily on the debtor's schedules in determining the amount of
11 "eligible" debt, not on an amount of debt that is established
12 after a hearing on the merits. The Pearson court expressed
13 concern about any approach in which "extensive inquiries" and
14 evidentiary hearings "dominate the proceedings." Id. at 757.
15 However, the court also recognized it would be inappropriate "to
16 spell out detailed procedures by which the question of Chapter 13
17 eligibility may be resolved including what kinds of proof would be
18 minimally sufficient and what burdens of proof must be met by one
19 side or the other." Id. at 756.

20 What distinguishes this case from the Scovis rule is the
21 Hamptons' Objection to Confirmation based on eligibility and lack
22 of good faith. We noted the significance of a good faith
23 objection in Quintana v. IRS (In re Quintana), 107 B.R. 234, (9th
24 Cir. BAP 1989), aff'd, 915 F.2d 513 (9th Cir. 1990).

25 The debtors' schedules should be the starting point to a
26 determination of the debtor's aggregate debts. . . .
27 However, the schedules are not dispositive. If the
28 debtors' schedules were dispositive, then eligibility
could be created by improper or incomplete scheduling of
creditors. A bankruptcy court should "look past the
schedules to other evidence submitted when a good faith

1 objection to the debtor's eligibility has been brought
2 by a party in interest."

3 107 B.R. at 238-39 n.6 (citing In re Williams Land Co., 91 B.R.
4 923, 927 (Bankr. D. Or. 1988)).

5 Here, Guastella filed her schedules and her chapter 13 plan;
6 the Hamptons objected to confirmation of the plan on the grounds
7 that Guastella was not eligible for chapter 13 relief and that the
8 schedules were "knowingly false." Guastella does not contend that
9 the Objection to Confirmation was filed in bad faith. Faced with
10 what appeared to be a good faith objection from the Hamptons, it
11 was properly within the discretion of the bankruptcy court to make
12 a limited inquiry outside of the schedules to determine first
13 whether Guastella estimated her debts in good faith and, if not,
14 whether Guastella was in fact eligible for chapter 13 relief.

15 The bankruptcy judge properly made the initial "good faith"
16 determination based on a summary review of the State Court record
17 and applicable law, without engaging in an extensive inquiry and
18 without allowing it to dominate the proceedings. The record
19 revealed that Guastella scheduled the Hamptons' claim at \$0.00
20 even after the State Court found that she had conspired with her
21 Parents and had already decided to impose a constructive trust
22 against her interest in the El Monte House to pay the Parents'
23 debt to the Hamptons. Guastella prepared her bankruptcy schedules
24 with the advice and assistance of an attorney, who was aware of
25 the Tentative Decision, had participated in the "still pending"
26 State Court Litigation and either knew, or should have known, what
27 the State Court's decision meant with regard to Guastella's
28 eligibility. Based thereon, the bankruptcy court determined that

1 Guastella could not have reasonably believed in good faith that
2 the Hamptons did not have a substantial claim within the meaning
3 of the Bankruptcy Code. Having made that determination, the
4 bankruptcy court did not err in looking outside the schedules to
5 determine the amount of that claim.

6
7 D. The Bankruptcy Court Was Not Required to Make a Finding that
8 Guastella Acted with Intent to Misrepresent Her Debts.

9 Guastella contends that the bankruptcy court erred by not
10 considering the "totality of the circumstances," i.e., by not
11 considering her "sincerity in preparing her schedules and her
12 subjective state of mind." Guastella argues that the bankruptcy
13 court was required to consider all militating factors - both
14 objective and subjective - and make a finding of bad faith as the
15 term is defined to mean "dishonesty of belief or purpose." BLACK'S
16 LAW DICTIONARY 149 (8th Ed. 2004).⁷

17 Ironically, Guastella's argument here, calling for a
18 comprehensive "state of mind" inquiry, contradicts her earlier
19 argument, and the principle stated in Pearson that her eligibility
20 should be determined without an extensive inquiry. Matter of
21 Pearson, 773 F.2d at 757. Guastella's argument is not persuasive.

22 Congress did not specifically define "good faith" in the

23
24 ⁷ The issue is summarized in Guastella's appellate brief as follows:

25 In order to dismiss Appellant's bankruptcy case, the
26 bankruptcy court was required to make a finding that a)
27 Appellant lied about the amount of debt she owed to
28 Appellees or b) that she intentionally and in bad faith
misrepresented the amount of debt to the Appellees for
the purpose of manufacturing jurisdiction where none
otherwise might exist.

1 Bankruptcy Code, nor does the Code suggest a procedure for making
2 that determination. Guastella asserts that the proper analysis is
3 explicated in Goeb v. Heid (In re Goeb), 675 F.2d 1386 (9th Cir.
4 1982). Goeb involved the confirmation of a chapter 13 plan, which
5 proposed to pay almost nothing to unsecured creditors, and the
6 need for an inquiry to determine whether the plan was filed in
7 "good faith" as required by § 1325(a)(3). Notably under
8 § 1325(a)(3), the debtor has the burden of proving good faith. Ho
9 v. Dowell (In re Ho), 274 B.R. 867, 883 (9th Cir. BAP 2002)
10 (Klein, J., concurring). Even the Goeb court declined to
11 prescribe a list of "good faith" factors, but recommended a case-
12 by-case analysis. In re Goeb, 675 F.2d at 1390.⁸

13 Here, the court did consider evidence of Guastella's state of
14 mind, and based thereon, the court did make a finding that
15 Guastella could not have prepared her schedules in good faith.
16 Guastella filed declarations in response to the Objection to
17 Confirmation and in support of the Motion for Reconsideration
18 regarding (1) her interpretation of the Tentative Decision, and
19 (2) her belief that the "state court would affirm its tentative
20 decision." But the record includes other statements by Guastella
21 which reveal that she fully understood her potential liability to
22 the Hamptons. Guastella disclosed the State Court Litigation as
23 "pending" in her schedules. She acknowledged that she filed the
24 bankruptcy petition "in order to protect herself against the

25
26 ⁸ Compare the Ninth Circuit BAP's decision in Warren v. Fid.
27 & Cas. Co. of New York (In re Warren), 89 B.R. 87, 93 (9th Cir.
28 BAP 1988) (adopting an 11-point test) to Leavitt v. Soto (In re
Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999) (setting forth a
four-step "totality of the circumstances" test).

1 possibility of an adverse ruling by the state court." In ruling
2 on Guastella's Motion for Reconsideration, the bankruptcy judge
3 responded to Guastella's professed interpretation of the Tentative
4 Decision:

5 The question then, under this scenario, can I find that
6 the Debtor could ignore that claim, . . . could the
7 Debtor ignore that in good faith and list it as zero
8 based on the tentative ruling in the State Court, and I
9 don't think the Debtor could. And I don't think the
10 Debtor could because the claim was clearly in dispute.
11 (Emphasis added.)

12 The court's words "under this scenario" indicate that the
13 judge did consider the circumstances and the record before her.
14 The court did not err in rejecting Guastella's "good faith state
15 of mind" argument because (1) Guastella's interpretation of the
16 Tentative Decision was wrong as a matter of law, and (2)
17 Guastella's own statements in the record are conflicting. On the
18 one hand, Guastella professes to a reasonable subjective belief
19 that her liability to the Hamptons had been somehow irrevocably
20 extinguished by the Tentative Decision, such that it was
21 appropriate to schedule their claim at \$0.00. On the other hand,
22 she understood that the State Court Litigation was not yet final
23 and that she needed to file bankruptcy before the hearing on the
24 Modification Request to protect herself against the possibility of
25 an adverse ruling.

26 Guastella asks this panel to redefine and restrict the
27 chapter 13 eligibility rule which was explicitly stated in Scovis
28 as follows:

29 [E]ligibility should normally be determined by the
30 debtor's originally filed schedules, checking only to
31 see if the schedules were made in good faith.

32 In re Scovis, 249 F.3d at 982.

1 The phrase "checking only to see if the schedules were made
2 in good faith" does not mandate that the court make findings of
3 "bad faith." Neither does it require that a debtor intentionally
4 misrepresent her debts to create the appearance of eligibility
5 before there can be an absence of good faith.

6 Bankruptcy courts have consistently recognized that, as a
7 matter of public policy, the issue of chapter 13 eligibility
8 should be determined quickly. The Pearson court addressed the
9 policy considerations by comparing chapter 13 eligibility with the
10 issue of subject matter jurisdiction in federal diversity cases.

11 This threshold eligibility determination for Chapter 13
12 is in many respects like the threshold subject matter
13 jurisdiction determination in diversity cases where the
14 \$10,000 minimum amount in controversy is challenged.
15 Clearly in both situations Congress intended to limit
16 the class of persons who might avail themselves of
17 access to the federal forum. Just as clearly, it is
18 necessary that the procedures for determining initial
19 jurisdiction cannot be allowed to dominate the
20 proceedings themselves nor to delay them unduly. As
important as this may be in the ordinary diversity
litigation in a district court, it is even more
important with respect to Chapter 13 proceedings for
time is of the essence. The resources of the debtor are
almost by definition limited and the means of
determining eligibility must be efficient and
inexpensive. To allow an extensive inquiry in each case
would do much toward defeating the very object of the
statute.

21 In re Pearson, 773 F.2d at 757 (emphasis added).

22 Pearson's "diversity" analogy adds another dimension to our
23 decision because diversity jurisdiction, like chapter 13
24 eligibility, is determined by the "amount in controversy."
25 Discussing the test for diversity jurisdiction, the U.S. Supreme
26 Court in St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283,
27 58 S. Ct. 586, 82 L. Ed. 845 (1938) recognized that the "amount in
28 controversy" cannot always be ascertained. It defined a diversity

1 test very similar to the Scovis test used in chapter 13 cases
2 stating, "the amount claimed in good faith by the plaintiff
3 controls unless it appears to a legal certainty that the claim is
4 for less than the jurisdictional amount or the amount claimed is
5 merely colorable." In re Pearson, 773 F.2d at 757 (citing St.
6 Paul Mercury, 303 U.S. at 288-90⁹) (emphasis added).

7 The Pearson court essentially adopted the "diversity
8 jurisdiction" test as a "workable and fair" approach to the
9 question of chapter 13 eligibility:

10 We recognize that the diversity jurisdiction standard is
11 not controlling here. The good sense of that approach,
12 however, commends itself to our consideration for the
13 same basic problems exist here and, it seems to us, the
14 same basic approach is both workable and fair.

15 In re Pearson, 773 F.2d at 757.

16 Applying this principle to the case before us, it is not our
17 intention here to rewrite the eligibility test as stated in
18 Scovis. However, we do conclude that the "good faith" test

19 ⁹ The Supreme Court stated in St. Paul Mercury:

20 The rule governing dismissal for want of jurisdiction in
21 cases brought in the federal court is that, unless the
22 law gives a different rule, the sum claimed by the
23 plaintiff controls if the claim is apparently made in
24 good faith. It must appear to a legal certainty that
25 the claim is really for less than the jurisdictional
26 amount to justify dismissal. The inability of plaintiff
27 to recover an amount adequate to give the court
28 jurisdiction does not show his bad faith or oust the
jurisdiction. Nor does the fact that the complaint
discloses the existence of a valid defense to the claim.
But if, from the face of the pleadings, it is apparent,
to a legal certainty, that the plaintiff cannot recover
the amount claimed or if, from the proofs, the court is
satisfied to a like certainty that the plaintiff never
was entitled to recover that amount, and that his claim
was therefore colorable for the purpose of conferring
jurisdiction, the suit will be dismissed.

303 U.S. at 288-90 (internal footnotes omitted).

1 applicable to the preparation of chapter 13 bankruptcy schedules
2 is mitigated by, and must be balanced against, the "legal
3 certainty" factor recognized in St. Paul Mercury. In other words,
4 an actual "good faith" inquiry was unnecessary if it appeared to a
5 legal certainty from the face of Guastella's schedules, and the
6 record before the court, that the Hamptons' claim was not \$0.00 as
7 stated on the schedules.

8 We are reminded here of the timeless axiom, "if it's too good
9 to be true, it probably isn't." Guastella's schedules, taken as a
10 whole, were so paradoxical, and her estimation of the Hamptons'
11 claim, based on the "pending" State Court Litigation, was so
12 lacking in "legal certainty" that the court was well within its
13 discretion to summarily reject Guastella's declarations of belief
14 and sincerity. We hold that the bankruptcy court was not required
15 to make a finding that Guastella intentionally misrepresented her
16 debts to create chapter 13 eligibility. The bankruptcy court did
17 not err in finding that Guastella failed to schedule the Hamptons'
18 claim in good faith.

19
20 E. The Tentative Decision Was Not a "Safe Harbor" for the
21 Preparation of the Bankruptcy Schedules.

22 Guastella argues that she prepared her bankruptcy schedules
23 in reasonable reliance on the Tentative Decision, which declined
24 to impose monetary damages. She cites In re Slack for the
25 proposition that a state court's tentative decision adequately
26 establishes liability for purposes of preparing bankruptcy
27 schedules. We reject the contention that Slack creates a good
28 faith "safe harbor" based on tentative rulings from another court

1 for three reasons.

2 First, it is well established that chapter 13 eligibility and
3 the "good faith" test must be determined on a case-by-case basis.
4 A tentative decision from another court is one factor that can be
5 considered in each case. We find no reason to restrict the
6 flexibility of that rule.

7 Second, Guastella mischaracterizes the Slack decision. In
8 Slack, the State court had issued a tentative decision that the
9 debtor was liable for an amount which greatly exceeded the chapter
10 13 eligibility limit. The parties subsequently stipulated to a
11 lesser amount of damages in both the state and bankruptcy courts,
12 but the issue of liability remained in dispute, and the stipulated
13 amount still exceeded the chapter 13 eligibility limit. The Slack
14 court determined that the stipulation adequately liquidated the
15 plaintiff's claim to show the lack of eligibility, even though the
16 debtor's liability was still disputed. The Slack court did not
17 hold that a state court's tentative decision in "pending"
18 litigation could be relied upon to establish the absence of a
19 claim.

20 Third, and finally, the record contradicts Guastella's
21 contention that she reasonably relied on the Tentative Decision.
22 She scheduled the State Court Litigation as "pending"; she knew
23 that the issue of liability was unresolved and still before the
24 State Court; she opposed the Modification Request on the merits
25 but did not wait to see how the State Court might rule on the
26 liability issue; she filed the bankruptcy petition knowing that
27 she needed to protect herself from the possibility of an adverse
28 ruling; and she retained bankruptcy counsel who was familiar with

1 the State Court Litigation and who understood, or should have
2 understood, the applicable law regarding liquidation of the
3 Hamptons' claim.

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VII. CONCLUSION

Guastella was not eligible for chapter 13 relief because the Hamptons' liquidated claim exceeded the statutory limit under § 109(e). The bankruptcy court properly determined that Guastella's schedules were not prepared in good faith and properly looked beyond the schedules, to the State Court record, to determine the eligibility issue. The bankruptcy court was not required to make a finding that Guastella intentionally misrepresented the Hamptons' claim to create the appearance of eligibility. Finally, the State Court's Tentative Decision was not a "safe harbor" upon which Guastella could reasonably rely in the preparation of her schedules. Accordingly, the decision of the bankruptcy court is AFFIRMED.