

ORDERED.

Dated: July 16, 2021


Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:17-bk-07843-FMD
Chapter 7

Gabriel C. Murphy,

Putative Debtor.

ORDER GRANTING PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT ON INVOLUNTARY PETITION; DENYING PETITIONING CREDITORS' MOTION FOR SANCTIONS; AND DENYING DEBTOR'S *ORE TENUS* MOTION TO CONTINUE HEARING AND RESPOND TO DISCOVERY

This involuntary Chapter 7 case came before the Court for a Zoom video hearing on June 22, 2021, on the *Motion for Summary Judgment on Involuntary Petition* (the "Summary Judgment Motion")¹ and *Motion for Sanctions* (the "Sanctions Motion")² (collectively, the "Motions") filed by Investment Theory, LLC ("Investment Theory"), Digital Technology, LLC ("Digital Technology"), Guaranty Solutions Recovery Fund I, LLC ("Guaranty Solutions"), and William M. Scheer and Laurence G. Scheer (collectively, the "Scheers") (collectively, "Petitioning Creditors").

¹ Doc. No. 295.

² Doc. No. 294.

David Jennis, Esq., R. Clay Mathews, Esq., and Richard Thames, Esq., appeared on behalf of Petitioning Creditors. The putative debtor, Gabriel C. Murphy (“Debtor”), appeared on his own behalf.

At the commencement of the hearing, Debtor advised the Court that he had been working out of the country for months, and he requested that the Court continue the hearing for a period of three weeks. The Court reviewed the record, including the following: (1) on January 22, 2021, after the District Court entered its January 6, 2021 order remanding the case to this Court to conduct further proceedings consistent with the District Court’s ruling,³ Debtor filed three motions with the Court via email;⁴ (2) Debtor was served with several Court orders and notices of hearing by mail and by email;⁵ (3) Debtor failed to appear, by video or by telephone, at hearings conducted on February 24, 2021, May 5, 2021, and June 1, 2021; (4) on May 29, 2021, Petitioning Creditors served their Summary Judgment Motion on Debtor by mail and by email;⁶ and (5) on June 4, 2021, Petitioning Creditors served Debtor with the Court’s *Order on the Pretrial Conference*, which set the hearing on the Summary Judgment Motion for June 22, 2021, and permitted Debtor to file a response no later than June 21, 2021.⁷

After Debtor acknowledged having received copies of the hearing notices and the Summary Judgment Motion, and confirmed that he had not responded to them, the Court denied his *ore tenus* motion for a continuance⁸ and proceeded with the hearing on the Summary Judgment Motion.

At the conclusion of Petitioning Creditors’ presentation, the Court asked Debtor if he wished to respond to the Summary Judgment Motion. In response, Debtor stated that he believed Petitioning

³ Doc. No. 251.

⁴ Doc. Nos. 252, 253, and 254.

⁵ Doc. Nos. 279, 286, and 290.

⁶ Doc. No. 295.

⁷ Doc. Nos. 297, 298, and 301.

⁸ Doc. No. 303.

Creditors filed the involuntary petition for the purpose of allowing one of the Petitioning Creditors, Investment Theory, to control certain pending litigation that Debtor had filed against Investment Theory and others in the State of Kansas; however, Debtor did not deny or rebut any of the facts presented by Petitioning Creditors as the undisputed facts that establish that Debtor, as of the Petition Date, was not generally paying his debts as they became due.

Accordingly, having considered the Summary Judgment Motion and the arguments of counsel for Petitioning Creditors and Debtor, and being otherwise advised in the premises, the Court makes the following findings:

I. BACKGROUND

A. Debtor

Debtor previously was involved in several failed real estate ventures in Kansas and Missouri. On September 24, 2012, Union Bank obtained a judgment against Debtor in the United States District Court in Missouri in an amount exceeding \$1,555,592.36 (the “Union Bank Judgment”),⁹ and on October 30, 2012, M&I Marshall & Ilsley Bank obtained a judgment against Debtor in the state court in Kansas in the amount of \$1,949,676.49 (the “M&I Bank Judgment”).¹⁰

B. Petitioning Creditors and Their Claims

Digital Technology is a Nevis limited liability company and the holder of a \$200,000.00 Promissory Note executed by Crowd Shout, Ltd., in its favor. On August 10, 2012, Debtor executed an “unconditional” personal guaranty of the Promissory Note (the “Guaranty”).¹¹ Debtor has not made any payments toward or otherwise satisfied the debt owed under the Guaranty.

⁹ Doc. No. 295-1, pp. 13-38.

¹⁰ Doc. No. 295-1, pp. 39-42.

¹¹ Doc. No. 295-1, pp. 8-12.

Investment Theory is a Delaware limited liability company that acquired the Union Bank Judgment from Arvest, as successor to Union Bank, on January 9, 2017.¹² The Union Bank Judgment has not been stayed or appealed. Debtor has not made any payments toward or otherwise satisfied the Union Bank Judgment and it has been accruing interest since September 24, 2012.

Guaranty Solutions is an Arizona limited liability company that, on May 5, 2016, acquired the M&I Bank Judgment from BMO Harris Bank, N.A., as successor to M&I Marshall & Ilsley Bank.¹³ The M&I Bank Judgment has not been stayed or appealed. Debtor has not made any payments toward or otherwise satisfied the M&I Bank Judgment.

The Scheers are the holders of a judgment against Debtor entered by the state court in Kansas on June 30, 2011, in the amount of \$55,997.58 (the “Scheer Judgment”).¹⁴ The Scheer Judgment has not been stayed or appealed. Debtor has not made any payments toward or otherwise satisfied the Scheer Judgment, which has been accruing interest at \$25.37 per day since June 30, 2011.

C. The Involuntary Case

On September 5, 2017, after Debtor had moved to Lee County, Florida, the three original Petitioning Creditors, Investment Theory, Digital Technology, and Guaranty Solutions, filed an involuntary Chapter 7 petition against Debtor in the Bankruptcy Court for the Middle District of Florida (the “Involuntary Petition”).¹⁵ On March 27, 2018, the Scheers filed a Joinder to the involuntary petition.¹⁶

¹² Doc. No. 295-1, pp. 29-38.

¹³ Doc. No. 295-1, pp. 41-42.

¹⁴ Doc. No. 295-1, pp. 43-45.

¹⁵ Doc. No. 1.

¹⁶ Doc. No. 153.

Debtor contested the Involuntary Petition by filing a *Motion to Dismiss Involuntary Bankruptcy Petition* (the “Motion to Dismiss”),¹⁷ initially challenging Digital Technology’s and Investment Theory’s eligibility to file and their motivations for filing the Involuntary Petition.

Following a five-day trial conducted in March and May of 2018, this Court denied Debtor’s Motion to Dismiss and entered its *Order Denying Motion to Dismiss Involuntary Bankruptcy Petition and Granting Alleged Debtor’s Request for Abstention* (the “Abstention Order”).¹⁸ In the Abstention Order, the Court ruled that: (1) the original Petitioning Creditors did not file the case in bad faith; (2) no bona fide dispute existed as to the claims of Digital Technology and Guaranty Solutions; and (3) Investment Theory did not acquire its claim, the Union Bank Judgment, for the purpose of filing the Involuntary Petition and was not an alter ego of Digital Technology.¹⁹

The Court’s ruling supported a finding that the involuntary case satisfies the requirements of 11 U.S.C. § 303(b)(1) because it was filed by three or more entities, each of which was the holder of a claim against Debtor that was not contingent as to liability or the subject of a bona fide dispute, that aggregated at least \$16,750.00 more than the value of any lien on Debtor’s property securing such claims. However, the Court elected to abstain from hearing the Involuntary Petition under 11 U.S.C. § 305(a).²⁰ Petitioning Creditors appealed the Abstention Order,²¹ and Debtor filed a *Motion to Remand for Retrial on All Issues Before the Bankruptcy Court* in the District Court (the “Motion to Remand”).²²

On January 5, 2021, the United States District Court entered its order that (1) denied Debtor’s Motion to Remand, (2) and reversed and vacated the Court’s ruling on abstention on the grounds that

¹⁷ Doc. No. 7.

¹⁸ Doc. No. 224.

¹⁹ Doc. No. 224, pp. 23-31.

²⁰ Doc. No. 224, p. 41.

²¹ Doc. No. 237; United States District Court Case No. 2:19-cv-631-JES.

²² United States District Court Case No. 2:19-cv-631-JES, Doc. No. 62.

(a) Petitioning Creditors had inadequate notice of the issue, and (b) this Court applied the wrong legal standard for abstention under 11 U.S.C. § 305(a).²³ The District Court then remanded the case back to this Court with the direction “to proceed with the matter pursuant to 11 U.S.C. § 303(h).”²⁴ Notably, the District Court stated that this Court’s rulings were vacated “*as to the issue of abstention only*.”²⁵

D. Proceedings Subsequent to Remand

In January 2021, after entry of the District Court’s order, Debtor filed three motions in this Court via email: (1) a *Verified Motion for Relief From Automatic Stay*;²⁶ (2) a *Renewed Motion to Require Petitioning Creditors to Post Indemnity Bond Pursuant to 11 U.S.C. § 303(e)*;²⁷ and (3) a *Motion to Compel Discovery*.²⁸ The Court held a hearing via Zoom on the three motions on February 24, 2021. Debtor was served by mail with notice of the February 24, 2021 hearing, but he did not attend.²⁹ The Court denied Debtor’s motions at the February 24 hearing,³⁰ and Debtor was served, by mail and by email, with copies of the Court’s orders denying the motions.³¹

On March 3, 2021, the Court entered its *Order Scheduling Trial* which provided that a “trial in the contested matter arising from the 303(h) Issue (Document No. 278) filed by Petitioning Creditors . . . will be held on June 22, 2021, at 9:30 AM”³² The order was served on Debtor.³³

Also on March 3, 2021, Petitioning Creditors served Debtor, by mail and by email, with a *Renewed Request for Production of Documents to Debtor* (the “RFP”).³⁴ The RFP, in pertinent part,

²³ Doc. No. 251.

²⁴ *Id.* at p. 24.

²⁵ *Id.* at p. 2 (emphasis supplied).

²⁶ Doc. No. 252.

²⁷ Doc. No. 253.

²⁸ Doc. No. 254.

²⁹ Doc. Nos. 257, 258, 259, 260, 261, and 262.

³⁰ Doc. Nos. 274, 275, and 276.

³¹ Doc. No. 277.

³² Doc. No. 280.

³³ Doc. No. 281.

³⁴ Doc. No. 295-1, pp. 96-106.

requested documents relating to either the payment or attempts to pay enumerated debts and judgments, any documents that would support a bona fide dispute as to such debts, and documents relating to Debtor's income taxes, alimony, spousal support, child support, and other obligations.³⁵

Debtor neither filed a response to the RFP nor did he produce any documents. On April 16, 2021, Petitioning Creditors filed a *Motion to Compel* (the "Motion to Compel")³⁶ and served it on Debtor by mail. The Court scheduled a hearing on the Motion to Compel for May 5, 2021. Debtor was served with notice of the May 5, 2021 hearing by mail and by email,³⁷ but he did not attend the hearing.

On May 7, 2021, the Court granted the Motion to Compel in its *Order (i) Granting Petitioning Creditors' Motion to Compel, and (ii) Scheduling a Pretrial Conference*, ordering Debtor to produce documents responsive to the RFP by May 21, 2021, and setting a pretrial conference for June 1, 2021.³⁸ Debtor was served with the order by mail and by email,³⁹ but he failed to produce any documents responsive to the RFP.

On May 26, 2021, Petitioning Creditors filed their *Motion for Sanctions*, and on May 29, 2021, they filed the Summary Judgment Motion. Petitioning Creditors served Debtor with both motions by mail and by email.⁴⁰

On June 1, 2021, the Court held a Pretrial Conference. Although Debtor had been served with notice of the Pretrial Conference by mail and by email,⁴¹ he did not attend. On June 1, 2021, the Court entered its *Order on the Pretrial Conference*,⁴² scheduling a hearing on the Sanctions Motion and the

³⁵ Doc. No. 295-1, Requests No. 5, 6, and 51.

³⁶ Doc. No. 282.

³⁷ Doc. No. 286.

³⁸ Doc. No. 289.

³⁹ Doc. No. 290.

⁴⁰ Doc. Nos. 294 and 295.

⁴¹ Doc. Nos. 289, 290.

⁴² Doc. No. 297.

Summary Judgment Motion for June 22, 2021, and rescheduling the trial for August 3, 2021. The order further provided that any response by Debtor to the Summary Judgment Motion must be filed by June 21, 2021. Although the order was served on Debtor by mail and by email, Debtor failed to file any response or to submit any evidence in opposition to the Summary Judgment Motion.⁴³

E. Debtor's Debts

On December 27, 2017, Debtor's then-attorney filed Debtor's *List of Creditors as of September 5, 2017* (the "Rule 1003(b) List").⁴⁴ The Rule 1003(b) List, which was attached as an exhibit to the Summary Judgment Motion, is as follows:⁴⁵

	<u>Creditor Details</u>	<u>Claim</u>	<u>Nature</u>	<u>Status</u>
1	Commercial Law Group, P.A. 4701 College Boulevard, Suite 204 Leawood, KS 6211	\$50,263.84	Promissory Note	Uncontested
2	Deborah Murphy 421 La Perouse Street Lehigh Acres, FL 33974	\$573,850.13	Promissory Note	Uncontested
3	Cory Lagerstrom 4603 Homestead Drive Prairie Village, KS 66208	\$751,729.78 + interest	Purported Legal Claim	Contested
4	Stephanie Milne 15642 Consor Street Overland Park, KS 66223	\$1,041,077.01 + interest	Judgment	Uncontested
5	Crowd Shout Holdings, Ltd. 45/13 Straight Street Valletta, Malta	£142,093.35	Purported Legal Claim	Contested

⁴³ Debtor's status as a *pro se* party does not excuse him from submitting affidavits or other evidence in opposition to the summary judgment. *Cummings v. Department of Corrections*, 757 F.3d 1228, 1233 n. 10 (11th Cir. 2014) (quoting *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) ("The right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law.")).

⁴⁴ Doc. No. 48. On November 7, 2017, Petitioning Creditors filed a *Motion to Compel Debtor to Comply with Rule 1003(b)*, and the Court granted the motion on December 4, 2017 (Doc. Nos. 18 and 25). Fed. R. Bankr. P. 1003(b) provides that "[i]f the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof."

⁴⁵ Doc. No. 295-1, pp. 2-5. (This table (reformatted for inclusion in this Order) mirrors Debtor's table included in his Rule 1003(b) List. Although the tables end with the number 29, Debtor's table omitted the number 25.)

6	Capital One P.O. Box 30285 Salt Lake City, UT 84130	\$27,699.54	Credit Card	Uncontested
7	Investment Theory, LLC 149 South Ridgewood Avenue, Suite 700 Daytona Beach, FL 32114	\$2,137,051.86	Judgment	Contested
8	Mid-America Apartments, L.P. 13601 Foster Street Overland Park, KS 66223	\$1,199.00	Contract	Contested
9	Protzman Law Firm, P.A. 1100 Main Street, Suite #2430 Kansas City, Missouri 64105	\$165,827.48	Promissory Note	Uncontested
10	Guaranty Solutions Recovery Fund 1, LLC 1347 North Greenfield Road, Suite 103 Mesa, Arizona 85205	\$4,451,742.92	Judgment	Uncontested
11	Plaintiff in 15CV00453 Bridge Chambers, West Quay Ramsay, Isle of Man IM99 4PD	> \$75,000 + Interest	Purported Legal Claim	Contested
12	Dr. Joseph R. Pace 58 Flat 3, High Street Sliema, Malta SLM 1543	€18 028.30	Promissory Note	Uncontested
13	Appleby 33 – 37 Athol Street Douglas, Isle of Man IM1 1LB	£12,608.41	Promissory Note	Uncontested
14	Santander Consumer USA Inc. P.O. Box 961245 Fort Worth, TX 76161-1245	\$32,734.86	Automobile Loan	Uncontested
15	Rogina Murphy 7719 West 156th Street Overland Park, KS 66223	~\$6,100.00	Contract	Uncontested
16	The Pickering Law Firm, P.A. 130 North Cherry Street Olathe, KS 66061	\$20,004.11	Promissory Note	Uncontested
17	Digital Technology, LLC 149 South Ridgewood Avenue, Suite 700 Daytona Beach, FL 32114	\$325,664.45	Promissory Note	Contested
18	Joy Wilner 7901 Falmouth Street Prairie Village, KS 66208	\$25,000.00	Promissory Note	Uncontested
19	CobraGuard, Inc. 6910 West 83rd Street, Suite 200 Overland Park, KS 66204	\$52,732.46	Judgment	Contested
20	Wolfe 401(k) PSP 4804 West 147th Place Overland Park, KS 66223	\$148,155.00 + interest	Promissory Note	Uncontested

21	Johnson, Ballwag & Modrcin, P.A. 9393 West 110th Street, Suite 450 Overland Park, KS 66210	\$35,381.15	Promissory Note	Uncontested
22	Internal Revenue Service 1111 Constitution Avenue NW Washington, DC 20224	Unknown	Taxes	Contested
23	Wilner Financial, LLC 7901 Falmouth Street Prairie Village, KS 66208	\$25,000	Promissory Note	Uncontested
24	Thomas Riccolo 637 South Edgewater Drive Morris, IL 60450	\$500,000.00 + interest	Promissory Note	Uncontested
26	Colantuono Bjerg Guinn, LLC 7515 College Boulevard, Suite 375 Leawood, KS 66211	\$32,489.55	Promissory Note	Uncontested
27	The Katz Law Firm, P.A. 722 Metcalf Avenue Overland Park, KS	\$75,000	Purported Legal Claim	Contested
28	Heatwole Law Firm, P.A. 1415 East Robinson Street, Suite B Orlando, FL 32801	Unknown	Promissory Note	Uncontested
29	Nicholas J. Gaugler 16868 Bluejacket Overland Park, KS 66202	~ \$1,300	Unknown	Contested

The Rule 1003(b) List identifies more than \$7 million in uncontested debts owed by Debtor to 15 creditors, not including two uncontested debts described in foreign currency and an uncontested debt in an unknown amount.

In addition to the debts listed on the Rule 1003(b) List, the following judgments (the “Judgments”) have been entered against Debtor:

- (1) The Scheer Judgment dated June 30, 2011, in the amount of \$55,997.58;⁴⁶
- (2) A judgment in favor of Kenny’s Tile & Floor Covering, Inc., dated March 29, 2011, in the amount of \$3,481.00;⁴⁷
- (3) A judgment in favor of Clopton Capital Lending, LLC, dated September 27, 2011, in the amount of \$104,864.96;⁴⁸

⁴⁶ Doc. No. 295-1, pp. 43-45.

⁴⁷ *Id.* at p. 46.

⁴⁸ *Id.* at pp. 49-50.

- (4) A judgment in favor of Gary Fish dated December 9, 2009, in the amount of \$227,667.31;⁴⁹
- (5) A judgment in favor of C. Floyd Anderson and R. Pete Smith dated May 21, 2014, in the amount of \$371,891.26;⁵⁰
- (6) A judgment in favor of Discover Bank dated September 28, 2012, in the amount of \$12,474.73;⁵¹
- (7) A judgment in favor of Jeff Hoge Concrete, LLC, dated February 22, 2007, in the amount of \$29,744.00;⁵² and
- (8) A judgment in favor of Malnar Construction Co, Inc., dated April 13, 2009, in the amount of \$713,636.01.⁵³

The above Judgments total more than \$1.5 million of additional debt owed by Debtor to eight judgment creditors that were not reflected on the Rule 1003(b) List.

In the over three-year period since Debtor's then-attorney filed the Rule 1003(b) List with the Court, and despite Petitioning Creditors' reliance on the Rule 1003(b) List to support the Summary Judgment Motion, Debtor has never sought to amend, correct, or reject the list's description of his creditors and their claims.

II. ANALYSIS

A. Summary Judgment Standard

Federal Rule of Civil Procedure 56 applies in contested matters through application of Federal Rules of Bankruptcy Procedure 7056 and 9014.⁵⁴ Contested matters involving involuntary petitions under § 303(h)(1) may be resolved by summary judgment under Federal Rule of Bankruptcy Procedure 1013, which mandates that courts "determine the issues of a contested petition at the

⁴⁹ *Id.* at pp. 52-57.

⁵⁰ *Id.* at pp. 58-63.

⁵¹ *Id.* at p. 66.

⁵² *Id.* at p. 67.

⁵³ *Id.* at pp. 68-75.

⁵⁴ Fed. R. Bankr. P. 7056, 9014(c).

earliest practicable time.”⁵⁵ The “earliest practicable time” to determine a contested involuntary petition “is when there is sufficient information to resolve the conflict before the court.”⁵⁶

Specifically, Rule 56 states that a “party may move for summary judgment” and the “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The party moving for summary judgment initially bears the burden of establishing the absence of a genuine issue as to any material fact.⁵⁷ That burden can be satisfied by demonstrating the absence of evidence supporting the non-movant’s case.⁵⁸ Once established, the party opposing the motion for summary judgment bears the burden to respond.⁵⁹

B. Debtor is not generally paying his undisputed debts as they become due.

The sole issue before the Court on remand is whether, under § 303(h)(1), Debtor is generally not paying his debts as they become due.

Courts have noted that “[t]here is no exact formula for determining whether an alleged debtor is generally not paying its debts; this test is subject to considerable flexibility and judicial discretion.”⁶⁰ In determining whether a debtor is generally paying its debts as they become due, courts can “compare the number of debts unpaid each month to those paid, the amount of the delinquency, the materiality of the non-payment, and the nature of the debtor’s conduct of its financial affairs.”⁶¹

⁵⁵ *In re Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.*, 779 F.2d 471, 474-75 (9th Cir. 1985) (entry of summary judgment on a contested involuntary petition is “unquestionably a literal compliance with Rule 1013.”).

⁵⁶ *Id.* at 475.

⁵⁷ *Celotex Corporation v. Catrett*, 477 U.S. 317, 322-25, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *In re Bos*, 561 B.R. 868, 897 (Bankr. N.D. Fla 2016).

⁶¹ *General Trading Inc. v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1504 n. 41 (11th Cir. 1997) (quoting *In re Leek Corp.*, 52 B.R. 311, 314 (Bankr. M.D. Fla. 1985)).

Notably, the “‘generally not paying’ test is to be applied as of the date of filing of the involuntary petition.”⁶²

Here, Debtor has offered *no* evidence that he was paying any debts each month. But there is abundant evidence that Debtor had failed to pay significant debts as of the filing of the Involuntary Petition on September 5, 2017. The evidence includes the following undisputed documents attached to the Summary Judgment Motion:

(1) *Debtor’s List of Creditors as of September 5, 2017*, filed in this case and identifying more than \$7 million in uncontested debts owed by Debtor;⁶³

(2) an *Order of Confinement* entered by the state court in Kansas in February 2012 based on Debtor’s failure to deliver a vehicle to M&I Marshall & Ilsley Bank pursuant to a prior order;⁶⁴

(3) Debtor’s August 2012 Guaranty of the \$200,000.00 Promissory Note to Digital Technology;⁶⁵

(4) the Union Bank Judgment dated September 24, 2012, in the amount of \$1,555,592.36;⁶⁶

(5) the M&I Bank Judgment dated October 30, 2012, in the amount of \$1,949,676.49;⁶⁷

(6) the Scheer Judgment dated June 30, 2011, in the amount of \$55,997.58;⁶⁸ and

(7) the series of Judgments entered against Debtor between 2007 and 2014, ranging in amount from \$3,481.00 to \$713,636.01 and totaling approximately \$1.5 million.⁶⁹

⁶² *In re Bishop, Baldwin*, 779 F.2d at 475 (citing *In re JV Knitting Services, Inc.*, 4 B.R. 597, 598 (Bankr. S.D. Fla. 1980)).

⁶³ Doc. No. 48; Doc. No. 295-1, pp. 2-5.

⁶⁴ Doc. No. 295-1, pp. 6-7.

⁶⁵ *Id.* at pp. 8-12.

⁶⁶ *Id.* at pp. 13-38. The judgment was assigned to Investment Theory in January 2017.

⁶⁷ *Id.* at pp. 39-42. The judgment was assigned to Guaranty Solutions in May 2016.

⁶⁸ *Id.* at pp. 43-45.

⁶⁹ *Id.* at pp. 46-75.

Accordingly, the evidence shows that Debtor's unpaid debts vastly outweigh any debts that Debtor may have paid each month. And even if Debtor were to show that he is paying some small consumer or operational debts every month – which he has not – the large amount of his outstanding debt supports a finding that he is generally not paying his debts as they become due under § 303(h).⁷⁰

III. CONCLUSION

The Court finds that Debtor has received adequate notice and an opportunity to be heard during these proceedings and, accordingly, has received adequate due process.

Given the amount of Debtor's unpaid debt and the judgments against him, together with a lack of evidence that Debtor is paying the debts or that the debts are in bona fide dispute, the Court finds that there is no genuine dispute of material fact on the issue whether Debtor is generally not paying his debts as they become due.

Based on the above, the Court finds that Petitioning Creditors have met their burden under 11 U.S.C. § 303(h). Therefore, under Federal Rule of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7056, 9014, and 1013, Petitioning Creditors are entitled to summary judgment as a matter of law on the issue of whether Debtor is generally not paying his debts as they become due.

Further, because the Court found in the Abstention Order that Petitioning Creditors have met the requirements of 11 U.S.C. § 303(b)(1), the Court will direct the entry of an order for relief under Chapter 7 against Debtor.

⁷⁰ *In re Hill*, 5 B.R. 79, 83 (Bankr. D. Minn. 1980) (the debtor was not paying his debts as they become due where, although the debtor paid small consumer creditors, he had three overwhelming unpaid debts totaling over \$1.4 million); *see also In re International Oil Trading Company, LLC*, 545 B.R. 336, 358 (Bankr. S.D. Fla. 2016) (debtor's payment of ongoing expenses was insufficient to constitute payment of debts as they become due where it had an overwhelming portion of unpaid obligations).

Accordingly, it is

ORDERED:

1. Petitioning Creditors' Summary Judgment Motion is GRANTED.
2. The Clerk of Court is hereby directed to enter an order for relief against Debtor under Chapter 7 of the Bankruptcy Code.
3. Petitioning Creditors' Sanctions Motion is DENIED as moot given the granting of the Summary Judgment Motion.
4. Debtor's *Ore Tenus* Motion to Continue Hearing and Respond to Discovery is DENIED.
5. The trial previously scheduled for August 3, 2021, pursuant to the *Order on the Pretrial Conference*, is cancelled.

David Jennis, Esq., is directed to serve this Order on Debtor by mail and by email at gabriel@gabrielmurphy.com, and to file a proof of service of same within 3 days of the entry of this Order.