

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CASE NO. 05-83785
)	
DAVID KEITH ESPINOSA,)	CHAPTER 7
)	
)	
Debtor.)	JUDGE BIHARY

ORDER

This Chapter 7 case came before the Court on October 1, 2007, for a continued hearing on the debtor's motion to convert the case to one under Chapter 13 (Docket No. 19) and on the debtor's objection to a proof of claim filed by Capital South Financial Services, Inc. ("Capital South") (Docket No. 34). Michael Rethinger appeared on behalf of the debtor, and Steven Sasine appeared for Capital South. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).

The motion to convert can only be granted if the debtor could be a debtor under Chapter 13. 11 U.S.C. § 706(d). The eligibility requirements for Chapter 13 are set out in 11 U.S.C. § 109(e).¹ Capital South contends that debtor's noncontingent, liquidated,

¹ At the time this case was filed, on October 15, 2005, 11 U.S.C. § 109(e) provided as follows:

[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 \$307,675 and noncontingent, liquidated secured debts of less than \$922,975, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated,

unsecured debts exceed the threshold of \$307,675.00 and thus the motion to convert should be denied. Capital South filed a proof of claim in the amount of \$293,794.91, and debtor scheduled other unsecured debts in the amount of \$141,693.00.

This case started as a Chapter 7 case when the debtor filed the petition on October 15, 2005. Capital South filed a complaint, objecting to both the debtor's Chapter 7 discharge and the dischargeability of its claim against the debtor. The debtor then sought to convert the case to one under Chapter 13, at which time Capital South objected, arguing that the debtor's unsecured debt exceeded the \$307,675.00 limit in § 109(e). On May 10, 2007, debtor amended his schedules, reducing the claim of Capital South from \$400,000.00 to \$50,000.00. Capital South filed a proof of claim on August 3, 2007, in the amount of \$293,794.91, and filed an amendment to the proof of claim on September 28, 2007. The amendment did not change the amount claimed, but attached additional documentation.

Mavis Stonecipher, formerly the Chief Financial Officer of Capital South, testified that the claim amount due was \$293,794.91 and referred to Capital South's amended proof of claim. Debtor contends the claim and the evidence in support of the claim do not include all credits to which the debtor is entitled, but debtor did not submit any evidence to support his contention. Capital South's representative testified that its claim

unsecured debts that aggregate less than \$307,675 and noncontingent, liquidated, secured debts of less than \$922,975 may be a debtor under chapter 13 of this title.

amount includes a credit of approximately \$84,000.00 for cars auctioned in mid-November, 2003. Debtor questioned whether the credit was actually applied, since it is not shown as a specific entry on Capital South's documents.

The Court does not decide at this time the amount of Capital South's claim, but directs counsel for Capital South to file and serve debtor with a complete transactional history of the loan guaranteed by the debtor between Capital South and J. R. S. & S., Inc. ("JRS"), so that debtor and Capital South can determine what, if any, issues need to be heard on Capital South's claim. The transactional history should include the dates and description of all amounts advanced, all amounts charged, all amounts applied to reduce the balance of the loan, including payments by JRS, receipts from insurance payments on damaged vehicles, receipts from a court-appointed receiver in Baldwin County, amounts credited as a result of a foreclosure on real property, amounts collected from any auction of vehicles or other equipment, and any other proceeds or payments received by Capital South by or on behalf of JRS. Capital South is directed to file the transactional history on or before **November 8, 2007**.

With respect to the motion to convert, the Court finds that even if Capital South's claim does not include the \$84,000.00 credit from the November, 2003 auction, debtor would still not be eligible to file a case under Chapter 13, because his noncontingent, liquidated, unsecured debts would exceed the limit set forth in 11 U.S.C. § 109(e). Accordingly, debtor's motion to convert the case to one under Chapter 13 must be

DENIED and debtor's objection to Capital South's claim is OVERRULED at this time. However, after Capital South files the transactional history, debtor has until **December 8, 2007**, to file a second objection to Capital South's claim. If such an objection is filed, it should contain a clear statement of what portion of the claim is objected to and the factual and legal basis for the objection.

IT IS SO ORDERED, this th18 day of October, 2007.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order mailed by United States Mail to the following:

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DATE: October 18, 2007