

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: ) In Proceedings  
 ) Under Chapter 7  
HARVEY GLENN, )  
 ) No. BK 92-50232  
Debtor(s). )

OPINION

On March 16, 1992, debtor filed an individual chapter 7 bankruptcy petition. On his schedules, debtor listed a "combined monthly income" of \$2,168.00. This amount includes his wife's monthly income of \$1,039.00. According to the schedules, debtor's total monthly expenses are \$2,036.00.

The United States Trustee subsequently filed a motion to dismiss pursuant to section 707(b) of the Bankruptcy Code, which provides:

(b) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee ... may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

11 U.S.C. §707(b). This Court has previously held that a debtor's ability to repay his debts through a chapter 13 plan is the primary factor to consider in determining whether substantial abuse exists under section 707(b). See In re Johnson, 115 B.R. 159, 163 (Bankr. S.D. Ill. 1990). In the present case, the U.S. Trustee contends that debtor has \$372.00 available per month with which to fund a

chapter 13 plan, and that unsecured creditors could have a 100% recovery on \$12,225.00 of unsecured debt within 33 months.<sup>1</sup> At the hearing on this matter, held July 2, 1992, counsel for debtor argued that the income of debtor's spouse should not be considered in determining whether debtor has the ability to repay his debts. Counsel indicated that he would file amended schedules, deleting the income of debtor's spouse and further reducing the expenses to reflect only those of debtor.<sup>2</sup> The Court took the matter under advisement and directed the parties to submit briefs within thirty days. The U.S. Trustee filed a brief on August 3, 1992. To date, debtor has not filed a brief, nor has debtor submitted amended schedules. The Court has no choice but to rely on the figures set forth in debtor's original schedules. Those figures clearly establish that debtor has the ability to repay his debts under a chapter 13 plan. "A debtor's ability to repay debts, however, will not automatically result in a section 707(b) dismissal if other factors ... indicate that dismissal is not warranted." In re Johnson, 115 B.R. at 164.<sup>3</sup> See also In re Martin, 107 B.R. 247, 248-49

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<sup>1</sup>The U.S. Trustee's calculations are based on a \$240.00 reduction in debtor's monthly expenses. According to the schedules, debtor's monthly expenses include \$240.00 in charitable contributions. The parties agreed at the hearing on this matter, and this Court has previously held, that charitable contributions are not necessary living expenses. See In re Bennett, No. 90-50816 (Bankr. S.D. Ill. Feb. 1, 1991).

<sup>2</sup>Whether the expenses would simply be reduced by 50% was not made clear at the hearing.

<sup>3</sup>These factors include (1) whether the bankruptcy petition was filed due to a sudden illness or unforeseen calamity; (2) whether debtor incurred cash advances and made consumer purchases far in excess of the ability to repay; (3) whether debtor has fully and accurately disclosed his monthly income and whether debtor's budget

(Bankr. D. Alaska 1989) (court has discretion to deny motion to dismiss even if debtor is able to repay debts, where mitigating factors indicate that debtor is entitled to benefit of "fresh start"). In the present case, debtor has failed to present evidence of any mitigating factors that would justify denial of the U.S. Trustee's motion to dismiss. Based on the facts as set forth, the Court can only conclude that dismissal is warranted under section 707(b).

Accordingly, IT IS ORDERED that the U.S. Trustee's motion to dismiss is GRANTED. This case is hereby DISMISSED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: September 8, 1992

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is excessive or extravagant; and (4) whether the information supplied on debtor's schedules and statements accurately reflects the debtor's true financial condition. In re Johnson, 115 B.R. at 163 (citations omitted).