

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re: Case Number 1-17-13506-bhl
TAMARA LYNN BAILEY-PFEIFFER, Chapter 13
Debtor.

DECISION

Tamara Bailey-Pfeiffer wants to be a chapter 13 debtor and use her future income to repay her substantial debts through a court-approved plan. Unfortunately for Bailey-Pfeiffer and, perhaps, for her creditors as well, Congress has enacted a barrier to her ability to use chapter 13. Under 11 U.S.C. §109(e), only an individual with noncontingent, liquidated, unsecured debts of less \$394,725 can be a chapter 13 debtor. Bailey-Pfeiffer's student loan debts alone exceed that amount. When she filed her chapter 13 petition, Bailey-Pfeiffer's unsecured debts totaled more than \$870,000, an amount that is more than double section 109(e)'s debt limit.

At a March 8, 2018 hearing to consider confirmation of Bailey-Pfeiffer's proposed chapter 13 plan, the court denied confirmation because section 109(e) made Bailey-Pfeiffer ineligible to be a chapter 13 debtor. The court ordered the case dismissed, but allowed Bailey-Pfeiffer to avoid dismissal by converting the case to one under chapter 7 or chapter 11 within 21 days.¹ This decision supplements the court's March 8 oral ruling.

Procedural Background and Factual Findings

On October 11, 2017, Bailey-Pfeiffer filed a chapter 13 petition, supporting schedules, and an initial proposed repayment plan. In her first set of schedules, Bailey-Pfeiffer disclosed total liabilities of \$1,177,014.68, including secured debts of \$381,768.18 and unsecured debts totaling \$795,228.50. Bailey-Pfeiffer did not identify any of these debts as contingent, unliquidated, or disputed.

On December 15, 2017, the chapter 13 trustee objected to confirmation of Bailey-Pfeiffer's plan. The trustee raised several technical issues that prevented confirmation. Among

¹ On March 16, 2018, Bailey-Pfeiffer moved to convert the case to chapter 7.

other problems, the trustee objected that the proposed plan failed to pay all of Bailey-Pfeiffer's disposable income to her unsecured creditors, as required by section 1325(b)(1)(B). The trustee also questioned whether Bailey-Pfeiffer was eligible to be a chapter 13 debtor given the amount of her student loan debts.

After the trustee's objection, Bailey-Pfeiffer filed an amended plan and schedules. The amendments addressed some of the technical concerns, but not Bailey-Pfeiffer's eligibility to be a chapter 13 debtor. In fact, the amended schedules showed even higher unsecured debts, with her student loan debt increasing to \$700,000.

The court considered the trustee's objections and the amended plan at a January 18, 2018 confirmation hearing. In response to questions concerning her eligibility to be a chapter 13 debtor, Bailey-Pfeiffer admitted that her non-contingent, unliquidated, and undisputed unsecured debts exceeded the statutory debt limits. But she insisted that this should not be fatal to her case and asked for time to brief the issue. The court sustained the trustee's objection, and allowed Bailey-Pfeiffer 30 days to file an amended, confirmable plan and 45 days to file a brief on the eligibility issue.

On January 19, 2018, Bailey-Pfeiffer filed a second amended plan. The chapter 13 trustee filed a further objection that same day. On February 27, 2018, Bailey-Pfeiffer filed a brief addressing the debt limits issue.

Legal Analysis and Conclusions

In 11 U.S.C. §109, entitled "Who may be a debtor," Congress has set forth eligibility qualifications for debtors under the various chapters of the Bankruptcy Code. Section 109(e) restricts eligibility for relief under chapter 13 to individuals with debts below certain prescribed limits. Adjusted for inflation², section 109(e) provides that "[o]nly an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200 ... may be a debtor under chapter 13 of this title."

Bailey-Pfeiffer's unsecured debts are nearly double the limits in section 109(e). Her

² 11 U.S.C. §104 provides for the adjustment of the dollar amounts in §109(e) every three years. The limits for Bailey-Pfeiffer's petition are those that were in effect on October 11, 2017, when she filed her petition in this case.

initial schedules acknowledge noncontingent, liquidated, unsecured debts of \$795,228.50 as of the petition date. In her amended schedules, she admitted to an even higher total of \$870,919.63. Under either of these figures, Bailey-Pfeiffer is not eligible to be a chapter 13 debtor.

One consequence of Bailey-Pfeiffer's ineligibility is that the trustee's objection to confirmation of the amended chapter 13 plan must be sustained. Section 1325(a) "instructs a bankruptcy court to confirm a plan only if the court finds, *inter alia*, that the plan complies with the 'applicable provisions' of the Code." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 277 (2010). Because Bailey-Pfeiffer is not eligible to be a chapter 13 debtor under section 109(e), her amended plan does not comply with an applicable provision of Title 11. Thus, this court is obliged to deny confirmation. *Espinoza*, 559 U.S. at 277 (bankruptcy courts have the "authority – indeed, the obligation – to" insure plans comply with Title 11 before confirmation).

Notwithstanding her ineligibility, Bailey-Pfeiffer argues the court should allow her to remain in chapter 13. She first argues that even if she is not eligible to be a chapter 13 debtor, this fact is not "jurisdictional," and, therefore, the court is not required to dismiss or convert her case. Bailey-Pfeiffer's premise is correct, but her conclusion does not follow. Under 28 U.S.C. §1334(a) and the district court's order of reference, this court has "original and exclusive jurisdiction of all cases under title 11." The court thus has jurisdiction over Bailey-Pfeiffer's case, even if she is not an eligible chapter 13 debtor under section 109(e). *See Rudd v. Laughlin*, 95 B.R. 705, 707-08 (D. Neb. 1988) (bankruptcy court has valid jurisdiction over case even where debtor is ineligible). But the existence of jurisdiction does not mean this court can or should, as a matter of substantive bankruptcy law, ignore the plain terms of section 109(e) and allow Bailey-Pfeiffer's case to proceed when she is not eligible to use chapter 13.

Section 1307 provides for the conversion or dismissal of a chapter 13 case "for cause." Cause is not defined, but the statute provides 11 situations that constitute "cause" justifying dismissal or conversion. Ineligibility under the section 109(e) debt limits is not one of the enumerated examples, but several courts have found cause for dismissal based on a would-be debtor's ineligibility for chapter 13. *See In re McGovern*, 122 B.R. 712, 719 (N.D. Ind. 1989); *In re Dobkin*, 12 B.R. 934, 936 (Bankr. N.D. Ill. 1981). Without addressing cause under section 1307, the Seventh Circuit has affirmed the dismissal of a case based on a lower court's finding of ineligibility under section 109(e), implicitly confirming that ineligibility is grounds for dismissal.

See In re Knight, 55 F.3d 231, 237 (7th Cir. 1995).

Cause for conversion or dismissal here is also supported by section 1307(c)(5), which provides that cause for dismissal or conversion includes the “denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan.” While the court does not relish the potential dismissal of Bailey-Pfeiffer’s case, the case stands at a procedural dead end. Bailey-Pfeiffer cannot fix the basis for the trustee’s confirmation objection because eligibility under section 109(e)’s debt limits is determined as of “the date of the filing of the petition” and the amount of her unsecured debts at the petition date will never change. Because her ineligibility cannot be cured, Bailey-Pfeiffer will never be able to propose a plan that complies with all of Title 11 and can never satisfy section 1325(a)(1). It would be pointless to allow her additional time to file another amended plan. In these circumstances, dismissal or conversion under section 1307(c)(5) is warranted.

Bailey-Pfeiffer emphasizes that the trustee has not moved to dismiss the case. While the trustee has not moved to dismiss, the trustee has objected to confirmation. As noted above, the court has a duty not to confirm a plan where the requirements of section 1325(a) are not satisfied. *Espinoza*, 559 U.S. at 277. Consistent with this duty, the court raised the eligibility issue at the January 18 confirmation hearing and provided the debtor the opportunity to brief the issue. The trustee’s decision not to seek dismissal is not relevant. *See* 11 U.S.C. §105(a) (“No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”). Because Bailey-Pfeiffer will never be able to propose a confirmable plan, dismissal or conversion under section 1307 is required.

In urging the court to let her case continue, Bailey-Pfeiffer cites *United States v. Edmonston*, 99 B.R. 995 (E.D. Cal. 1989). But that case involved a bankruptcy court’s denial of a creditor’s *post-confirmation* motion to dismiss based on the debtor’s ineligibility under the section 109(e) debt limits. In affirming the bankruptcy court’s denial of the motion to dismiss, the district court held that *res judicata* prevented the creditor’s tardy challenge to the debtor’s eligibility. Absent evidence of fraud sufficient to warrant the revocation of confirmation under

section 1330(a), the court held the creditor's failure to raise the debt limits issue before confirmation barred a post-confirmation motion to dismiss because the bankruptcy court's confirmation order included an "implicit determination" that the debtor was eligible for chapter 13. *Id.* at 998. Here, however, there has been no binding ruling on Bailey-Pfeiffer's eligibility, implicitly or otherwise. In fact, the court has explicitly ruled that it cannot confirm the plan precisely because Bailey-Pfeiffer's unsecured debts exceed the debt limits and render her ineligible for chapter 13.

Bailey-Pfeiffer's remaining arguments all take issue with the inequity of applying section 109(e)'s debt limits to her. Citing some legislative history, Bailey-Pfeiffer argues that Congress enacted the debt limits to prevent "large business owners" from filing under chapter 13 to avoiding the more rigorous protections for creditors found in chapter 11. This intention would not be served, she insists, in applying the debt limits to her. She also argues that it would be in the best interests of her creditors to allow her to continue under chapter 13 and notes that even the chapter 13 trustee agrees. Finally, observing that the Code treats educational debts differently from other unsecured debts in certain circumstances, Bailey-Pfeiffer urges the court to exclude her student loan debts from the unsecured debts that count toward the section 109(e) debt limits.

All of these equitable arguments founder on the plain language of section 109(e). The court cannot limit application of the debt limits to "large business owners" based on legislative history when the statutory language is clear on its face and has no such limitation. Similarly, even if all parties agree that it would be better if Bailey-Pfeiffer were eligible to be a chapter 13 debtor, that consensus cannot override Congress's decision to limit those persons eligible for chapter 13 relief in enacting the 109(e) debt limits. And, finally, the policy reasons that convinced Congress to provide special treatment for educational debts in some parts of the Code do not license this court to import that special treatment into section 109(e) where the statutory text does not so provide.

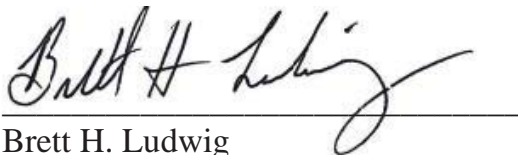
Finally, Bailey-Pfeiffer cites *In re Pratola*, 578 B.R. 414 (Bankr. N.D. Ill. 2017), for the proposition that the court can exercise its discretion not to dismiss a case even when the would-be chapter 13 debtor's unsecured debts exceed the section 109(e) debt limits. The *In re Pratola* court offers a number of compelling policy arguments for not applying the debt limits to debtors

with large student loan debts where creditors would presumably be better off with the debtor remaining in chapter 13. The court concluded that, because dismissal under section 1307 is discretionary, the court was not required to order dismissal, even where the trustee had requested dismissal. This court declines to follow that approach. The soundest policy arguments do not trump the statutory language, and, while the decision to dismiss or convert a case under section 1307 is discretionary, the court is bound to apply its discretion consistent with the plain terms of the Code. Those plain terms preclude the court from allowing a person who is ineligible to be a chapter 13 debtor from continuing in chapter 13.

Conclusion

There are very good arguments for changing the debt limits and eligibility requirements for chapter 13 debtors, particularly those with large unsecured student loan debts like Bailey-Pfeiffer. But these arguments and policy positions need to be directed to Congress not a bankruptcy court. This court's function (and duty) is to follow the law as enacted by Congress and signed by the President; counsel's or the court's personal beliefs or policy preferences are irrelevant when the plain terms of the statute dictate a contrary result. Bailey-Pfeiffer is entitled to continue in bankruptcy, but only in a chapter 7 or chapter 11 case; she cannot continue under chapter 13.

Dated March 23, 2018,

A handwritten signature in black ink, appearing to read "Brett H. Ludwig", written over a horizontal line.

Brett H. Ludwig
United States Bankruptcy Judge