

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

CARLOS M. VIDAL

**Case No. 04-11957-BKC-RAM
Chapter 13**

Debtor.

**ORDER GRANTING MOTION TO DISMISS DEBTOR’S CHAPTER 13 CASE FILED
BY ASSURANCES GENERALES DE FRANCE MARINE AVIATION TRANSPORT**

THIS MATTER came before the Court on September 17, 2004 at 10:00 a.m. upon the Motion to Dismiss Debtor’s Chapter 13 Case filed by Assurances Generales de France Marine Aviation Transport (the “Motion”). The Motion seeks dismissal of the Chapter 13 bankruptcy case pursuant to 11 U.S.C. §1307(c) and 11 U.S.C. §109(e). At the hearing, the parties conceded that if the judgment held by Assurances Generales de France Marine Aviation Transport in the original amount of \$227,168.95 is *non-contingent* and *liquidated* as those terms are used in 11 U.S.C. 109(e), then the Debtor is clearly over the debt limits and he is ineligible for Chapter 13. The Court heard arguments of counsel, and based upon the undisputed facts and the relevant case law makes the following findings and conclusions.

Undisputed Facts

The Debtor filed his case on March 10, 2004 (“Petition Date”) under Chapter 13 of the United States Bankruptcy Code. On the Petition Date, Assurances Generales de France Marine Aviation Transport was the holder of a final money judgment in the original amount of \$227,168.95 (the “Judgment”). Further, the Debtor timely filed his notice of appeal of the Judgment.

Issue to Be determined

Whether the pendency of an appeal of an otherwise final money judgment renders the debt represented by the judgment as “contingent or unliquidated” as contemplated in 11 U.S.C. §109(e).

Conclusion of Law

The Court concludes that the pendency of an appeal of an otherwise final money judgment does not render the judgment as “contingent” or “unliquidated” as contemplated in 11 U.S.C. §109(e). As a preliminary matter, the eligibility of a debtor under Chapter 13 is determined based

upon the debt limits found in §109(e). The eligibility determination is to be made as of the petition date. *U. S. v. Verdunn*, 89 F.3d 799, 801 n.8 (11th Cir. 1996).

Most, if not all courts, considering this issue have concluded that an otherwise final judgment for an amount certain, is not rendered as “contingent” or “unliquidated” merely because an appeal has been filed and is prosecuted during the Chapter 13 case. *Gould v. Gregg, Hart, Farris & Rutledge*, 137 B.R.761 (W.D. Ark. 1992)(pendency of appeal of attorney's fees did not make debt contingent); *In re Albano*, 55 B.R. 363 (N.D. Ill. 1985)(pendency of appeal did not render debt reduced to judgment unliquidated and contingent within meaning of Bankruptcy Code); *In re Slomnicki*, 250 B.R. 531 (Bankr. W.D. Penn. 2000); *In re Cluett*, 90 B.R. 505 (Bankr. M.D. Fla 1988)(pendency of appeal of state court judgment against debtors for \$412,000 did not make judgment debt unliquidated contingent debt so as to be excluded from computation of unsecured or secured debt limitations on eligibility for relief under Chapter 13).

The rationale presented in the cited cases is logical given the clear mandate that the eligibility of a debtor is determined as of the filing date. In this case, on the filing date, the judgment was final, non-contingent and liquidated in the amount of \$227,168.95. Even a subsequent reversal on appeal cannot change these facts. If the appellate court were to reverse the judgment, the Debtor would not be precluded from filing a subsequent case at that time, provided he was otherwise eligible.

Based upon the undisputed facts and the applicable law, it is

ORDERED AND ADJUDGED that the Motion is Granted. The Chapter 13 case is dismissed pursuant to 11 U.S.C. §1307(c) and 11 U.S.C. § 109(e).

DONE AND ORDERED in the Southern District of Florida on this 13th day of October 2004.

ROBERT A. MARK
United States Bankruptcy Judge