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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

DENNIS and JUDITH BRANDMAN,

No. 04-12063

Debtor(s).

Memorandum on Objection to Confirmation

Creditor Atticus Sharp claims that in 2002, Chapter 13 debtors Dennis and Judith Brandman entered into an agreement to buy out this partnership interest for \$125,000.00, with payment due June 30, 2002. The Brandmans have now proposed a Chapter 13 plan, and the only remaining contested issue is eligibility. The Brandmans are eligible for Chapter 13 if the court assumes that they owe the purchase amount plus accrued interest. However, Sharp argues that in addition to the principal and interest owed he is entitled to a lengthy laundry list of “consequential damages” caused by the failure of the Brandmans to pay. If these consequential damages are added, their unsecured debts exceed the eligibility limit of § 109(e) of the Bankruptcy Code.

Under § 109(e), a debtor is ineligible for Chapter 13 relief if his or her noncontingent, liquidated, unsecured debts exceed the statutory limit. A debt is liquidated for the purposes of calculating eligibility for relief under § 109(e) if the amount of the debt is readily determinable. *In re Slack*, 187 F.3d 1070, 1073 (9th Cir. 1999). The question of whether a debt is liquidated turns on whether it is subject to “ready determination and precision in computation of the amount due.” *In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987). The definition of “ready determination” turns on the distinction between a simple

1 hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in
2 which substantial evidence may be necessary to establish amounts or liability. *In re Slack*, 187 F.3d at
3 1073-74. Stated differently, a claim is liquidated if it is readily, and without the use of extrinsic
4 evidence, determinable as to amount, or if it can be determined by mathematical computation. *In re*
5 *Pearson*, 773 F.2d 751, 754 (6th Cir.1985).

6 The amount owed by the Brandmans on their alleged promise to pay Sharp is easily calculated
7 after a brief hearing to determine accrued interest and payments, if any; this amount may be a liquidated
8 debt under the statute, even if the Brandmans assert a defense. However, Sharp's "consequential
9 damages" are clearly concocted with an eye to defeating eligibility and are not liquidated because they
10 are not subject to precise calculation and require extrinsic evidence to prove that they are proximate
11 consequences of the breach of contract. Many of the alleged damages are clearly estimates, and whether
12 or not any of them are properly claimed requires a full trial on damages, not a quick calculation. They
13 are all based on the unproven and speculative allegation that Sharp's new business would not have
14 failed if the Brandmans had paid him. The mere fact that the court can use an adding machine to add up
15 all the claims does not mean that there is precision in the calculation of the amount due.

16 For the foregoing reasons, Sharp's objection will be overruled and the Brandmans' plan, as
17 amended, will be confirmed. Counsel for the Brandmans shall submit an appropriate form of order,
18 which counsel for the Trustee shall approve as to form.¹

19 Dated: December 21, 2004

20 
21 Alan Jaroslovsky
22 U.S. Bankruptcy Judge

24 ¹This decision is based on the understanding that eligibility was the only remaining issue and that
25 the Brandmans are eligible if the consequential damages are not considered liquidated. However, there
26 are a few gaps in the audio record which prevent the court from confirming these facts. If the court's
understanding is not correct, Sharp may seek rehearing.