

**APR 11 2006**

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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. ) **O P I N I O N**  
13 )

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

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,<sup>1</sup> MARLAR and PAPPAS, Bankruptcy Judges.

27 \_\_\_\_\_  
28 <sup>1</sup> 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).<sup>2</sup> 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 <sup>2</sup> 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"),<sup>3</sup> 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.<sup>4</sup>

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.

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23 <sup>3</sup> 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 <sup>4</sup> 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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## 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.

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

27

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1 eligibility under § 109(e) must be based on pre-petition events.<sup>5</sup>  
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 <sup>5</sup> 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).<sup>6</sup>

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 <sup>6</sup> 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).<sup>7</sup>

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 <sup>7</sup> 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.<sup>8</sup>

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

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25  
26 <sup>8</sup> 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:

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

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 288-90<sup>9</sup>) (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

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19 <sup>9</sup> 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  
29 jurisdiction. Nor does the fact that the complaint  
30 discloses the existence of a valid defense to the claim.  
31 But if, from the face of the pleadings, it is apparent,  
32 to a legal certainty, that the plaintiff cannot recover  
33 the amount claimed or if, from the proofs, the court is  
34 satisfied to a like certainty that the plaintiff never  
35 was entitled to recover that amount, and that his claim  
36 was therefore colorable for the purpose of conferring  
37 jurisdiction, the suit will be dismissed.

38 303 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.