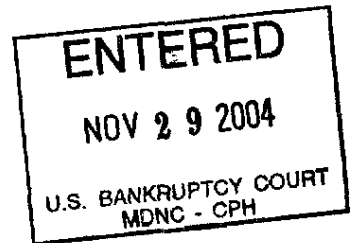


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:)
)
Gregory Franklin Spence)
and Tami Bowen Spence,) Case No. 04-11912 C-7G
)
Debtors.)

ORDER

This case came before the court on November 17, 2004, for hearing upon a motion to dismiss case filed by the United States Bankruptcy Administrator. Robyn C. Whitman appeared on behalf of the Bankruptcy Administrator and John H. Boddie appeared on behalf of the Debtors.

The motion seeks dismissal of this case pursuant to § 707(b) of the Bankruptcy Code. Under § 707(b) "the court . . . may dismiss a case filed by an individual debtor under [chapter 7] whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of [chapter 7]." Under this language, it is a prerequisite that the debts in the case be "primarily consumer debts" before dismissal can occur. See In re Booth, 858 F.2d 1051, 1055 (5th Cir. 1988) ("[S]ection 707(b) only applies in a Chapter 7 proceeding in which the debts are 'primarily' consumer debts. Even if the filing of the petition is in fact a substantial abuse, a case may not be dismissed under this provision unless this prerequisite is satisfied."). Because the evidence presented at the hearing was insufficient to show that the debts in this case are primarily consumer debts, the court, without reaching

the issue of substantial abuse, must deny the motion.

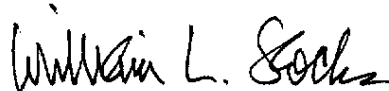
Under § 101(8) of the Bankruptcy Code, a consumer debt is defined as a debt "incurred by an individual primarily for a personal, family, or household purpose. . . ." In determining whether debt is for a "personal, family, or household purpose" under § 101(8), courts look to the purpose for which the debt was incurred. See In re Kelly, 841 F.2d 908, 913 (9th Cir. 1988). Debt incurred "for a business venture or with a profit motive does not fall into the category of debt incurred for 'personal, family, or household purposes. . . ." In re Runski, 102 F.3d 744, 747 (4th Cir. 1996). Applying this test in Runski, the court held that debt incurred by an individual to purchase medical and office equipment for use in the debtor's chiropractic practice was not consumer debt because such debt was incurred with a profit motive, i.e., to earn a living. Id. at 747. In accord In re Kestell, 99 F.3d 146, 149 (4th Cir. 1996); In re Jones, 114 B.R. 917 (Bankr. N.D. Ohio 1990); In re Latimer, 82 B.R. 354 (Bankr. E.D. Pa. 1988); In re Goulding, 79 B.R. 874 (Bankr. W.D. Mo. 1987); In re Frisch, 76 B.R. 801 (Bankr. D. Colo. 1987); In re Restea, 76 B.R. 728 (Bankr. D. S.D. 1987); In re Bell, 65 B.R. 575 (Bankr. E.D. Mich. 1986); In re Almendinger, 56 B.R. 97 (Bankr. N.D. Ohio 1985).

In the present case, approximately 90% of the total debt listed in the schedules was debt arising out of a failed business in which the Debtor was a principal. This court agrees with the courts who have concluded that the ratio of the dollar amount of consumer debt

to non-consumer debt should be controlling in determining whether the indebtedness is primarily consumer debt for purposes of § 707(b). See In re Stewart, 175 F.3d 796 (10th Cir. 1999); In re Booth, 858 F.2d 1051 (5th Cir. 1988); In re Kelly, 841 F.2d 908 (9th Cir. 1988). Because the consumer debts in the present case total only \$11,500.00, while the business debts total \$83,400.00, the court concludes that the Bankruptcy Administrator has failed to establish that the indebtedness in this case is primarily consumer debt. It follows that the motion to dismiss pursuant to § 707(b) therefore must be overruled and denied.

IT IS SO ORDERED.

This 26th day of November, 2004.

A handwritten signature in black ink, reading "William L. Stocks". The signature is written in a cursive style with a horizontal line underneath the name.

WILLIAM L. STOCKS
United States Bankruptcy Judge