NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-08-1287-PaDMk
	)	
STEPHEN J. LINDSEY and PATRICIA L. LINDSEY,	)	Bk. No. SA 08-12542-ES
	)	
Debtors.	)	
	)	
STEPHEN J. LINDSEY and PATRICIA L. LINDSEY,	)	
	)	
Appellants,	)	
	)	
v.	)	**M E M O R A N D U M**[1]
	)	
AMRANE COHEN, Chapter 13 Trustee,	)	
	)	
Appellee.	)	

Submitted without oral argument[2]
on May 14, 2009

Filed – June 17, 2009

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

Before: PAPPAS, DUNN and MARKELL, Bankruptcy Judges.

[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] In an order entered on April 7, 2009, the Panel determined that this appeal was suitable for disposition without oral argument. Fed. R. Bankr. P. 8012; 9th Cir. BAP R. 8012-1.

Debtors Stephen and Patricia Lindsey ("the Lindseys") appeal the bankruptcy court's order dismissing their chapter 13 bankruptcy case because the amount of their debts exceeded the limits for eligibility established by 11 U.S.C. § 109(e).[3] We AFFIRM.

FACTS[4]

In 2006, a federal district court entered a default judgment in favor of the United States against the Lindseys, jointly and severally, for unpaid federal income tax of $9,559,587 for 1989 to 1997 (the "District Court Judgment"). The Lindseys' appeal of the District Court Judgment is currently pending before the Ninth Circuit Court of Appeals.[5]

On May 12, 2008, after the District Court Judgment was entered and the Lindseys appealed to the Ninth Circuit, the Lindseys filed a chapter 13 petition. On Schedule E relating to priority debts, they listed two creditors holding unsecured

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[3] Unless specified otherwise, all references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

[4] The briefs submitted by the Lindseys are, in large part, very difficult to comprehend, and do not comply with Rules 8009 and 8010. Because the Lindseys appear pro se, we have exercised our discretion and construed their papers liberally. Ozenne v. Bendon (In re Ozenne), 337 B.R. 214, 218 (9th Cir. BAP 2006). Additionally, since the Lindseys filed no excerpts of record, a violation of Rule 8009(b), we have exercised our discretion to consider entries on the docket of the underlying bankruptcy case. O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); Fed. R. Evid. 201.

[5] United States v. Lindsey, et al., Ninth Circuit Docket No. 08-55363.

priority claims: the Internal Revenue Service ("IRS") in the amount of $9,559,587, and the California Franchise Tax Board in the amount of $1,363,691.

On July 14, 2008, the Lindseys filed an adversary proceeding in the bankruptcy court against a number of credit card companies, financial institutions, the IRS, the California Franchise Tax Board and Orange County, California. The complaint alleged, inter alia, that the United States' banking, monetary and taxing system was unlawful. The Lindseys alleged in their complaint that because the credit system was unlawful, their creditors were not "lawful or legal creditors." Furthermore, the Lindseys alleged that the tax system is likewise unlawful, thus "canceling any right of claim."

On August 18, 2008, the chapter 13 trustee in their case, Amrane Cohen ("Cohen"), objected to confirmation of the Lindseys' proposed plan, and requested that the case be dismissed. As for the "cause" warranting dismissal of the case under § 1307(c), Cohen argued that the Lindseys did not meet the debt limits for eligibility under § 109(e), and that they had not filed either their bankruptcy petition or their plan in good faith, as required by § 1325(a)(3) and (7).

On October 28, 2008, the bankruptcy court entered an Order Dismissing Debtors' Chapter 13 Bankruptcy Case and All Pending Adversary Proceedings on the ground that the Lindseys were ineligible to be chapter 13 debtors ("the Dismissal Order"). The Dismissal Order recites that confirmation of the Lindseys' plan was set for hearing before the bankruptcy court on October 15, 2008, that the Lindseys and Cohen appeared, but that because the

Lindseys' were ineligible, the confirmation hearing was not held. The Dismissal Order notes that, during the hearing, the Lindseys were given until October 27, 2008, to convert their bankruptcy case to one where the debt limitations would not bar relief, either chapter 7 or chapter 11, otherwise their case would be dismissed. The Lindseys took no action to convert their case to another chapter, and therefore it was dismissed on October 28, 2008.

The Lindseys filed this timely appeal from the Dismissal Order on October 24, 2008.[6]

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). The Panel has jurisdiction under 28 U.S.C. § 158.[7]

ISSUE

Whether the bankruptcy court erred in determining that the Lindseys are ineligible to be chapter 13 debtors.

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[6] The notice of appeal was filed after the October 15, 2008 hearing, but before the Dismissal Order was entered. On November 10, 2008, after entry of the Dismissal Order on October 28, 2008, the Lindseys filed an Amended Notice of Appeal.

[7] Based upon comments in their briefing, the Lindseys appear to be under a misapprehension regarding the jurisdiction of the Panel. The Panel is not, as the Lindseys suppose, a division of the United States Court of Appeals for the Ninth Circuit, but an intermediate court of appeal between bankruptcy courts and the court of appeals. Under 28 U.S.C. § 158, the Panel hears and decides appeals from the bankruptcy courts of the Ninth Circuit. Contrary to the Lindsey's impression, the Panel lacks jurisdiction to review judgments of the federal district courts.

STANDARDS OF REVIEW

The bankruptcy court's factual findings are reviewed for clear error, and its conclusions of law are reviewed de novo. Guastella v. Hampton (In re Guastella), 341 B.R. 908, 914-15 (9th Cir. BAP 2006) (citing Anastas v. Am. Sav. Bank (In re Anastas), 94 F.3d 1280, 1283 (9th Cir. 1996)); Rule 8013.

Orders dismissing bankruptcy cases are reviewed for abuse of discretion. In re Guastella, 341 B.R. at 915. "A court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." Ho v. Dowell (In re Ho), 274 B.R. 867, 871 (9th Cir. BAP 2002) (citing United States v. Sprague, 135 F.3d 1301, 1304 (9th Cir. 1998)).

DISCUSSION

I.

The Lindseys' Request for a Stay

Before analyzing the merits of the issue on appeal, we dispose of a procedural matter.

Employing a liberal construction to the Lindseys' opening brief, we understand them to request that the Panel enter a stay of "pending proceedings." In particular, the brief asks for "a stay from this court pending the decision of the Ninth Circuit Court of Appeals in its current case number 08-55863 [sic]."[8] A review of the bankruptcy court's docket indicates that the Lindseys did not seek a stay of the dismissal order pending this appeal.

[8] The correct court of appeals case number is 08-55363.

It is unclear whether the Lindseys seek to stay this appeal, the Dismissal Order, or both. To the extent that the Lindseys request that the Panel stay these appellate proceedings pending resolution of the appeal of the District Court Judgment before the Ninth Circuit, we deny that request.

The power to stay proceedings "is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 255 (1936). But even if the Lindseys obtain a favorable ruling from the Ninth Circuit, it would not directly affect this appeal. If the District Court Judgment is reversed or vacated on appeal, because it was a default judgment, we presume that the United States could proceed to trial in its action against the Lindseys. As we discuss below, even the results of such a trial would not necessarily impact the § 109(e) calculations applicable in the dismissed bankruptcy case. As a result, the economies of time and effort for all concerned do not warrant a stay of this appeal.

The same analysis holds true if the Lindseys' request is for a stay of the Dismissal Order. Such relief is governed by Rule 8005. When deciding whether to issue a stay pending a bankruptcy appeal, four factors should be considered: 1) the Lindseys' likelihood of success on the merits of the appeal; 2) significant and/or irreparable harm that would come to the Lindseys absent a stay; 3) harm to Cohen if a stay is granted; and 4) where the public interest lies. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Wymer v. Wymer (In re Wymer), 5 B.R. 802, 806 (9th Cir.

BAP 1980). Failure to establish even one of these elements dooms the motion. In re Irwin, 338 B.R. 839, 843 (E.D. Cal. 2006).

In our view, none of these factors weighs in favor of granting a stay of the Dismissal Order pending disposition of the Ninth Circuit appeal. In particular, the Lindseys have not demonstrated that they are likely to prevail in that appeal, nor have they articulated the harm they will suffer if a stay of the Dismissal Order is not granted. Accordingly, to the extent a stay of some sort is sought, the Lindseys' request for a stay pending resolution of the Ninth Circuit appeal is denied.

II.

Dismissal

Section 1307(c) allows a court either to dismiss a case or convert it to chapter 7, depending on which option is in the best interests of creditors and the estate. The bankruptcy court should employ a two-step process in analyzing a motion to dismiss a chapter 13 case. First, the court must determine whether it has "cause" to act, and second, the court must decide whether the interests of the creditors and the estate would be best served by conversion or dismissal. Nelson v. Meyer (In re Nelson), 343 B.R. 671, 674-75 (9th Cir. BAP 2006).

The bankruptcy court dismissed the Lindseys' chapter 13 case after finding that they were not eligible to be debtors under § 109(e).[9] As might be expected, if a debtor is not eligible for

[9] There is no indication in the record that the bankruptcy court addressed the good faith issues raised by Cohen. Those arguments were also not addressed in the briefs on appeal, and we do not consider them.

relief under chapter 13, that is cause for dismissal under § 1307(c). 8 COLLIER ON BANKRUPTCY ¶ 1307.04 (Alan N. Resnick & Henry J. Sommer, 15th ed. rev. 2005).

Section 109(e) provides:

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $336,900 and noncontingent, liquidated, secured debts of less than $1,010,650, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $336,900 and noncontingent, liquidated, secured debts of less than $1,010,650 may be a debtor under chapter 13 of this title.

§ 109(e). Under the Code, a debt means "liability on a claim." § 101(12). A "claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured[.]" § 101(5)(A). Applying these definitions, in order for the Lindseys to be eligible for relief under chapter 13 and § 109(e), the aggregate of their noncontingent, liquidated unsecured debts must be less than $336,900.

The amount of a debtor's debt for chapter 13 eligibility purposes under § 109(e) is normally determined by reference to the schedules. Scovis v. Henrichsen (In re Scovis), 249 F.3d 975, 982 (9th Cir. 2001). The Lindseys listed an unsecured, priority claim held by the IRS in the amount of $9,559,587 on Schedule E. There is no suggestion by the Lindseys that the IRS claim, or any portion of it, is secured. Indeed, the Lindseys

listed this debt on Schedule E, where "Creditors Holding Unsecured Priority Claims" are listed.

There is likewise no basis to suggest that the IRS claim is contingent. "A contingent liability for bankruptcy purposes is 'one which 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.'" Duplessis v. Valenti (In re Valenti), 310 B.R. 138, 148 (9th Cir. BAP 2004) (quoting Fostvedt v. Dow (In re Fostvedt), 823 F.2d 305, 306-07 (9th Cir. 1987). Here, the Lindseys acknowledge that a judgment has been entered against them by the district court for tax liabilities owed to the IRS. "[A] debt is noncontingent if all events giving rise to liability occurred prior to the filing of the bankruptcy petition." Nicholes v. Johnny Appleseed of Wash. (In re Nicholes), 184 B.R. 82, 88 (9th Cir. BAP 1995). And courts have concluded that prepetition tax debts are noncontingent:

> It is now broadly recognized that tax debts for prepetition tax periods are not contingent because all of the events necessary to fix liability have occurred, notwithstanding that the taxes were not assessed before the petition or that the time for payment comes after the petition.

1 Keith M. Lundin, CHAPTER 13 BANKRUPTCY § 15.1, at p. 15-5 (3rd ed. 2000 & Supp. 2004) (citing In re Geary, 2003 WL 68080 (9th Cir., January 8, 2003); Mazzeo v. United States (In re Mazzeo), 131 F.3d 295 (2d Cir. 1997); Barcal v. Laughlin (In re Barcal), 213 B.R. 1008, 1013 (8th Cir. BAP 1997).

The IRS claim against the Lindseys is clearly not contingent. The Lindseys apparently concede this point, because

if a claim is contingent, unliquidated or disputed, there are boxes on Schedule E that debtors may check to alert others and the bankruptcy court of that fact. The Lindseys checked only the "Disputed" box on their Schedule E.

The Lindseys also do not contend, nor can they, that the IRS claim is unliquidated. "In the Ninth Circuit, a debt is liquidated for purposes of calculating chapter 13 eligibility if the amount of the debt is readily ascertainable." In re Guastella, 341 B.R. at 916 (citing Slack v. Wilshire Ins. Co. (In re Slack), 187 F.3d 1070, 1073-75 (9th Cir. 1999)). The amount of debt here is readily ascertainable, as the IRS holds a judgment of $9,559,587 against the Lindseys. The Lindseys have listed that amount as the amount due on this claim on their Schedule E.

The Lindseys, no doubt, dispute that they owe the debt represented by the District Court Judgment. Indeed, they are appealing that judgment. However, that a claim is disputed by a debtor does not require it to be excluded from the § 109(e) eligibility calculation. As this Panel has observed:

> [W]e hold that the fact that a claim is disputed does not per se exclude the claim from the eligibility calculation under § 109(e), since a disputed claim is not necessarily unliquidated. So long as a debt is subject to ready determination and precision in computation of the amount due, then it is considered liquidated and included for eligibility purposes under § 109(e), regardless of any dispute. On the other hand, if the dispute itself makes the claim difficult to ascertain or prevents the ready determination of the amount due, the debt is unliquidated and excluded from the § 109(e) computation.

Nicholes, 184 B.R. at 90-91 (emphasis added); see also In re

Scovis, 249 F.3d at 983-84; In re Slack, 187 F.3d at 1074-75.

The Lindseys' challenge to the IRS claim is apparently grounded in their belief that the United States' banking and monetary system is fundamentally flawed. Their arguments concerning their liability for this claim do not address the amount of the District Court Judgment specifically. As such, the IRS claim amount is readily ascertainable and was properly included in the bankruptcy court's determination of the Lindseys' eligibility for relief under the § 109(e) debt limits.

The bankruptcy court had before it a copy of the District Court Judgment. A minute entry entered in the docket on September 17, 2008 indicates that the bankruptcy court required the Lindseys to submit a copy of the District Court Judgment, together with a copy of the district court docket, by October 1, 2008. That information was provided by the Lindseys on October 2, 2008, (BK Docket No. 15).

Given the record before it, including the Lindseys' own schedules of debt and the District Court Judgment, we conclude that the bankruptcy court did not err in finding that the Lindseys' unsecured, liquidated, noncontingent debts exceeded the statutory limits provided in § 109(e), rendering the Lindseys ineligible to be debtors under chapter 13. Because they were not eligible for chapter 13 relief, adequate cause existed under § 1307(c) to dismiss the Lindseys' chapter 13 case. When the Lindseys did not avail themselves of the opportunity granted by the bankruptcy court to convert their case to a case under chapter 11 or chapter 7, the bankruptcy court did not abuse its discretion by dismissing the case.

CONCLUSION

The order of the bankruptcy court dismissing the Lindseys' chapter 13 bankruptcy case is AFFIRMED.