

ORDERED.

Dated: April 27, 2022



Grace E. Robson
United States Bankruptcy Judge

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

In re)	
)	
Rosimeri C. Clements,)	Case No. 6:21-bk-05701-GER
)	Chapter 13
Debtor.)	
_____)	

**ORDER (1) GRANTING MOTION TO DISMISS CASE
AND (2) DISMISSING CASE WITHOUT PREJUDICE**

This case came before the Court on April 20, 2022, at 1:30 p.m. for consideration of the Motion to Dismiss¹ filed by Blair Clements (the “Creditor”) and the Response² filed by Rosimeri C. Clements (the “Debtor”). The Creditor seeks dismissal asserting the Debtor’s non-contingent, liquidated, unsecured debts exceed the \$419,275.00 limit contained in section 109(e) of the Bankruptcy Code.³ The Debtor asserts she is within the statutory debt limits because the proofs of claim filed in the case total \$309,428.55, and there is a pending objection to the Creditor’s claim.⁴

Section 109(e) limits eligibility to be a debtor under Chapter 13 of the Bankruptcy Code to individuals with regular income who owe, on the date of the filing of the petition, “noncontingent,

¹ *Motion to Dismiss Case Pursuant to Section 109(e) of the Bankruptcy Code* (the “Motion to Dismiss”) (Doc. No. 27).

² *Response to Motion to Dismiss Pursuant to Section 109(e) of the Bankruptcy Code* (the “Response”) (Doc. No. 36).

³ Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.

⁴ Doc. No. 36.

liquidated, unsecured debts of less than \$419,275 and noncontingent, liquidated, secured debts of less than \$1,257,850.”⁵ A debtor’s eligibility is jurisdictional.⁶ “Debts are measured as of the day the petition is filed.”⁷ “The debtor’s sworn bankruptcy schedules are the starting point when considering eligibility.”⁸ If allegations of bad faith are asserted, the court may consider other matters in the record.⁹ Here, the Creditor asks the Court to consider the proof of claim it filed to determine the Debtor’s eligibility to be a debtor under Chapter 13 based on the entry of final orders in state court. While the phrase “bad faith” was not explicitly stated on the record, the Creditor’s argument placed the Debtor’s good faith at issue.

The Debtor filed a voluntary bankruptcy petition on December 22, 2021 (the “Petition Date”).¹⁰ The Debtor listed a total of \$402,893.58 of non-contingent, liquidated, undisputed, unsecured claims in her schedules that were filed with the Petition.¹¹ The Creditor’s claim was listed as a noncontingent, liquidated, unsecured claim based on attorneys’ fees incurred in connection with state court domestic proceedings in the amount of \$150,903.58. However, the Creditor subsequently filed Proof of Claim No. 5-1 (the “Proof of Claim”) asserting an unsecured, priority claim totaling \$185,589.43. The deadline to file proofs of claims was March 2, 2022,¹² and the unsecured claims that were filed, including that of the Creditor, total only \$309,428.55.¹³

The Court concludes that it is appropriate to consider the amounts set forth in the Proof of Claim in determining whether the Debtor is eligible to be a debtor under Chapter 13 because the amounts set forth in the Proof of Claim were liquidated and readily ascertainable by the Debtor

⁵ 11 U.S.C. § 109(e) (2021). The amounts prescribed in 11 U.S.C. § 109(e) are adjusted every three years to reflect changes in the Consumer Price Index. 11 U.S.C. § 104(a). While an adjustment occurred April 1, 2022, that adjustment is not relevant here as the case was filed on December 22, 2021.

⁶ *In re Winston*, 309 B.R. 61, 62 (Bankr. M.D. Fla. 2004).

⁷ *In re Wachs*, No. 8:21-bk-00470-RCT, 2021 WL 3162641, at *1 (Bankr. M.D. Fla. May 25, 2021).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Voluntary Petition under Chapter 13* (the “Petition”) (Doc. No. 1).

¹¹ *See Schedule E/F* (Doc. No. 14).

¹² *Notice of Chapter 13 Bankruptcy Case* (Doc. No. 5).

¹³ *See Claims Register* in this case.

based on the entry of final orders in the state court domestic proceedings.¹⁴ The Proof of Claim itemizes the amounts owed by the Debtor as follows:

- A. Attorneys' fees of \$125,065.00, and Appellate attorneys' fees of \$25,838.58 awarded in the *Order Awarding Former Husband Attorney's Fees* dated October 5, 2021.
- B. Retroactive lump-sum alimony of \$25,000.00 awarded in the *Second Amended Final Judgment of Dissolution of Marriage* (the "Final Judgment") dated March 19, 2021.
- C. Retroactive child support of \$5,807.85 awarded in the Final Judgment dated March 19, 2021.
- D. Unpaid ongoing child support of \$3,878.00, from June 1, 2021, through date of filing of the Debtor's petition (for a total of 7 months at \$554.00 per month) awarded in the Final Judgment dated March 19, 2021.¹⁵

(Proof of Claim No. 5-1). While the Debtor filed an objection to the Proof of Claim, the objection is to the characterization of the entire claim amount as priority, not to the amount of the claim.¹⁶

As of the Petition Date, the entirety of the \$185,589.43 claim was both noncontingent and liquidated for purposes of determining eligibility under section 109(e). Therefore, at the time of filing, the Debtor's total noncontingent, liquidated, unsecured debts amounted to \$437,579.43, an amount that is \$18,304.43 over the jurisdictional limit prescribed in section 109(e). As a result, the Debtor is not eligible to be a debtor under Chapter 13 of the Bankruptcy Code and this case should be dismissed without prejudice. However, the Court will permit the Debtor to convert the case to another chapter for which she is eligible.

¹⁴ "A liquidated debt is a debt made certain, or readily ascertainable, by operation of law or agreement," with the focus being "on the amount of the debt, not the existence of future liability." *In re Wachs*, 2021 WL 3162641, at *1 (citing *United States v. Verdunn*, 89 F.3d 799, 802 (11th Cir. 1996); *In re Newman*, 259 B.R. 914, 918-19 (Bankr. M.D. Fla. 2001)).

¹⁵ In the Proof of Claim, the Creditor notes that there is a typographical error in paragraph 7 of the Final Judgment, as the child support started in June 2021 and not June 2020.

¹⁶ See *Objection to Claim 5 of Blair Clements* (Doc. No. 45).

Accordingly, it is

ORDERED:

1. The Motion to Dismiss (Doc. No. 27) is **GRANTED**.
2. This case is **DISMISSED** with leave for the Debtor to convert the case to Chapter 7 or Chapter 11 within 14 days of the entry of this Order, and without prejudice to filing another Chapter 13 petition.

#

Tatiana Leo is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.