UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
CAROL CORSON	:	
Debtor	:	Bankruptcy No. 03-18160F

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MEMORANDUM

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Before me is a motion to dismiss this chapter 13 case or convert the case to chapter 7, filed by Ms. Sidonie Paves. As will be seen, this motion is the latest in a series of chess-like moves made by the debtor and Ms. Paves. Ms. Paves contends in this motion that the debtor is ineligible for chapter 13 relief and so this case must either be dismissed or converted to chapter 7. The debtor maintains that she meets the eligibility requirements for chapter 13 relief. If not, then the debtor requests that the case be converted to chapter 7.

The present motion arises in the following context.

I.

The debtor initially commenced this bankruptcy case by filing a chapter 7 petition on May 28, 2003. Ms. Paves, the debtor's mother, became a creditor of the

debtor courtesy of a state court judgment in her favor against the debtor and her brother. See Paves v. Corson, 569 Pa. 171 (2002). The state court lawsuit began in April 1993, when Ms. Paves brought an action against her two children "asserting claims of conversion, breach of fiduciary duty, breach of confidential relationship, intentional infliction of emotional distress and battery." Id. at 173.[1] Ultimately, the Pennsylvania Supreme Court upheld the jury award against the debtor for conversion, in the amount of $59,500, and for breach of confidential relationship, in the amount of $150,500. Id. The appellate court remanded the matter for a new trial on the other claims, as well as for assessment of any punitive damages. Id. at 178. The debtor's bankruptcy filing apparently stayed that new trial.

After Ms. Corson filed her chapter 7 petition, Ms. Paves instituted an adversary proceeding in this court, docketed at Adv. No. #03-0986, asserting that her claims against the debtor were nondischargeable pursuant to 11 U.S.C. § 523(a)(4) and (a)(6). In response, the debtor then elected to convert her case to chapter 13, pursuant to 11 U.S.C. § 706, presumably to take advantage of the "superdischarge" provisions applicable in chapter 13 cases under section 1328(a).[2] See In re Stern, 266 B.R. 322, 325 (Bankr. D. Md. 2001). To counter that tactic, Ms. Paves's instant motion contends that

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[1]The basis for these claims is summarized in the published opinion of the Pennsylvania Supreme Court and need not be repeated here.

[2]The scope of the chapter 13 superdischarge includes debts arising from breaches of fiduciary duty and from willful misconduct. See generally In re Francis, 273 B.R. 87, 92 (B.A.P. 6th Cir. 2002), aff'd 69 Fed. Appx. 766, 2003 WL 21782600 (6th Cir. 2003).

the debtor is ineligible for chapter 13 relief, and thus ineligible for the superdischarge. See id.

Ms. Paves argues that the amount of her judgment, plus interest on that judgment, plus the debtors' other noncontingent, liquidated, unsecured debts, exceed the $290,525 eligibility ceiling imposed by 11 U.S.C. § 109(e) for chapter 13 debtors.[3] The movant's argument was based largely upon the bankruptcy schedules filed by the debtor with her original chapter 7 petition. After Ms. Paves' instant motion to dismiss or convert was filed, the debtor reacted by filing an amended schedule of unsecured claims that, in some instances, reduced or eliminated certain debts, as well as changed the characterization of some debts to disputed, unliquidated and/or contingent.

An evidentiary hearing was held on this motion to dismiss or reconvert this case, at which only the debtor testified. The scope of her testimony involved the prepetition unsecured claims against her and, in particular, the basis for her amended schedule of claims.

[3]Pursuant to 11 U.S.C. § 104(b)(1), the debt limit found in section 109(e) increases every three years to account for inflation. The present ceiling of $307,675 for noncontingent, liquidated, unsecured debts (and $922,975 for noncontingent, liquidated, secured debts) became effective April 1, 2004. This new ceiling does not apply in this case because the debtor's chapter 13 case commenced before April 1, 2004. See, e.g., In re Persky, 1998 WL 695311, *2 n.5 (E.D. Pa. 1998).

II.

The debtor had no counsel of record when she first filed schedules in her chapter 7 case.[4] Her current attorney entered an appearance on November 25, 2003, the same date the debtor filed her motion to convert her case to chapter 13. Ms. Paves filed her motion to dismiss the chapter 13 case or convert it back to chapter 7 on December 30, 2003. The debtor had filed amended schedules I and J and an amended statement of financial affairs, on December 24, 2003. She then filed an amended schedule F, the schedule of unsecured creditors, on January 14, 2004, and filed an amended schedule D after the hearing on the instant motion, on May 24, 2004.

The following creditors appeared on the debtor's original schedule F, Ex. M-2, with the changes made on the amended schedule F, Ex. M-3, as noted. Except for the second claim of Ms. Paves–explained as the "part of lawsuit still pending"–none of the claims on the original schedule were listed as contingent, unliquidated or disputed[5]:

[4]Although officially the debtor appeared pro se, her Statement of Financial Affairs shows she paid attorney Mary Jeffery, Esq. $300 "related to debt counseling or bankruptcy." The debtor indicated in testimony at the hearing that she had a friend in a law firm who provided the requisite documents and typed them for her. Trial at 1:21. (The parties elected not to order a written transcript of the hearing. Therefore all references to the hearing will be to the audio recording of the hearing that took place on April 13, 2004, denoting the hour and minute at which the testimony took place.)

[5]Thus, contrary to her testimony, Trial at 1:21, the debtor apparently understood or was advised in preparing her original schedules that, when appropriate, some debts can be labeled as contingent or unliquidated.

Creditor	Original Schedules	Amended Schedules
Abington Memorial Hospital	$97	unchanged
Alamo FKA Cartemps	$500	deleted
Barry Hackert Auto Body	$1,193	amount changed to "unknown"; marked as unliquidated and disputed
Chrysler Financial	$1,334	unchanged
David Spirt, Esq.	$12,500	amount reduced to $8,800; marked as unliquidated
First USA Bank	$12,200	unchanged
Mobile Life Support Services	$623	deleted
Neurological & Spine Surgery	$500	deleted
Robert Levine DDS	$740	reduced to $400
Sidonie Paves	$210,000	increased to $210,400; marked as contingent, unliquidated and disputed
Sidonie Paves	$0 Unliquidated	deleted
Silver Forman & Assoc.	$5,045	reduced to $2,200; marked as unliquidated and disputed

The debtor made one more change from her original bankruptcy schedules that affected her total unsecured debts: she amended her schedule D (the schedule of secured creditors) to assert that there was no unsecured portion to her debt owed to Beneficial Savings Bank (BSB). The debtor had originally claimed that her automobile, the purchase of which was financed by BSB, had a value of $9,500. She listed the total debt owed to this creditor at $12,000, thereby asserting an unsecured claim of $2,500 and a secured claim of $9,500. Ex. D-2; see generally 11 U.S.C. § 506(a); In re Hernandez, 175 B.R. 962 (N.D. Ill. 1994). Adding this unsecured component to the other unsecured claims of the debtor, the original schedules reflected a total noncontingent, liquidated, unsecured debt of $247,232. This total, however, did not include any prepetition interest on the portion of the judgment held by Ms. Paves that had been affirmed by the

Pennsylvania Supreme Court.

The movant asserts that the debtor omitted post-judgment interest up to the date of the bankruptcy filing, totaling $48,615 on the $210,400 judgment.[6] Adding this amount to the originally-scheduled unsecured debts increases the total unsecured claims to $295,847, exceeding the unsecured debt limit of $290,525. Based upon the debtor's various amendments to her bankruptcy schedules, the total unsecured claims (including judgment interest) would be only $284,046.[7] Thus, if the debtor's amendments were accepted, the debtor is eligible for chapter 13 bankruptcy relief.

III.

Before I analyze the evidence presented concerning the debtor's prepetition obligations, certain legal principles must be identified.

First, the qualifications for being a debtor under the Bankruptcy Code are

[6]According to the reported decision of the Pennsylvania Supreme Court, judgment was entered against the debtor for breach of confidential relation ($150,500) and conversion ($59,500), totaling $210,000, not $210,400. It is not clear where the additional $400 for these two claims comes from, but the debtor included it in her amended schedule F and has not retreated from it in her post-hearing memorandum. Accordingly, I shall accept that the sum of the two damage claims equals $210,400. (I note that the outcome of this contested matter would not be different if the judgment amount were $210,000.)

[7]Actually, the debtor maintains that her "liquidated" unsecured claims are only $14,631. Debtor's Memorandum, at 6. For reasons that follow, I disagree.

set forth in section 109, entitled "Who may be a debtor." Subsection 109(e) contains the provisions applicable to chapter 13 eligibility, which in pertinent part stated at the time of the debtor's bankruptcy filing:

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated unsecured debts of less than $290,525 and noncontingent, liquidated, secured debts of less than $871,550 . . . may be a debtor under chapter 13 of this title.

While there are a number of issues that may arise concerning the eligibility of a debtor for chapter 13 relief (e.g., whether the debtor has "regular income"), the chapter 13 eligibility requirements are not jurisdictional. Rudd v. Laughlin, 866 F.2d 1040 (8th Cir. 1989); Matter of Phillips, 844 F.2d 230 (5th Cir. 1988); In re Wenberg, 94 B.R. 631 (B.A.P. 9th Cir. 1988), aff'd, 902 F.2d 768 (9th Cir. 1990).

The purpose behind this debt limitation for chapter 13 relief has been explained as follows:

> The monetary limitations of subsection (e) reflect Congress's recognition that a chapter 11 reorganization might be too cumbersome a procedure for a sole proprietor or individual with a small amount of debt. At the same time, they ensure that chapter 13 is not used by individuals with large businesses in which the creditor protections of chapter 11, such as voting and the disclosure statement, are more important.

2 Collier on Bankruptcy, ¶ 109.06[2] at 109-42 to 43 (15th ed. rev. 2004) (footnote omitted). In addition, the debt ceiling on chapter 13 relief has the effect of preventing the discharge of large unsecured claims which would survive a chapter 7 liquidation. See In re Ristic, 142 B.R. 856, 861-62 (Bankr. E.D. Wis. 1992); see generally Pennsylvania

Dept. of Public Welfare v. Davenport, 495 U.S. 552 (1990) (a claim that is nondischargeable in chapter 7 may be discharged in chapter 13 pursuant to section 1328(a)).

Second, the eligibility language used in section 109(e) refers only to unsecured claims which are liquidated and noncontingent "on the date of filing of the petition." Thus, the operative date is the amount owed to unsecured creditors as of the date of the commencement of the case. See In re Stairs, 307 B.R. 698, 701 (Bankr. D. Colo. 2004).[8]

Third, the precise language of section 109(e), when compared with other Code provisions such as section 303(b)(1),[9] has led courts to conclude that the terms "contingent" and "unliquidated" differ from the term "disputed." Thus, disputed claims are considered when determining eligibility for chapter 13 relief. See, e.g., Matter of Knight, 55 F.3d at 234-35 (7th Cir. 1995); In re Sylvester, 19 B.R. 671 (B.A.P. 9th Cir. 1982); Gould v. Gregg, Hart, Farris & Rutledge; In re Lamar, 111 B.R. 327 (D. Nev. 1990).

The Third Circuit has referred favorably to a long standing definition of a

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[8]Moreover, as will be discussed below, a debtor's characterization of her claims as unliquidated or contingent is not dispositive on the issue of eligibility. In addition to the debtors' schedules, I can consider other evidence regarding compliance with the debt ceiling. See Matter of Day, 747 F.2d 405, 408 (7th Cir. 1984); Gould v. Gregg, Hart, Farris & Rutledge, 137 B.R. 761, 765 (W.D. Ark. 1992); Lucoski v. I.R.S., 126 B.R. 332, 337-42 (S.D. Ind. 1991); In re Pennypacker, 115 B.R. 504, 506 (Bankr. E.D. Pa. 1990); In re Jerome, 112 B.R. 563, 566 (Bankr. S.D.N.Y. 1990); Matter of Perry, 56 B.R. 663 (Bankr. M.D. Ga. 1986). But see Matter of Pearson, 773 F.2d 751 (6th Cir. 1985).

[9]In an involuntary bankruptcy case, petitioning creditors cannot hold claims "contingent as to liability or the subject of a bona fide dispute." 11 U.S.C. § 303(b)(1).

"contingent claim" in Matter of M. Frenville Co., 744 F.2d 332, 336 n.7 (3d Cir. 1984), cert. denied sub nom. M. Frenville Co. v. Avellino & Bienes, 469 U.S. 1160 (1985):

> Bankruptcy judges have defined a contingent claim as a claim which becomes due only on the occurrence of a future event. One frequently cited definition of contingent is that 'claims are contingent as to liability if the debt is one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event.' In re All Media Properties, Inc., 5 B.R. 126, 133 (Bankr. S.D. Tex. 1980), aff'd, 646 F.2d 193 (5th Cir. (Unit A) 1981) (per curiam).

Accord, e.g., In re Albano, 55 B.R. 363, 366 (N.D. Ill. 1985); In re Pennypacker, 115 at 507.

In the context of an involuntary bankruptcy petition, which can be filed only by a petitioning creditor holding a claim that is "not contingent as to liability" see 11 U.S.C. § 303(b)(1), the Fifth Circuit Court of Appeals provided this summary, also utilized in construing section 109(e) of the Code:

> It thus appears that the words 'fixed (or 'not contingent') as to liability,' as used in Sec. 59(b), were certainly not intended to be restricted to the sense of 'fixed liability, as evidenced by a judgment or an instrument in writing' -- as that term is used in Sec. 63a(1). In other words, the term 'not contingent as to liability', as used in Sec. 59(b), is different from and broader than claims based on instruments in writing or judgments. It follows that Sec. 59(b) contemplates that creditors, whose claims are not based on instruments in writing or upon judgments, may petition in involuntary bankruptcy, e.g., creditors whose claims are based upon unwritten agreements or other transactions not yet reduced to judgment -- provided only that the claims be 'not contingent as to liability' in some other sense of that term.
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> Examination of all the authorities clearly indicates that the theory on which claims have been held insufficient is that they were open, unliquidated claims (e.g., tort or quantum

> meruit claims requiring proof as to liability, reasonable value, damages, etc.), which by their very nature are not fixed unless and until juridical award [is entered] to fix liability and amount.

Denham v. Shellman Grain Elevator, Inc., 444 F.2d 1376, 1380 (5th Cir. 1971) (interpreting the former Bankruptcy Act); see In re Furey, 31 B.R. 495, 497 (Bankr. E.D. Pa. 1983).

Thus, in general, a debt is contingent if the debtor's legal duty to pay, i.e., his or her liability, does not exist until triggered by the occurrence of a future event that was reasonably within the presumed contemplation of the parties at the time the original relationship between the parties was created. See 2 Collier on Bankruptcy, ¶ 109.06[2][b] (15th ed. rev. 2004).

Fourth, the concept of liquidation of a claim is distinct from its contingency. A claim is "liquidated if the amount due can be determined with sufficient precision." In re Pennypacker, 115 B.R. at 505. A debt is liquidated

> if its amount is readily and precisely determinable, as where the claim is determinable by reference to an agreement or by simple computation.

2 Collier on Bankruptcy, ¶ 109.06[2][c] at 109-44 (15th ed. rev. 2004); accord, e.g., Matter of Knight, 55 F.3d at 235 (holding that a penalty debt owed to State of Indiana was liquidated because the amount of liability, albeit disputed, was easily determined).

When one considers these definitions of contingency and liquidation, it is apparent that most contract claims against the debtor will be viewed as liquidated and noncontingent, even if there is a dispute as to the debtor's breach or the amount of

damages. See United States v. Verdunn, 89 F.3d 799, 802 n.12 (11th Cir. 1996). The debtor's liability arises when the contract is entered into and the amount of any damages for breach are usually determinable by the contract itself. Similarly, a state court judgment entered prepetition against a debtor will render the claim noncontingent and liquidated, even if on appeal. The appeal only renders the claim "disputed." See, e.g., In re Albano; In re Cluett, 90 B.R. 505 (Bankr. M.D. Fla. 1988); In re Martinez, 51 B.R. 944 (Bankr. D. Colo. 1985).

Thus, one may fairly generalize that contract claims are liquidated claims, since the amount of the claim is readily determined from the agreement itself, while tort claims, which may require a court to fix damages, including pain and suffering, are not liquidated. See, e.g., Matter of Belt, 106 B.R. 553, 558-559 (Bankr. N.D. Ind. 1989):

> "Liquidation" is the result of a finding that the amount of a claim can be easily determined.... It refers to certainty as to the money value of a claim.... Courts generally recognize that debts based on tort and quantum meruit claims are unliquidated until resolved by judgment decree or otherwise because the claimant's damages are not fixed.

See also United States v. Verdunn, 89 F.3d at 802 .[10]

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[10]However, there are exceptions to this generalization. As one court explained:

> In In re Sylvester, 19 Bankr. 671, 673 (9th Cir. BAP 1982) the court made the observation in dicta that "contract debts (even though disputed) are considered liquidated and tort claims are not." That statement is generally correct, but must be taken in its proper context. As the Sylvester court more specifically explained:
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> > The concept of liquidation has been variously expressed. The common thread ... has been ready determination and precision in computation of the amount due.... Some cases have stated the test as to

Fifth, to the extent a claim is secured by nonestate assets, or to the extent the claim is secured by assets worth less than the amount of the claim, the claim is unsecured. 11 U.S.C. § 506(a). In the latter instance, for purposes of section 109(e), the unsecured portion of the claim is the difference between the amount of the claim and the value of the collateral. See In re Ficken, 2 F.3d 299 (8th Cir. 1993); In re Balbus, 933

> whether the amount due is capable of ascertainment by reference to an agreement or by simple computation. Id.
>
> Therefore, whether a debt is liquidated or not for purposes of 11 U.S.C. § 109(e) does not depend strictly on whether the claim sounds in tort or in contract, but whether it is capable of ready computation. For the same reason, whether a debt is liquidated does not depend on whether it is disputed. Thus, a disputed debt which is capable of ready determination is liquidated.

In re Loya, 123 B.R. at 340 (footnote omitted).

In other words, while many prepetition tort claims will be unliquidated, since the fixing of the precise amount due is not readily determinable by a bankruptcy court, there will be situations when that generalization will not apply. For example, a malpractice claim against a debtor/tax advisor has been held to be a liquidated debt under limited circumstances, even though no litigation against the debtor was concluded. Id. Moreover, there are other reported decisions in which courts have held that tort claims were liquidated although no judgments had been entered, because the amount of the claim was readily determinable. E.g., In re Jordan, 166 B.R. 201 (Bankr. D. Me. 1994) (debtor/employee who embezzled funds from employer deemed to have a liquidated debt since the amount of the embezzlement could be easily calculated); In re Sitarz, 150 B.R. 710, 725 (Bankr. D. Minn. 1993) (same); Matter of McGovern, 122 B.R. 712, 717 (Bankr. N.D. Ind. 1989) (claim against debtor for misappropriating funds from a non-profit agency was liquidated, since the amount of such funds was readily determinable); In re Furey, 31 B.R. at 497 (debtor misappropriated checks from his employer in an amount already fixed by an insurance company).

Thus, where tort claims are concerned in applying section 109(e), the issue becomes whether the claims are capable of simple calculation, without the use of opinion testimony or discretion. See, e.g., Matter of McGovern, 122 B.R. at 715, 716. If not, then they are viewed as unliquidated. In this contested matter, there is no dispute between the parties that the remanded claims held by Ms. Paves, including her claim for punitive damages, were unliquidated at the time of the debtor's bankruptcy filing and therefore outside the debt ceiling established for chapter 13 eligibility in section 109(e).

F.2d 246 (4th Cir. 1991); Miller v. U.S. Through Farmers Home Admin., 907 F.2d 80 (8th Cir. 1990); In re Rifkin, 124 B.R. 626 (Bankr. E.D.N.Y. 1991). Therefore, if the amount of the debtor's obligation on her car loan exceeded the value of the car at the time of her bankruptcy filing, the bank would hold a partial unsecured claim, which claim would be germane for purposes of determining her chapter 13 eligibility.

Finally, in Pennsylvania, "a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award." 42 P.S. § 8101. The legal rate of interest in Pennsylvania is 6% per annum, simple interest. 41 P.S. § 202; see Equitable Gas Co. v. Wade, 2002 PA Super 338, 812 A.2d 715, 716 (2002).

In this proceeding, there were 1409 days between the date of judgment and the date of this debtor's bankruptcy refiling. At 6% per annum, not compounded, the post-judgment interest that accrued prepetition on a judgment of $210,400 would total $48,732.10.[11]

IV.

One other general aspect of this dispute should be addressed before

[11]My interest calculations differ from those undertaken by Ms. Paves. The per diem interest calculation is approximately $34.59.

consideration of the evidence presented: i.e., the import of the information found in the debtor's original bankruptcy schedules and her amended bankruptcy schedules.

A debtor has the statutory duty to file schedules of assets and liabilities. 11 U.S.C. § 521(1). "The schedules must be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." Fed. R. Bankr. P. 1008. A debtor may amend her schedules "as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a). If a debtor converts his or her case, the schedules and statements filed in the first case will be deemed filed in the converted case. Fed. R. Bankr. P. 1007(c).[12]

A case may not be converted to one under another chapter unless the debtor is eligible to be a debtor under that chapter. 11 U.S.C. § 706(d). Thus, if this debtor was ineligible for chapter 13, then her conversion to that chapter from chapter 7 is invalid. In re Bobroff, 766 F.2d 797, 803 (3d Cir. 1985). "The debtor's eligibility is judged as of the original date of the filing of the bankruptcy petition, because the conversion of a case from one chapter to another 'does not effect a change in the date of the filing of the petition.'" In re Stern, 266 B.R. 322, 325-26 (Bankr. D. Md. 2001), citing 11 U.S.C. § 348(a); see also In re Rohl, 298 B.R. 95, 100 (Bankr. E.D. Mich. 2003) (same).

In considering both the debtor's original and amended schedules, I note that the former may constitute evidentiary admissions, while the latter may constitute judicial admissions. An evidentiary admission—statements in pleadings from another proceeding, superseded or withdrawn pleadings in the same proceeding, answers to

[12]Section 348(d) does not apply here to include debts that arose postpetition but preconversion, as it applies only to cases converted from chapters 11, 12 or 13, not to them. 11 U.S.C. § 348(d).

interrogatories—may be controverted or explained by the party. Russell, Bankruptcy Evidence Manual § 801.22 (2004 ed.). A judicial admission on the other hand—admissions in pleadings in the proceeding, stipulations, and admissions pursuant to requests to admit—are binding and may not be controverted at trial. Id.; see In re Cobb, 56 B.R. 440, 442 n.3 (Bankr. N.D. Ill. 1985) (explaining same); see also Commercial Banking Corp. v. Martel, 123 F.2d 846, 847 (2d Cir. 1941) (bankruptcy schedule of liabilities could be explained in another proceeding).

In In re Bohrer, 266 B.R. 200 (Bankr. N.D. Cal. 2001), a debtor understated his income on his original schedules, which he amended to correct. Id. at 201. In analyzing whether the debtor's plan met the disposable income test found in section 1325(b), the court stated that it could look at the debtor's original schedules as evidentiary admissions. Id.

> Bohrer appears to suffer from a substantial misapprehension as to the nature of schedules. Statements in bankruptcy schedules are executed under penalty of perjury and when offered against a debtor are eligible for treatment as judicial admissions. In the Matter of Gervich, 570 F.2d 247, 253 (8th Cir. 1978). A debtor may not adopt a cavalier attitude toward his the [sic] accuracy of his schedules by arguing that they are not precise and correct. In re Duplante, 215 B.R. 444, 447 n. 8 (9th Cir. BAP 1997). When schedules are amended the old schedules do not, as Bohrer seems to argue, become nullities. The only effect of amendment of a schedule is that the original schedule no longer has the binding, preclusive effect it might otherwise have. It still [is] fully subject to consideration by the court as an evidentiary admission. White v. ARCO/Polymers, Inc., 720 F.2d 1391, 1396 n. 5 (5th Cir. 1983).

Id.

In another example, where the facts asserted on a debtor's schedules conflicted with those of his financial statements, the court deemed the schedules controlling as judicial admissions, pointing out that the debtor's schedules were signed under oath. In re Bartomeli, 303 B.R. 254, 265 (Bankr. D. Conn. 2004). And where a debtor failed "to qualify the schedule's description so as to include the term 'disputed,' the Debtor has waived the right to contest the debt's existence." In the Matter of Musgrove, 187 B.R. 808, 812-13 (Bankr. N.D. Ga. 1995).

The values asserted in schedules may not necessarily be conclusive admissions since those values may be viewed as mere opinion and therefore considered evidential rather than judicial admissions. In re Cobb, 56 B.R. at 442 n.3. The Cobb court felt that bankruptcy schedules are "prepared in haste without much thought being given to the values reflected therein . . .. Their prior statement of value in their schedules is nothing more than an admission by a party opponent. The admission is not conclusive." In re Cobb, 56 B.R. at 442; see In re Kaskel, 269 B.R. 709, 715 (Bankr. D. Idaho 2001) (values not conclusive); In re Hanson Dredging, Inc., 6 B.R. 230, 231 (Bankr. S.D. Fla. 1980) (allowing debtor to explain statements made in schedules, but finding value in schedule more credible). But see In re Bohrer, 266 B.R. at 201 ("A debtor may not adopt a cavalier attitude toward his the [sic] accuracy of his schedules by arguing that they are not precise and correct."), quoting In re Duplante, 215 B.R. 444, 447 n.8 (B.A.P. 9th Cir. 1997).

I appreciate that the Sixth Circuit Court of Appeals gives significant weight to a debtor's good faith assertion of a debt: "[T]he amount claimed in good faith by the

plaintiff controls unless it appears to a legal certainty that the claim is for less than the jurisdictional amount or the amount claimed is merely colorable." In re Mannor, 175 B.R. 639, 641 (Bankr. E.D. Mich. 1994) quoting In re Pearson, 773 F.2d 751 (6th Cir. 1985). This approach, however, has not been accepted by courts outside the Sixth Circuit. See, e.g., Lucoski v. I.R.S., 126 B.R. 332 (S.D. Ind. 1991) ("This Court does not adopt the restrictions imposed by the Pearson court. Rather, this Court rules that even if the schedules reflect the eligibility requirements are met, if it is determined within a reasonable time that the debts exceed the statutory maximums, the case must be dismissed, or the debtor may be given the opportunity to convert to a different proceeding under the Bankruptcy Code.").

In this district, Judge Twardowski concluded that determination of eligibility for chapter 13 should not rely completely upon the debtor's good faith assertion of a debt. "We reject these approaches because we find that to the extent that they require total reliance by the court upon the debtor's characterization of the debts in his schedules, we do not believe that the debtor should be given unbridled authority to determine his eligibility for chapter 13 relief." In re Pennypacker, 115 B.R. 504, 506 (Bankr. E.D. Pa. 1990).

The approach articulated in Pennypacker is the most persuasive. As explained by one court:

> The rule proposed by Debtors is intriguing in its simplicity, but the Court believes such deference to the numbers and designations found on a debtor's schedules is unwarranted. While agreeing that a faithful reading of section 109(e) calls for a snapshot of indebtedness at the time a debtor files his

> petition, the Court will cannot [sic] go so far as to find that the image captured on the debtor's schedules is always in perfect focus.
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> Recognizing that a debtor's schedules are a potentially imperfect measure of the debtor's debts, the Court concludes a more appropriate approach is to use the debtor's schedules as a starting point in the section 109(e) inquiry, but also to consider postpetition events and developments to the extent (and only to the extent) they shed light on the amount of secured and unsecured debt actually owed by the debtor at the time of the filing of the petition. For example, in a situation such as Debtors', where a secured debt is mistakenly scheduled as an unsecured obligation, it would exalt form over substance to refuse to consider a postpetition amendment to the schedules that properly classifies the indebtedness. Similarly, if it were to become evident postpetition that the conditions giving rise to a contingent liability all occurred prepetition, common sense requires recognition of the reality that the debtor was liable for the debt on the petition date.

In re Hatzenbuehler, 282 B.R. 828, 833 (Bankr. N.D. Tex. 2002) (footnotes omitted).

In general the burden of persuasion falls upon debtors to establish their right to relief under chapter 13. See, e.g., In re Tim Wargo & Sons, Inc., 869 F.2d 1128, 1129 (8th Cir. 1989); Cottonport Bank v. Dichiara, 193 B.R. 798, 801 (W.D. La. 1996); In re Baird, 228 B.R. 324, 330 (Bankr. M.D. Fla. 1999); In re City of Bridgeport, 129 B.R. 332, 334 (Bankr. D. Conn. 1991); cf. In re Tamecki, 229 F.3d 205, 207 (3d Cir. 2000) (chapter 7 debtor has burden of proof to demonstrate that petition was filed in good faith); In re SGL Carbon Corp., 200 F.3d 154, 162 n.10 (3d Cir. 1999) (chapter 11 debtor has evidentiary burden of persuasion to demonstrate good faith filing).

The allocation of this burden upon the debtor to demonstrate her eligibility for chapter 13 relief is consistent with the general principle that the party with the better

means to prove or disprove an issue should bear the burden of proof:

> The logic of allocation of the burden of proof is that it is necessarily placed on the party who has the most knowledge and best means of proof on a given issue at his disposal. Compare In re New York City Shoes, Inc., 86 B.R. 420, 425 (Bankr. E.D. Pa. 1988) (landlord has burden of proving his own diligent efforts to replace an errant tenant); In re Crompton, 73 B.R. 800, 808-09 (Bankr. E.D. Pa. 1987) (debtor has burden of proving that his own statement of income and expenses satisfies the requirement that all of this projected disposable income is being paid into a Chapter 23 [sic] plan); and In re Furlow, 70 B.R. 973, 978 (Bankr. E.D. Pa. 1987) (debtor has burden of proving the logic of his reasons for discriminating in his treatment of creditors). Clearly, the party having the most knowledge of computation of the late charges in issue here and the party upon which the burden of proof must therefore be placed is the Claimant.

In re Burwell, 107 B.R. 62, 67 (Bankr. E.D. Pa. 1989), quoting In re Jordan, 91 B.R. 673, 684 (Bankr. E.D. Pa. 1988). Typically, the purported chapter 13 debtor would have greater access to information about her unsecured debts than would any particular creditor. Thus, the ultimate burden of persuasion falls upon the debtor to establish eligibility under section 109(e).

In this instance, to the extent Ms. Paves, as the movant, bore any initial burden of production to demonstrate that the debtor is not eligible for chapter 13, she met that burden through the debtor's original bankruptcy schedules and her proof of entitlement to post-judgment interest. Thereafter, the burden of persuasion shifted to the debtor to substantiate the amendments to her schedules bringing her total debt within the statutory limit imposed by section 109(e). See In re Hatzenbuehler, 282 B.R. at 835.

V.

For the following reasons, I conclude that the debtor has not met her burden to demonstrate that the amended schedules more accurately reflect her unsecured debts as of the time her bankruptcy case commenced than did her original schedules.[13]

First, according to the debtor, the debt owed to Alamo FKA Cartemps was "written off." Trial at 1:03. For this reason, she excluded this obligation from her amended schedules. Previously I have held, albeit in a different context, that debts that are written off by a creditor remain legally due and owing by the debtor. "Diaconx has not cited any legal authority explaining why the unilateral action of a bank's accounting department in writing off a debt as uncollectible internally on its books affects the legal rights of the bank and its obligor. . . . Absent a subsequent agreement of the parties in the nature of an accord and satisfaction or a novation, I can only conclude that the original security agreement has remained in effect." In re Diaconx Corp., 69 B.R. 333, 341 (Bankr. E.D. Pa. 1987). This conclusion is consistent with Pennsylvania law. Industrial Val. Bank & Trust Co. v. Norman, 13 Leb. C.L.J. 169, 53 Pa. D. & C. 2d 691 (Pa. Com. Pl. 1971):

> Defendants' sole assault on this note was their claim that $50,000 of this note had been forgiven by the bank as a result of various disputes between the bank and Samuel K. Norman. In support of defendants' contention, he points to an endorsement on the note of a credit of $50,000. The bank,

[13]Since the debtor's total unsecured debts either fall just above or below the debt ceiling of section 109(e), I shall analyze all of the amended debt information, regardless of amount.

> however, denied forgiving Norman $50,000 of indebtedness as a result of a compromise concerning disputes. The officer in charge of the transaction from the bank testified that the bank examiners directed them to write off $50,000 of this note as a charge against its reserve for bad debts, since it was considered by the examiners as uncollectible. The bank officer testified that this is a common practice required by bank examiners in order to conform the banks asset statement to reality. A bank loan to a customer is carried on the bank's balance sheet as an asset. If the note supporting the loan appears to be uncollectible, the bank examiners direct it be charged against reserve for bad debt and not carried as an asset, thus more accurately reflect the financial condition of the bank. However, this does not, of itself, constitute forgiveness of the debt to the debtor. The obligation continues and is collectible in the future if the debtor is solvent.

Id., at 694 (emphasis added).

A novation substitutes a new contract for an old one, accepting a new promise in satisfaction of a previously existing claim. G.E. Capital Mortgage Servs. v. Pinnacle Mortgage Inv. Corp., 897 F. Supp. 854, 864 n.8 (E.D. Pa. 1995) (citations omitted). "Under Pennsylvania law, the party arguing that a new agreement constitutes a novation must establish the following elements: 'the displacement and extinction of a valid contract, the substitution for it of a new contract, a sufficient legal consideration for the new contract, and the consent of the parties.'" G.E. Capital, 897 F. Supp. at 864 (E.D. Pa. 1995), citing Buttonwood Farms, Inc. v. Carson, 329 Pa. Super. 312, 478 A.2d 484, 486 (1984). "'The party asserting a novation . . . has the burden of proving that the parties intended to discharge the earlier contract.'" G.E. Capital, 897 F. Supp. at 864, citing Buttonwood, 478 A.2d at 486; see In re Presidential Associates, 1992 WL 295892 (Bankr. E.D. Pa. 1992), citing Publicker Industries, Inc. v. Roman Ceramics Corp., 603

F.2d 1065, 1071 (3d Cir. 1979). An accord and satisfaction is similar: "an agreement to substitute for an existing debt some alternative form of discharging that debt, coupled with the actual discharge of the debt by the substituted performance." Black's Law Dictionary (7th ed. 1999).

Here, the debtor's testimony did not evidence either a novation or an accord and satisfaction; in particular, no consideration for a new contract was evident nor was any substituted performance suggested. On the contrary, the debtor stated that her creditor merely decided not to pursue any collection efforts. Therefore I find the Alamo debt still due and owing in the amount reported by the debtor in her original schedules: $500.

Similar reasoning also applies to the Stuart Forman debt for accounting services that the debtor also asserts was unilaterally reduced. In evidence is a bill dated June 1, 2001, reciting a balance due of $3,985 and warning that "past due balances over 30 days are assessed a late payment charge of 1.5% per month." Ex. M-8. Also entered into evidence is a bill dated May 1, 2003 reciting a previous balance due of $5,045. Ex. M-9. Finally, an undated letter signed by Mr. Forman recites that "[a]s of January 1, 2004 there remains a balance due of $3,250 for prior professional services rendered. This amount is net of late payments and interest charges, which have been waived." Exs. M-9, M-17.

Between May 1, 2003 and January 1, 2004, the debtor offered no evidence that payments had been made to reduce her obligation on this claim. Instead, the debtor testified that Mr. Forman had told her after she had filed for bankruptcy that much of her

debt to him constituted interest on the unpaid bill that she could ignore and only pay $3,200. Trial at 1:20.[14] Later in testimony, the debtor stated she had held a prepetition conversation with Mr. Forman, who told her he would waive the interest charges, "if he was able to." Trial at 1:26. "And he never really came up with an amount until I spoke with him [later and came up with] the concrete amount." Id.

Based on the reasoning above, portions of a bill written off are still owed. Moreover, even if the debtor were successful in reducing her debt postpetition, such a reduction would have no effect on eligibility, because the plain language of section 109(e) provides that debts counted for eligibility purposes are those owed "on the date of filing of the petition . . .." 11 U.S.C. § 109(e); see In re Stairs, 307 B.R. at 701 ("[E]ven though it is asserted by the Debtor that the BSB claim may have been . . . reduced to a zero balance[,] . . . this reduction was a post-petition event and not relevant to eligibility analysis."); see also In the Matter of Heleva, 2001 WL 1176394, *2 (E.D. Pa. Oct. 2, 2001) ("The possibility that a judgment or obligation may be cancelled upon future legal determinations does not alter the noncontingent or liquidated nature of the obligation."). One court put it particularly forcefully:

> The Debtor's post-petition piecemeal attempts to "buy out" or "settle" those debts do not somehow retroactively make them contingent or unliquidated as of the petition date. The Court is unwilling to reward a debtor's post-petition efforts to gerrymander eligibility requirements by picking and choosing debts to somehow "settle" without any court supervision or process.

[14]This is an increase from the $2,200 the debtor entered on her amended Schedule F. She explained that she had made a mistake. Hearing at 1:20.

In re Rohl, 298 B.R. at 104. I note also that creditors may reduce claims because of a debtor's bankruptcy filing, recognizing the probability that the obligation will not be fully collectable. See, e.g., In re Brigance, 219 B.R. 486, 492 (Bankr. W.D. Tenn. 1998) (lender testimony that when customer files bankruptcy petition, customer's account is written off as bad debt).

Even if Mr. Forman may have decided to reduce his prepetition claim in light of the debtor's bankruptcy filing (or based upon his belief that he could not collect more from the debtor), this does not change the debtor's legal liability at the moment she filed her bankruptcy petition. The documentary evidence reflects that $5,045 was owed as of May 1, 2003. The bankruptcy case commenced on May 28, 2003, less than thirty days thereafter. Accordingly, this debt should be counted toward the section 109(e) eligibility limit in its originally-scheduled amount of $5,045.

I next consider the scheduled claim held by Mr. Spirt, the debtor's attorney in the state court litigation brought by Ms. Paves. In evidence is a bill dated April 4, 2001 "for professional services rendered" citing a past due amount of $7,810. Exs. M-12, M-15. The debtor testified that this $7,810 bill had been the last one she had received "in a very long time." Trial at 1:16. The debtor believed, however, that her attorney had performed additional services since that bill. Id.[15] She originally estimated at the time of filing her petition that she must have owed about $12,500. Id.

In preparing to file her amended schedules, the debtor called Mr. Spirt and

[15]Given that the Pennsylvania Supreme Court appeal was argued in April 8, 2002, Ex. M-1, it is virtually certain that Mr. Spirt (or his law firm) provided additional services after April 4, 2001.

asked him for the exact amount owing. According to the debtor, he told her she owed $8,800. Id. When she asked about all the other work he had done for her that must be missing from that amount, Mr. Spirt allegedly replied that he could not even foresee the debtor paying the $8,800, so he did not bother billing her for the rest of the work. Trial at 1:16-:17. (Although the debtor marked this debt as unliquidated on her amended schedules, clearly, it is not.)

In contrast to the Forman debt, the debtor credibly testified that Mr. Spirt elected not to charge her for certain work performed. Indeed, the one bill in evidence shows two items for which Mr. Spirt was not billing: correspondence (10/17/00) and a telephone call and correspondence (11/21/00). Ex. M-12. This is not the same as writing off a debt previously incurred, since Mr. Spirt never made any claim for the services in the first place. The evidence demonstrates that $7,810 was owed approximately two years prepetition, that additional work was performed, and that the attorney calculated his claim at only $8,800. This liquidated debt was therefore established at $8,800 on the date of filing.

Next for consideration is a claim the debtor contends that she disputes, held by Barry Hackert Auto Body. Trial at 1:04, 1:15. The debtor here maintains that the entire $1,193 obligation should not be considered under section 109(e), because this creditor failed to return two phone calls she made postpetition in an attempt to discuss the matter. Trial at 1:04, 1:15. The debtor stated "I didn't know where it stood." Trial at 1:04.

Given the definitions of contingent and liquidated discussed earlier, this

obligation is an noncontingent, liquidated, contractual claim for auto repair services that were provided prepetition. Although the debtor now disputes the amount claimed due by this body shop, a disputed debt is still considered for chapter 13 eligibility purposes. See In re Stern, 266 B.R. 322, 327 (Bankr. D. Md. 2001) (claims disputed as to liability must be counted, citing United States v. Verdunn, 89 F.3d 799 (11th Cir. 1996)); In re Knight, 55 F.3d 231 (7th Cir. 1995); In re Claypool, 142 B.R. 753 (Bankr. E.D. Va. 1990); see also In re Slack, 187 F.3d 1070, 1074 (9th Cir. 1999) (looking to whether disputed debt is subject to "ready determination," and concluding that "the mere assertion by the debtor that he is not liable for the claim will not render the debt unliquidated . . .."); In re Johnson, 191 B.R. 184, 185 (Bankr. D. Ariz. 1996) (that a claim will be further disputed on appeal does not make it unliquidated or contingent); In re McMonagle, 30 B.R. 899, 903 (Bankr. D.S.D. 1983) (debtor's dispute of personal liability for debts supported by state court judgments "has no bearing on the computation of the unsecured debt limits established by section 109(e)."); In re Prince, 5 B.R. 432, 433 (Bankr. W.D.N.Y. 1980) (existence of appeal does not make debt contingent).

The debtor acknowledged that when she originally scheduled the Barry Hackert debt, she believed she owed a definite amount. Trial at 1:13. Presumably, this belief arose from some bill received by her. But when she amended her schedules, she "did not know what [she] owed." Id. This sudden lack of knowledge was occasioned solely by the failure of the creditor to respond to her post-bankruptcy inquiries. Clearly, the debtor had precise information, prepetition, concerning the amount of this claim and disclosed it on her original bankruptcy schedules. There was no evidence offered to

support that this contractual debt was repaid, or is unliquidated or contingent. Therefore, the $1,193 debt to Barry Hackert Auto Body stands at the debtor's originally-scheduled amount for purposes of this eligibility determination.

While increasing the scheduled amount of the Paves debt to $210,400, the debtor also newly marked the judgment obligation as contingent, unliquidated and disputed in her amended schedules. In evidence, however, is a copy of the published decision, Paves v. Corson, 801 A.2d 546, 569 Pa. 171 (2002). Ex. M-1. Damages assessed against the debtor for breach of confidential relationship and conversion, in the amounts of $150,500 and $59,500 respectively, were affirmed. Therefore there is no contingency necessary to invoke the debtor's duty to pay these damages, nor is the debt not of a sum certain, i.e., unliquidated. As already explained above, a dispute about a debt does not make it unliquidated or contingent. See In re Rohl, 298 B.R. at 103 ("However, a sincere dispute as to the existence of these liabilities [reduced to judgment] does not by itself make either of these liabilities contingent or unliquidated."). The debt should not only be counted toward the debtor's chapter 13 eligibility, but, as related above, with the inclusion of the interest accrued since the date of the judgment.

I next focus upon the Mobile Life and Neurological & Spine Surgery debts. Here, the debtor claims a representative of her insurance company, Geico Insurance, told her that claims of both of these creditors had been denied by Geico for submitting their claims too late, and that the debtor was not personally responsible for the amounts. Trial at 1:06, 1:18. She therefore removed both debts when filing her Amended Schedule F.

In evidence is correspondence from "The Collection Department" of

Mobile Life Support Services reciting an overdue amount of $623. Ex. M-8, M-12, M-13. The correspondence indicates that it was "Printed On" December 26, 2001. Id. Handwritten on the correspondence is the statement, appparently written by the debtor: "Geico told me that this was never submitted to them and I am not responsible for paying this bill." Id.

Also in evidence is a bill dated December 4, 2001 from Neurological & Spine Surgery in the amount of $500. Ex. M-8. In addition, in evidence is a letter dated February 25, 2004 from Geico regarding Neurological & Spine Surgery stating:

> Please be advised under Mandatory Personal Injury Protection Endorsement, when the Insurance Company denies a bill for non-compliance, the medical provider cannot bill the patient the amount denied.

Exs. M-12, M-14. A Geico Health Insurance Claim Form in evidence indicates that the accident that precipitated the debtor's health bills occurred September 3, 2001. Id. The date next to the "patient's signature," an indication of when the claim form may have been submitted to Geico, is August 16, 2002. Id. Rather than the debtor's actual signature adjacent to the date however is typed "Signature on file." Id.

Finally, on what appears to be a Geico Claim Denial form in connection with Neurological & Spine Surgery is the following statement:

> Denial is made due to non-compliance with the Mandatory Personal Injury Protection Endorsement which stipulates that written proof of claim must be submitted as soon as reasonably practicable, but in the case of health service expenses no later than 180 days after the date services are rendered or 180 days after the date written notice was given to the Company, whichever is later, unless the eligible injured person submits written proof that it was impossible to comply

> with such time limitation due to specific circumstances beyond such person's control.

Ex. M-12. A handwritten date of "9/6/02" appears on the form. Id.

As explained above, dispute as to liability does not make a debt either contingent or liquidated. Furthermore, it is not for this court at this juncture to determine whether the debtor ultimately could be found liable or not. See In re Pennypacker, 115 B. R. at 506. For one, though some of the documentary evidence could lead one to conclude that the claim form was submitted nearly 11 months after the accident, whereas Geico requires claim submission within 180 days of when services were rendered, I cannot determine here whether the delay was the fault of the creditor or the debtor; nor can I determine whether Geico's denial of the claim comported with the terms of the insurance contract with the debtor; nor may I conclude that the alleged "law" cited by Geico regarding the debtor's liability is accurate and applicable.

Both Mobile Life and Neurological & Spine Surgery billed the debtor in amounts determined with sufficient precision and without contingencies. These bills were for services rendered and thus were contractual. Therefore the debts in connection with Mobile Life and Neurological & Spine Surgery should be considered in their originally-scheduled amounts and counted towards the debtor's eligibility for chapter 13, albeit disputed by the debtor.

The debtor also asserts that she reduced the debt owed to Robert Levine, DDS, on her amended schedules to $400 after she learned that her insurance had paid $340 on the $740 claim. Trial at 1:08, 1:19. The debtor stated that at the time she filed

her original schedules, she thought she owed the entire amount, but found out "after the fact" that, at the time filed, she only owed $400 due to an insurance payment. Trial at 1:19. She testified that someone from Dr. Levine's office told her the insurance payment had been made. Id.

In evidence is an invoice dated December 26, 2002 indicating an amount due of $740. Exs. M-9, M-16. Handwritten on the invoice is the note:

> 12/26/02 Dear Carol: We just received correspondence from Geico . . . The claim has been denied. Please remit the balance below.

Id. The note is signed by Dottie Sulpizio, Office Manager. Id. This note initially contradicts the debtor's testimony that insurance paid a portion of the claim.

Also in evidence, though, is a letter dated August 21, 2003 from I.C. System, Inc., indicating that Dr. Levine turned over the account to a collection agency. Ex. M-10. The letter indicates that I.C. System seeks payment on a balance due of $486.40. Id. The debtor testified that the amount turned over to collection reflected the reduction in the bill due to the insurance payment. Trial at 1:08.

Although the collection agency's letter is dated a few months after the debtor's May 2003 bankruptcy filing, it is more persuasive evidence of the amount the debtor owed as of the petition date, coupled with the debtor's testimony of an insurance payment. Therefore, the amount of $486.40 will be used for eligibility purposes.

Finally, regarding the debtor's debt owed on her automobile, the debtor claims she reduced the unsecured portion to $0 based on the fact that, after BSB repossessed her vehicle, it did not seek a deficiency. Trial at 1:23. Additionally, she

claims that when she went to retrieve personal items from the repossessed vehicle, a BSB representative told her that she owed nothing more on the car. Trial at 1:23-:24.

The cash price of the car was $12,250 on December 22, 2001, and the debtor financed $12,001.44. Ex. M-11. BSB repossessed the vehicle after this bankruptcy case was commenced and after the automatic stay was terminated under section 362(d). In its Motion to Lift Stay, BSB states only that the debtor has no equity in the vehicle. See Motion of Beneficial Savings Bank, Aug. 14, 2003, ¶ 5(b). The creditor does not appear to have filed any proof of claim in this case.

Automobiles start to depreciate the moment they leave the seller's lot. Certainly after nearly 18 months the vehicle could easily have depreciated by about $2,500 (which is only 10% of the initial purchase price) as noted on the debtor's original schedules. Owners of property are qualified to offer evidence of value. See, e.g., Asplundh Mfg. Div., a Div. of Asplundh Tree Expert Co. v. Benton Harbor Engineering, 57 F.3d 1190, 1198 n.8 (3d Cir. 1995); Neff v. Kehoe, 708 F.2d 639, 644 (11th Cir. 1983). On her amended schedule D, the debtor seeks to increase her estimate of the value of the vehicle to $12,000. This amended valuation, however, is based solely upon the bank's failure to pursue any deficiency claim, rather than upon new valuation information.

The debtor's bankruptcy filing is a more probable cause of BSB's not pursuing a deficiency claim than that no deficiency exists because the value of the car

after repossession equaled the debtor owed (along with the costs of repossession).[16] Moreover, it is more likely than not that the automobile depreciated in value.[17]

In her amended scheduled D, the debtor did not alter the amount of her prepetition obligation to BSB of $12,000. She only increased the value of the vehicle as of the date of her bankruptcy filing; an amendment predicated solely upon the lender's failure to seek a deficiency. For the reasons just stated, I conclude that the debtor's original estimate of the value of the vehicle is more credible than that reflected on her amended schedule. Accordingly, at the time of her bankruptcy filing, BSB held an unsecured claim of $2,500 for purposes of this motion.

VI.

Based upon the above evidence, the allocation of the evidentiary burden, and the inclusion of all disputed debts into the calculus, the debtor had the following noncontingent, liquidated, unsecured debts as of the date of her bankruptcy filing:

[16]The debtor cites 13 P.S. § 9626(a)(3) in support of the proposition that BSB is prohibited from collecting a deficiency for failing to provide notice of disposition of the collateral. Debtor's Memorandum of Law in Opposition to Motion to Dismiss, at 4. Whether this statutory provision applies or, if it applies, is stayed by the debtor's bankruptcy filing, are issues I need not now decide. The entitlement to any deficiency would be disputed, but not contingent or unliquidated. Any deficiency claim is easily computed: the amount owed, plus the costs of repossession less the proceeds of sale upon repossession.

[17]This would be even more certain if the automobile in question was the same vehicle that needed auto body repairs.

Creditor	Unsecured Debt
Abington Memorial Hospital	$97
Alamo FKA Cartemps	$500
Barry Hackert Auto Body	$1,193
Chrysler Financial	$1,334
David Spirt, Esq.	$8,800
First USA Bank	$12,200
Mobile Life Support Services	$623
Neurological & Spine Surgery	$500
Robert Levine DDS	$486.40
Sidonie Paves	$259,132.10
Silver Forman & Assoc.	$5,045
Beneficial Savings Bank	$2,500
TOTAL	**$292,410.50**

The $292,410.50 sum of unsecured, noncontingent and unliquidated debts exceeds the statutory limit of $290,525, making the debtor ineligible to file under chapter 13.

VII.

The conclusion that this debtor is ineligible for chapter 13 relief does not fully resolve this motion. While a bankruptcy court has the power to dismiss a chapter 13 case where the debtor is ineligible for relief, e.g., Matter of Knight; Matter of Hammers, 988 F.2d 32 (5th Cir. 1993); Lucoski v. I.R.S., a court is not compelled to dismiss but may convert to chapter 7. See In re Pennypacker; Matter of Martin, 78 B.R. 928 (Bankr. S.D. Iowa 1987); In re Bobroff, 32 B.R. 933 (Bankr. E.D. Pa. 1983).[18] Whether to dismiss the chapter 13 case or convert it to chapter 7 is generally left to the discretion of

[18]No party requests that the debtor be given leave to file a motion to convert this case to chapter 11. See generally Lucoski v. I.R.S., 126 B.R. at 335. Thus, I do not consider that option.

the bankruptcy court, based upon the totality of the circumstances, and primarily considering the best interests of the debtor and her creditors. E.g., In re Green, 64 B.R. 530 (B.A.P. 9th Cir. 1986); see Matter of Cohoes Indus. Terminal, Inc., 931 F.2d 222, 227 (2d Cir. 1991) (discussing the similar provisions of section 1112(b)); In re Ravick Corp., 106 B.R. 834, 843 (Bankr. D.N.J. 1989) (same).

Here, both the debtor and Ms. Paves express a preference for conversion back to chapter 7. Presumably, the debtor prefers chapter 7 so she may seek a chapter 7 discharge, a discharge that may or may not include her obligation to Ms. Paves. I assume the creditor also seeks conversion both for the opportunity to investigate the debtor's assets and to resolve, she believes, any non-dischargeability issues.[19]

As both parties desire conversion, and as no other party in interest has suggested that dismissal is more appropriate, their joint request will be accommodated.

Accordingly, an order reconverting this case to chapter 7 shall be entered.

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[19]There is a potential dispute lurking in the far future that the debtor alludes to in her memorandum but that I need not now decide.

In Johnson v. Home State Bank, 501 U.S. 78 (1991), the Supreme Court held that the Bankruptcy Code does not, in general, prevent an individual from filing chapter 7, obtaining a chapter 7 discharge, and then filing chapter 13. The debtor here assumes that a chapter 7 discharge of debts, even if Ms. Paves claim were not included, would render her eligible to file a chapter 13 case after her chapter 7 case is closed. Moreover, it is further assumed that a later chapter 13 filing would discharge any claim owed to Ms. Paves.

Whether these assumptions are correct involves some complicated issues, the present analysis of which would be purely advisory and therefore impermissible.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
CAROL CORSON	:	
Debtor	:	Bankruptcy No. 03-18160F

.....

ORDER

.....

AND NOW, this 25th day of June 2004, for the reasons stated in the accompanying memorandum, the Motion of Sidonie Paves to Dismiss Chapter 13 Case or Convert Case to Chapter 7 is granted. The debtor is determined to be ineligible for chapter 13 relief. Therefore, it is ordered that the debtor's case is converted back to chapter 7. The United States trustee shall appoint a chapter 7 trustee forthwith.

BRUCE FOX
United States Bankruptcy Judge

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