ORDERED.

Dated: May 05, 2023

Jason A. Burgess
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

KAREN W. HALL,
SPUDDOG FARM PROPERTIES, LLC,

Debtors.
_____/

Case No. 3:22-bk-01326-BAJ
Case No. 3:22-bk-01341-BAJ
Chapter 11
(Jointly Administered Cases)

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, AND DENYING CROSS-MOTION FOR SUMMARY JUDGMENT, ON OBJECTION TO SUBCHAPTER V ELIGIBILITY

This Case is before the Court on the *Motion for Summary Judgment* (the "Motion") (Doc. 147) filed by WBL SPO II, LLC ("WBL"), the *Response and Cross-Motion for Summary Judgment* (the "Response") (Doc. 158) filed by Karen W. Hall ("Mrs. Hall") and Spuddog Farm Properties LLC ("Spuddog") (collectively the "Debtors"), the Objection to Debtors' Eligibility for Subchapter V (the "Objection to Eligibility") (Doc. 69) filed by WBL, and the Response to Objection to Eligibility (Doc. 74) filed by Nutrien Ag Solutions, Inc. ("Nutrien Ag"). By the Motion, WBL argues that the Debtors "are not eligible to proceed under Subchapter V because

their aggregate noncontingent liquidated secured and unsecured debts exceed the $7,500,000 [debt] limit." (Doc. 147, p. 1). In support, WBL argues that: (i) the proofs of claim, not the schedules, should control the eligibility calculation; (ii) the outcome of the pending adversary proceeding is not necessary to determine eligibility; (iii) Mrs. Hall's guaranty is noncontingent; and (iv) the WBL Claim is liquidated. Conversely, the Debtors seek summary judgment in their favor or, alternatively, denial of the Motion based on the existence of disputed material facts. In support, the Debtors argue that (i) the WBL Claim should be excluded from the eligibility calculation because it is not debt at all; (ii) the bankruptcy schedules, not proofs of claim, should control the eligibility determination; (iii) Mrs. Hall signed the WBL unlimited guaranty on behalf of Spuddog, and the WBL Claim as to her is contingent; and (iv) the WBL debt is unliquidated. (Doc. 158, pp. 10-17). Upon consideration of the parties' respective arguments and for the reasons set forth below, the Court will grant the Motion.

Background

Mrs. Hall and Spuddog are affiliates that filed their Subchapter V cases in 2022. Mrs. Hall previously owned and operated farming and trucking businesses in Virginia with her husband, Benny F. Hall, Sr. ("Mr. Hall"). (Doc. 158, p. 2). Mrs. Hall now resides in Florida and works seasonally at Daytona Speedway. Id. In 2015, Benny F. Hall & Sons, LLC ("BFH"), an affiliated farming business owned and operated by Mr. and Mrs. Hall, lost its seasonal line of credit. Id. To fund operations, BFH and the Debtors obtained merchant cash advance ("MCA") loans. Id. at p. 3. Seeking to refinance the MCA loans and obtain additional operating capital, the Debtors discussed financing options with the Vice-President of Kwik Capital. Id. Those discussions led the Debtors to meet with a corporate officer of WBL, Mr. Michael John. Id. The Debtors allege that they relied on oral representations from Mr. John when they entered into multiple loan

agreements with WBL. Id. at pp. 4-5. On May 11, 2016, the parties closed on an initial loan, by which WBL provided the Debtors with $350,000. Id. at p. 5. On June 24, 2016, the parties closed on a second loan, by which WBL provided the Debtors with $935,795. Id. On January 12, 2017, the parties closed on a third loan, by which WBL provided the Debtors with approximately $940,000. Id. at p. 6. In early 2017, WBL declared a payment default and alleged an indebtedness totaling $1,507,294.07. Id. at p. 7.

In July of 2022, each of the Debtors filed a voluntary petition seeking relief under Subchapter V. Id. The Court ordered joint administration of the two affiliated cases. Id. WBL filed a proof of claim in each case in the amount of $7,323,990.19. Id. at p. 8. WBL also filed the Objection to Eligibility, and the Debtors' filed the Response to Objection to Eligibility.

Based upon a review of the claims registers and the Debtors' schedules,[1] the Court surmises that the total claims against Mrs. Hall equal $9,505,522.09 and against Spuddog equal $7,478,968.64[2] as of the petition dates. The total aggregate claims equal $9,721,043.43. The parties did not debate the validity of claims of creditors other than WBL. Given the significant amount of the WBL Claim, whether the WBL claim is unliquidated or contingent largely controls the eligibility determination.

Summary Judgment Standard

"[S]ummary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex

[1] If a creditor has filed a proof of claim, the proof of claim amount will control over the scheduled amount. Fed. R. Bankr. P. 3003(c)(4). Absent a proof of claim, the Court included the scheduled amount in its calculation. 11 U.S.C. § 1111.

[2] Spuddog, standing alone, would qualify as a Subchapter V debtor under § 1182(1)(A). However, Spuddog is ineligible because it is "a member of a group of affiliated debtors under this title that has *aggregate*" debts greater than $7,500,000. 11 U.S.C. § 1182(1)(B) (emphasis added).

Corp. v. Catrett, 477 U.S. 317, 322 (1986) (internal quotations omitted). The court's role is not to try issues of fact, but to determine whether fact issues exist to be tried. Balderman v. U.S. Veterans Admin., 870 F.2d 57, 60 (2d Cir. 1989). "The moving party bears the initial burden to show . . . by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). "Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is indeed a material issue of fact that precludes summary judgment." Id. A moving party discharges its burden on a motion for summary judgment by demonstrating "that there is an absence of evidence to support the nonmoving party's case." Celotex Corp., 477 U.S. at 325. In determining whether the movant has met this initial burden, "the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the nonmoving party." Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." Miranda v. B & B Cash Grocery Store, Inc., 975 F.2d 1518, 1534 (11th Cir. 1992).

Analysis

To qualify for Subchapter V, a debtor must have debts that do not exceed the ceiling established by § 1182. A debtor cannot qualify for Subchapter V if its "aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition" exceed $7,500,000. 11 U.S.C. § 1182(1)(A). Given the similar language in § 109(e), Chapter 13 case law offers useful guidance when interpreting § 1182.

A. Disputed Debts Count Toward Eligibility Under 11 U.S.C. § 1182 and the Mere Existence of a Dispute does not Render the Debt Unliquidated

The Debtors concede that "case law supports the proposition that the mere dispute as to liability on a debt does not automatically exclude that amount from the calculation" under 11

U.S.C. § 1182. (Doc. 158, p. 11). Nevertheless, the Debtors attempt to differentiate "mere dispute" from "a bona fide dispute." Id. In support, the Debtors point to the pending adversary proceeding that they initiated against WBL. (the "Adversary Proceeding"; 3:22-ap-00086-BAJ, Doc. 1). Through the Adversary Proceeding, the Debtors seek disallowance of the WBL claim in its entirety based on fraud in the inducement, intentional misrepresentation, negligent misrepresentation, and equitable subordination. Id. Based on the pendency of the Adversary Proceeding, the Debtors argue that there is a dispute as to whether "the WBL Claim is a 'debt' at all." (Doc. 158, p. 11). The Debtors further argue that the dispute renders the WBL claim unliquidated. (Doc. 158, p. 17). The Court disagrees.

Under the plain language of 11 U.S.C. § 1182, disputed debts are not excluded from the $7.5 million debt limit. Furthermore, the Eleventh Circuit previously rejected an argument very similar to that made by the Debtors. U.S. v. Verdunn, 89 F.3d 799 (11th Cir. 1996). In Verdunn, the debtor argued that his tax debts were unliquidated because he "vigorously disputed" fraud penalties assessed by the Internal Revenue Service ("IRS") and substantial proceedings were necessary for the Tax Court to determine his tax liability. Id. at 802. The Eleventh Circuit rejected the debtor's argument and ruled in favor of the IRS Commissioner, who analogized the IRS notice of deficiency to a contract. Id. at 802-03. Very much like the debtor's argument in Verdunn, the Debtors argue that the magnitude of their dispute transforms the WBL Claim to an unliquidated debt. (Doc. 158, p. 16). The Debtors debate the existence of the WBL Claim, arguing it is not debt at all. Id. at p. 11. However, they do not debate that the amount of the WBL Claim is readily ascertainable. Id. at pp. 10, 14. Likewise, the Debtors do not argue that WBL miscalculated its claim, other than to argue that the WBL Claim should be treated as $0 or, at a minimum, that the

Court should disallow the prepayment penalty.[3] Id. at pp. 10-12. This argument is unavailing because "the concept of a liquidated debt relates to the amount of liability, not the existence of liability." Verdunn, 89 F. 3d at 802.

"[C]ourts have generally held that a debt is liquidated if its amount is readily and precisely determinable, where the claim is determinable by reference to an agreement." United States v. May, 211 B.R. 991, 996 (citing Collier on Bankruptcy, 15th Ed. at 1109.06[2][c] (March 1997)). Ordinarily, debts of a contractual nature are "subject to ready determination and precision in computation of the amount due" and, therefore, are considered liquidated, even if subject to a substantial dispute. Barcal v. Laughlin (In re Barcal), 213 B.R. 1008, 1014 (B.A.P. 8th Cir. 1997). By contrast, tort claims are generally unliquidated if not reduced to judgment. Id. The nature of "the process for determining the claim" dictates whether the claim is liquidated or unliquidated, not the magnitude of the dispute or the length of the trial required to resolve the dispute. See id.; Nicholes v. Johnny Appleseed (In re Nicholes), 184 B.R. 82, 91 (B.A.P. 9th Cir. 1995) ("So long as a debt is subject to ready determination and precision in computation of the amount due, then it is considered liquidated and included for eligibility purposes under § 109(e), regardless of any dispute."); see also In re Robinson, 535 B.R. 437, 448 (Bankr. N.D. Ga. 2015) ("Generally, when a debt is owed pursuant to a contractual obligation it is liquidated."). Therefore, the pendency of the Adversary Proceeding does not render the WBL Claim unliquidated.

Furthermore, even if the Debtors were to prevail in the Adversary Proceeding, the Debtors would still be ineligible in the pending cases. In re Jerome, 112 B.R. 563, 566 (Bankr. S.D.N.Y. 1990) (stating that eligibility is determined as of "the date of filing the petition and not after a

[3] Even if the Court disallowed the prepayment penalty of $519,963.58, the Debtors' aggregate debts would still exceed $7.5 million.

hearing on the merits of the claims"). The relevant debt levels are those existing "as of the date of the filing of the petition." See 11 U.S.C. § 1182(1)(A).

In sum, the Debtors' arguments, which primarily focus on the extent of the dispute, are misplaced. The Court finds that the WBL Claim is liquidated.

B. Schedules Do Not Control Eligibility Under 11 U.S.C. § 1182

Next, the Debtors argue that the schedules should control the eligibility determination, absent an allegation of bad faith. (Doc. 158, p. 14) (relying on Emcyte Corp. v. Stahl (In re Stahl), 2021 Bankr. LEXIS 921, at *15 (B.A.P. 9th Cir. 2021)). The Court declines to adopt this view. While the schedules offer some probative value, the Court will not restrict its inquiry solely to the schedules. In re Steffens, 343 B.R. 696, 698 (Bankr. M.D. Fla. 2005) (determining eligibility based upon the claims filed). Eligibility is determined by what the Debtors owe on the petition date, not by what the Debtors think they owe. In re Sullivan, 245 B.R. 416, 418 (N.D. Fla. 1999).

C. Value of Collateral Immaterial for Eligibility Purposes

The Debtors also contend that the WBL Claim is unliquidated because the value of its collateral is unknown. (Doc. 158, p. 17). This is clearly erroneous. The Subchapter V debt limit includes "secured and unsecured debts." 11 U.S.C. § 1182(1)(A). Therefore, the value of the collateral is immaterial to determine the Debtors' eligibility under § 1182.

D. Mrs. Hall Signed the WBL Unlimited Guaranty in her Individual Capacity

The unlimited guaranty dated January 12, 2017, contains three signature blocks, one for Mr. Hall, one for Mrs. Hall, and one for Spuddog. (the "WBL Unlimited Guaranty"; Proof of Claim 7, pp. 14-18). Mrs. Hall signed the WBL Unlimited Guaranty but claims to have signed only on behalf of Spuddog, not in her individual capacity. (Doc. 158, p. 15). Although the words "managing member" were added to each of the three signature blocks, the Court finds that Mrs.

Hall signed the WBL Unlimited Guaranty in her individual capacity. First, each of the three signature blocks clearly identifies each of the three guarantors separately as follows: "(Guarantor Name) Benny Franklin Hall," "(Guarantor Name) Karen Willett Hall," and "(Guarantor Name) Spuddog Farm Properties LLC." Id. at p. 16. Mr. Hall signed twice, once on behalf of Spuddog and once individually. If the parties intended to obligate only Spuddog, then Mr. Hall did not need to sign twice. Second, the WBL Unlimited Guaranty includes an additional provision, which states "**For Married Residents Only:** Each Guarantor who signs below represents that this obligation is incurred in the interest of his or her marriage or family." Id. Mr. Hall and Mrs. Hall signed this additional provision, which undoubtedly was not necessary if the WBL Unlimited Guaranty applied to Spuddog alone. Third, the three guarantors also signed a jury waiver, which also clearly and separately identified each of the guarantors but did not include the words "managing member." Id. at p. 18. Taken together, these indisputable facts indicate that the WBL Unlimited Guaranty bound Mr. Hall, Mrs. Hall, and Spuddog. Based on the foregoing, the Court finds that Mrs. Hall signed the WBL Unlimited Guaranty in her individual capacity, and the WBL Claim as to both Debtors is noncontingent.

Conclusion

The Court finds that that there is no genuine dispute as to any material fact, and WBL is entitled to judgment as a matter of law. The Debtors do not argue that WBL miscalculated its claim, rather they argue that the WBL Claim does not exist, should be reduced to $0, or converted to equity. The parties' dispute, albeit significant, does not render the WBL Claim unliquidated where the debt is based on alleged failure to pay pursuant to the terms of a contract. Further, the Court will not restrict its review solely to the schedules filed in the case. Eligibility should be determined by what the Debtors owe on the petition date, not by what the Debtors think they owe.

Also, determining the value of the collateral is unnecessary based on the plain language of § 1182, which includes secured and unsecured debts when considering eligibility limits. Finally, Mrs. Hall signed the WBL Unlimited Guaranty in her individual capacity, and the WBL Claim as to both Debtors is noncontingent. Based on the foregoing, the Court will grant the Motion.

Accordingly, it is

ORDERED:

1. The Motion is **GRANTED**.
2. The Cross-Motion for Summary Judgment is **DENIED**.
3. Within fourteen (14) days, each Debtor shall amend its voluntary petition to remove the Subchapter V election or file a motion to dismiss or convert.

Attorney Jonathan M. Sykes 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 the order.