SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 26, 2020

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

ROBERT FRANCIS CARTER AND
CANDACE NECOLE CARTER, **CASE NO. 20-00653-NPO**

DEBTORS. **CHAPTER 13**

ORDER ON TRUSTEE'S MOTION TO DISMISS

This matter came before the Court for a telephonic hearing on June 1, 2020 (the "Hearing"), on the Trustee's Motion to Dismiss (the "Motion") (Dkt. 28) filed by the chapter 13 trustee, Harold J. Barkley, Jr. (the "Trustee") and the Response (Dkt. 36) filed by Robert Francis Carter ("Mr. Carter") and Candace Necole Carter ("Mrs. Carter, or together with Mr. Carter, the "Carters") in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Joshua C. Lawhorn represented the Trustee, and Thomas Carl Rollins, Jr. represented the Carters. Counsel for the Carters requested and received permission to file a memorandum brief after the Hearing. On June 3, 2020, the Carters filed the Debtor's Brief (the "Carters' Brief") (Dkt. 44), and on June 10, 2020, the Trustee filed the Trustee's Memorandum Brief (the "Trustee's Brief") (Dkt. 48). After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the subject matter of and the parties to the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This matter is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A). Notice of the Motion was proper under the circumstances.

Facts

The Carters filed a joint petition for relief (Dkt. 1) under chapter 13 of the U.S. Bankruptcy Code on February 25, 2020. That same day, they filed their schedules and statement. (Dkt. 4). In Schedule E/F: Creditors Who Have Unsecured Claims (Dkt. 4 at 18-38), the Carters disclosed aggregate unsecured debt of $518,190.21. Of this aggregate debt, $12,047.51 is owed jointly. The general unsecured debt attributable solely to Mr. Carter is $178,609.00, and the general unsecured debt attributable solely to Mrs. Carter is $327,533.70. Thus, Mr. Carter's total unsecured debt, owed individually or jointly, is $190,656.51, and Mrs. Carter's total unsecured debt, owed individually or jointly, is $339,581.21. The Carters' total secured debt is $106,512.89.[1]

In the Motion and in the Trustee's Brief, the Trustee asserts that the Bankruptcy Case should be dismissed because the Carters' aggregate unsecured debt exceeds the limit of $419,275 in 11 U.S.C. § 109(e),[2] thereby rendering them ineligible to be chapter 13 debtors in a joint case. In the Response and in the Carters' Brief, the Carters argue that § 109(e) allows for debtors to maintain a joint chapter 13 case when each debtor's separate, unsecured debt is below the limit for individuals.

[1] The Carters' secured debt is not at issue.

[2] Hereinafter, all references to code sections are to the U.S. Bankruptcy Code found at title 11 of the U.S. Code, unless otherwise noted.

Discussion

Section 109(e) establishes debt limitations for debtors seeking relief under chapter 13 of the U.S. Bankruptcy Code and provides, in pertinent part, as follows:

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850, or an individual with regular income and such individual's spouse . . . that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e). Thus, under this provision, there are two groups of people who can be chapter 13 debtors. An "individual with regular income" can be a chapter 13 debtor if he or she owes unsecured debts less than $419,275 and secured debts less than $1,257,850. *Id.* In addition, an "individual with regular income and such individual's spouse" can be chapter 13 debtors if they owe unsecured debts that aggregate less than $419,275 and secured debts of less than $1,257,850. *Id.*

The Trustee contends in the Motion that the Carters' combined unsecured debt exceeds the limit of $419,275 in § 109(e), thereby rendering the Carters ineligible to be chapter 13 debtors in a joint case. The Carters agree that their aggregate unsecured debt exceeds that limit,[3] but they assert that their separate unsecured debts do not. Consequently, they contend that because each of them is "an individual with regular income" who would independently qualify as a debtor under § 109(e), they should be eligible to file a chapter 13 joint case. (Dkt. 44 ¶ 7).

[3] The dollar limits in § 109(e) are subject to adjustment every three years. 11 U.S.C. § 104. Because the most recent adjustment was made on April 1, 2019, before the filing of the Bankruptcy Case, the Court applies the current dollar limits. In the Carters' Brief, however, the Carters cite the debt limits in effect prior to the most recent adjustment. (Dkt. 44 at 4). Because the Carters' aggregate unsecured debt exceeds the most recent adjustment, the outcome is the same.

The Fifth Circuit Court of Appeals has not addressed the proper treatment of unsecured debts of spouses under § 109(e). The Fifth Circuit, however, has instructed that statutory interpretation begins with "the plain language and structure of the statute." *Coserv Ltd. Liab. Corp. v. Sw. Bell Tel. Co.*, 350 F.3d 482, 486 (5th Cir. 2003). In resolving the parties' dispute, the Court thus adheres to the preeminent canon of statutory interpretation that requires it to presume that Congress "says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). When the plain meaning of a statute is unambiguous and does not lead to an absurd result, the Court need not consider or search for alternative interpretations. *United States v. Rabanal*, 508 F.3d 741, 743 (5th Cir. 2007); *see also Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 486 (5th Cir. 2013) ("The task of statutory interpretation begins and, if possible, ends with the language of the statute.").

Looking to the language of § 109(e), the Court concludes that the statute is clear and unambiguous: a debtor who files an individual case and debtors who file a joint case are subject to the same unsecured debt limit. 11 U.S.C. § 109(e). An "individual" qualifies as a chapter 13 debtor if he owes unsecured debts less than $419,275. *Id.* An "individual . . . and such individual's spouse" can be chapter 13 debtors if they owe unsecured debts that aggregate less than that same amount. *Id.* Thus, the statute expressly treats the unsecured debts of joint debtors in the aggregate and does not provide for separate treatment of unsecured debts owed by joint debtors who would qualify individually.

The Carters interpret § 109(e) differently. They argue that not all of their unsecured debt is joint debt and that § 109(e) refers to "individual . . . and such individual's spouse" only for the purpose of establishing the eligibility of a spouse without regular income to file a joint petition. (Dkt. 44 at 4). Although the Court agrees that § 109(e) enables a spouse without regular income

to be eligible for chapter 13 relief in a joint case, there is no language in the statute that supports an interpretation that unsecured debts are aggregated only when one spouse is without regular income. *In re Pete*, 541 B.R. 917, 920-21 (Bankr. N.D. Ga. 2015).

The Carters cite two cases that reach the result they urge: *In re Werts*, 410 B.R. 677 (Bankr. D. Kan. 2009) and *In re Hannon*, 455 B.R. 814 (Bankr. S.D. Fla. 2011). *Werts* held that joint debtors whose aggregate debts exceed the debt limit, but whose individual debts do not, are nevertheless eligible as chapter 13 debtors under § 109(e). *In re Werts*, 410 B.R. at 688. In reaching that conclusion, *Werts* reasoned that barring joint debtors who would be individually eligible for chapter 13 would not further Congress' "goal of encouraging Chapter 13 filings" rather than chapter 7 filings. *Id.* at 688. *Werts* concluded that prohibiting a joint case under such circumstances "would elevate form over substance" and "would be no benefit to anyone." *Id.* at 688-89.

The second case cited by the Carters, *Hannon*, relies on *In re Scholz*, No. 6:10-bk-08446-ABB, 2011 WL 9517442 (Bankr. M.D. Fla. Apr. 11, 2011), for the proposition that filers may proceed jointly in chapter 13 when they individually meet the filing requirements of § 109(e). *Hannon*, 455 B.R. at 815. *Scholz* focused on § 302(a) and (b). Under § 302(a), a joint case is filed by "an individual . . . and such individual's spouse," and under § 302(b), the bankruptcy court must determine in a joint case "the extent, if any, to which the debtors' estates shall be consolidated." *In re Scholz*, 2011 WL 9517442, at *2. *Scholz* noted that § 109(e) "recognizes petition filers as individuals" and sets debt limits for "'an individual' 'debtor,'" "nouns [that] are singular, not plural." *Id*. *Scholz*, therefore, concluded that it would be "inconsistent with the plain meaning of the language of Sections 302(a), 302(b), and 109(e) to treat joint filers as a consolidated entity, whose debts taken together may not exceed the Section 109(e) ceilings." *Id.*

The Court finds that the interpretation of § 109(e) by *Werts*, *Hannon*, and *Scholz* conflicts with the Fifth Circuit's view of the judicial role in statutory construction. *See United States v. Maturino*, 887 F.3d 716, 73 (5th Cir. 2018) ("Text is the alpha and omega of the interpretive process."). As the bankruptcy court in *In re Miller*, 493 B.R. 55 (Bankr. N.D. Ill. 2013), points out, *Werts* does not explain "how section 109(e) can be interpreted to permit a joint case even though the aggregate debt limit is exceeded, as long as each debtor would be separately eligible to file an individual case." *Id*. at 59. Moreover, the plain language of § 109(e) does not concern the consolidation of estates, but rather the amount of unsecured debt that Congress deemed appropriate to be administered in a chapter 13 case. Accordingly, a single debt limit for both individuals and joint debtors in chapter 13 is not inconsistent "with the filing of cases by 'individuals' under section 302(a) or the concept of separate estates under section 302(b)." *In re Miller*, 493 B.R. at 60. In connection with the unsecured debt limit, § 109(e) clearly provides that only "an individual . . . and such individual's spouse . . . that owe" unsecured debts that "aggregate" less than the specified amount are eligible chapter 13 debtors. As stated in *Miller*, "there is no getting around that the subject in the relevant part of section 109(e) is plural ('individual . . . and such individual's spouse'), and the amounts these plural debtors may 'owe' in the 'aggregate' and still file a chapter 13 case are the same amounts for an individual debtor." *In re Miller*, 439 B.R. at 60.

That the same unsecured debt limit in § 109(e) applies to both individuals and joint filers in a chapter 13 case does not lead to an absurd result. *Tex. Brine Co. v. Am. Arbitration Ass'n*, 955 F.3d 482, 486 (5th Cir. 2020) (in statutory interpretation, "[t]he absurdity bar is high, as it should be."). Those who exceed the debt limits in § 109(e) may seek bankruptcy relief in other chapters, which may offer greater creditor protections such as a disclosure statement, voting on plan confirmation, and the absolute priority rule found in chapter 11. *In re Miller*, 439 B.R. at 61 (citing

In re Brammer, 431 B.R. 522, 524 (Bankr. D.D.C. 2009)). Perhaps a higher debt limit should apply to joint debtors as a matter of policy, but such a change in the statute would require congressional action. *See United States v. Koutsostamatis*, 956 F.3d 301, 306 (5th Cir. 2020) (noting that there are three obligations in statutory interpretation: "(1) Read the statute; (2) read the statute; (3) read the statute!") (citation omitted).

In summary, the Court finds that § 109(e) establishes a single unsecured debt limit for joint debtors as opposed to a separate, or individual, limit for each debtor. Other bankruptcy courts have reached the same conclusion. *See In re Pete*, 541 B.R. at 920-21; *In re Miller*, 93 B.R. at 60; *In re Weiser*, 391 B.R. 902, 907-08 (Bankr. S.D. Fla. 2008); *Coastal Bank of GA v. Archibald (In re Archibald)*, 314 B.R. 876, 880 (Bankr. S.D. Ga. 2004); *In re Feltman*, 285 B.R. 82, 86 n.8 (Bankr. D.D.C. 2002).

Conclusion

The position of the Carters requires a legislative solution and not judicial intervention. Because the Carters' aggregate unsecured debt exceeds $419,275, they are not eligible to be debtors in a joint chapter 13 case, regardless of their eligibility to file individual chapter 13 cases, pursuant to the plain meaning of § 109(e). The question then becomes what remedy to apply. The Trustee seeks the dismissal of the Bankruptcy Case, but there are alternatives to dismissal. For example, assuming that the Carters are eligible to file separately for relief under chapter 13, the Bankruptcy Case may be severed into individual chapter 13 cases so that only one of the Carters is dismissed from the Bankruptcy Case. *See* FED. R. BANKR. P. 1009 (permitting the amendment of a voluntary petition at any time). If, however, the Carters want to remain as joint filers, the Bankruptcy Case may be converted to another applicable chapter. There are other options as well. Accordingly, before dismissing the Bankruptcy Case, the Court will provide the Carters with an

opportunity to sever or convert the Bankruptcy Case or exercise some other option consistent with this Order.

IT IS, THEREFORE, ORDERED that the Carters shall file a motion severing the Bankruptcy Case and dismissing Mr. Carter or Mrs. Carter from the Bankruptcy Case, converting the Bankruptcy Case to another applicable chapter, and/or exercising some other option consistent with this Order within fourteen (14) days.

IT IS FURTHER ORDERED that if the Carters fail to take proper action within fourteen (14) days of the date of this Order, the Motion shall be granted, and the Bankruptcy Case shall be dismissed without further notice or a hearing.

##END OF ORDER##