

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:05-bk-15294-ABB
Chapter 7

ROBERT JOSEPH BROWN,

Debtor.

ORDER

This matter came before the Court on State Farm's Motion to Dismiss Bankruptcy Case ("Motion to Dismiss") (Doc. No. 38) filed by State Farm Mutual Automobile Insurance Company and State Farm Fire & Casualty Company (collectively, "State Farm") and the Chapter 13 Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. § 109(e) filed by Laurie K. Weatherford, the Chapter 13 Standing Trustee ("Trustee"). A hearing on the dismissal motions was held on May 16, 2006 at which Robert Joseph Brown, the Debtor herein (the "Debtor"), counsel for the Debtor, counsel for the Trustee, and counsel for State Farm appeared.

The Debtor instituted this Chapter 13 case on October 14, 2005 ("Petition Date") by filing a "bare bones" petition listing estimated debts in the amount of \$100,001 to \$500,000. (Doc. No. 1.) He filed a Summary of Schedules with Schedules A through J on November 8, 2005 listing secured claims of \$138,383.15 and unsecured claims of \$113,798.28. (Doc. No. 7) Several creditors scheduled in Schedule F, including State Farm, are listed as holding claims in "unknown" amounts. The bar date for filing claims was March 1, 2006. State Farm timely filed a proof of claim, Claim No. 3, asserting an unsecured nonpriority claim against the Debtor in the amount of \$5,466,366.72. State Farm and the Trustee, relying on Claim No. 3, contend the Debtor is not eligible for Chapter 13 relief because the debt owed to State Farm exceeds the \$307,675 debt ceiling set forth in 11 U.S.C. § 109(e).

State Farm's Proof of Claim is based upon State Farm's allegations the Debtor, and others working together, submitted fraudulent medical reports and invoices for unnecessary electrodiagnostic tests performed (or not performed) on automobile accident victims. State Farm instituted a civil suit against the Debtor and other

defendants which is currently pending in the United States District Court for the Middle District of Florida, Orlando Division, and is set for trial in August 2006 (the "District Court Litigation"). State Farm seeks to recover damages against the Debtor pursuant to the federal racketeering statutes, 18 U.S.C. § 1961 *et seq.* ("RICO"), and Florida common law fraud.

State Farm asserts the Debtor submitted fraudulent invoices totaling \$1,822,122.24 and application of the treble damages provision of the RICO statutes results in a total claim of \$5,466,366.72. State Farm contends its claim is liquidated. The Debtor, through his Objection to Claim Number 3 (Doc. No. 56), disputes any underlying liability to State Farm and the amount of State Farm's claim. Objection at ¶¶ 1, 2. State Farm and "all subsidiaries" are listed in Schedule F as holding unliquidated and disputed claims for "2004 any possible future claim against debtor."

Section 109(e) of the Bankruptcy Code 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 \$307,675 and noncontingent, liquidated secured debts of less than \$922,975 . . . may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e) (2005). The terms "liquidated" and "unliquidated" are not defined in the Bankruptcy Code or its legislative history. The Eleventh Circuit Court of Appeals determined, relying on *Black's Law Dictionary*, a "liquidated debt" for purposes of 11 U.S.C. § 109(e) "is that which has been made certain as to amount due by agreement of the parties or by operation of law." U.S. v. Verdunn, 89 F.3d 799, 802 (11th Cir. 1996). Where a debt is "easily ascertainable" through the application of a fixed legal standard (*i.e.* ascertaining a tax deficiency through application of criteria established in the Internal Revenue Code for calculating underpayment and penalties, or a debt arising from parking traffic convictions pursuant to a municipal code), the debt is liquidated. Id. at 803.

There has been no determination as to whether the Debtor is indebted to State Farm in any amount.¹ The automatic stay has not been lifted in this case, nor has stay relief been requested, for the

¹ The bankruptcy court in Verdunn granted relief from the automatic stay to allow the parties to go forward with the Tax Court trial. The Tax Court issued a memorandum opinion sustaining the determination of the debtor's tax deficiencies and finding he filed fraudulent returns.

determination of the issues of liability and indebtedness in the District Court Litigation. State Farm's debt, on the Petition Date, had not been made certain as to the amount due by either agreement of the parties or operation of law. The amount of State Farm's debt is not easily ascertainable through the application of a fixed legal standard nor is it evident from a statutory notice.

The Debtor would be denied due process of law if he was denied Chapter 13 eligibility at this stage in his proceedings. No plan has been confirmed and the merits of State Farm's claim are undetermined. State Farm's claim was an unsecured unliquidated debt on the Petition Date and cannot be included in the 11 U.S.C. § 109(e) eligibility calculation.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that State Farm's and the Chapter 13 Trustee's Motions to Dismiss are hereby **DENIED**.

Dated this 23rd day of June, 2006.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge