UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
JUL 15 2002
U.S. BANKRUPTCY COURT
MDNC - AHH

IN RE:

Phillip Carey and
Arnet Melrose Carey,

Debtors.

Case No. 01-12541C

MEMORANDUM OPINION

This case came before the court on May 7, 2002, for hearing upon a motion to dismiss this case pursuant to 707(b) of the Bankruptcy Code that was filed by the Bankruptcy Administrator. Gerald A. Pell appeared on behalf of the Debtors and Robyn C. Whitman appeared on behalf of the Bankruptcy Administrator. Having considered the evidence offered by the parties and the arguments of counsel, the court hereby makes findings of fact and conclusions of law in accordance with Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure, as follows:

FACTS

This case was filed on September 10, 2001. At the time of filing, the male Debtor was Dean of the School of Arts and Sciences at a local university. In that position, the male Debtor had gross monthly income of $8,333.00 per month. The male Debtor also had retirement income of $1,300.00 per month, for a total annual income of $115,600.00. The female Debtor was employed as a secretary at the same university and had gross monthly income of $1,600.00 or an annual income of $19,200.00. Together, the Debtors scheduled net monthly income of $7,695.00.

The Debtors scheduled monthly expenses of $9,367.50. However, these expenses included $1,200.00 per month for support of adult children, $300.00 per month for the childrens' educational loans, car payments totaling $1,710.00 per month which included a monthly payment on a 2000 Acura automobile provided for one of the children, charitable contributions of $846.00 and a monthly house payment of $2,383.00.

The Debtors scheduled secured debt of $526,303.00. This debt included a $251,900.00 mortgage on a residence located in North Carolina which the Debtors purchased when they moved to North Carolina in the summer of 2000, as well as two mortgages totaling $224,110.00 on a residence located in Decatur, Illinois, where the Debtors resided before moving to North Carolina. The secured debt also included indebtedness of $9,250.00 secured by a 1994 Cadillac automobile, indebtedness of $31,000.00 secured by a 2000 Acura automobile, indebtedness of $5,500.00 secured by a 1993 Cadillac automobile and indebtedness of $4,500.00 secured by Debtors' household furnishings. Debtors also were leasing a 2000 Jaguar automobile at $665.41 per month.

The Debtors scheduled unsecured debt of $38,828.50. The unsecured indebtedness consisted primarily of credit card indebtedness owed under eight different credit cards along with two signature loans.

The assets listed by the Debtors consisted of the residences located in Illinois and North Carolina and personal property that the Debtors valued at $100,464.00. The personal property consisted primarily of Debtors' three automobiles with a combined value of $47,300.00 and the male Debtor's retirement fund of $50,279.00. In their exemptions the Debtors claimed as exempt property all of the property in which there was any equity, including their household and personal belongings, all of the equity in the North Carolina residence (a total of $16,057.00) and the male Debtor's $50,279.00 retirement fund.

The Bankruptcy Administrator's motion to dismiss was filed on February 6, 2002. In the motion the Bankruptcy Administrator asserts that under the totality of the circumstances of this case, granting the Debtors a Chapter 7 discharge would be a substantial abuse of the provisions of Chapter 7 and prays that this case be dismissed pursuant to § 707(b) of the Bankruptcy Code.

DISCUSSION

A. Applicable Law

Under § 707(b) the court "may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds the granting of relief would be a substantial abuse of the provisions of this chapter." This provision represents an attempt to strike a balance between allowing debtors a fresh start and stemming abuse of consumer credit by providing the bankruptcy court with a means of dealing equitably with the situation in which a debtor seeks to take unfair advantage of his or her creditors through the use of Chapter 7. See In re Green, 934 F.2d 568, 570 (4th Cir. 1991). Section 707(b) should be applied in a manner in which a truly needy debtor is allowed a fresh start, while denying a head start to the abusers. See In re Rodriguez, 228 B.R. 601, 603 (Bankr. W.D. Va. 1999).

There are two requirements in order for § 707(b) to be applicable: the debts in the case must be primarily consumer debts and it must be shown that granting the debtor a Chapter 7 discharge would involve a "substantial abuse" of the provisions of Chapter 7. In the present case, it is undisputed that the debts are primarily consumer debts.[1] Hence, the only issue for determination is whether granting the Debtors a Chapter 7 discharge would involve a substantial abuse of the provisions of Chapter 7.

There is no statutory definition of "substantial abuse" to aid in this determination. Various tests or rules have been developed by the courts. However, the applicable rule in the Fourth Circuit is the one adopted in In re Green, 934 F.2d 568 (4th Cir. 1991). In Green the court declined to adopt a per se rule under which a

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[1]Under § 101(8) of the Bankruptcy Code a consumer debt is a "debt incurred by an individual primarily for a personal, family, or household purpose." A debt "not incurred with a profit motive or in connection with a business transaction" is considered consumer debt for purposes of § 707(b). See In re Kestell, 99 F.3d 146, 149 (4th Cir. 1996).

debtor's ability to pay his or her debts, standing alone, justifies a 707(b) dismissal. Instead, while specifically recognizing that the debtor's ability to pay is the primary factor to be considered, the court ruled that "the substantial abuse determination must be made on a case-by-case basis, in light of the totality of the circumstances." Id. at 573. The court then provided five examples of circumstances or factors to be considered in addition to ability to pay: (1) whether the bankruptcy petition was filed because of sudden illness, calamity, disability or unemployment; (2) whether the debtor incurred consumer credit in excess of his or her ability to pay; (3) whether the debtor's family budget is excessive or unreasonable; (4) whether the schedules and statement of financial affairs reasonably and accurately reflect the debtor's true financial condition; and (5) whether the petition was filed in good faith. See id. Having considered these factors and the other attendant circumstances in this case, and having given effect to the presumption in favor of granting Chapter 7 relief that Congress built into § 707(b), the court has concluded that the granting of a Chapter 7 discharge in this case would constitute a substantial abuse of the provisions of Chapter 7.

B. Application of Law

The evidence did not establish any sudden illness, disability or calamity that was a cause of Debtors' bankruptcy filing. The evidence did show that the male Debtor changed jobs in 2000 as a result of losing his job with his former employer. The Debtors apparently attribute this bankruptcy filing to the male Debtor's loss of employment, arguing that the job loss resulted in a loss of income that caused the Debtors to incur unmanageable indebtedness. This argument is not supported by the evidence and is rejected.

For several years prior to the year 2000 the male Debtor was employed by Illinois Power Company ("IPC") and earned a substantial salary. For example, in 1999 the male Debtor earned $85,823.46. The male Debtor's employment at IPC terminated on December 31, 1999, apparently as a result of a restructuring by IPC. However, the Debtor's salary at IPC did not end on December 31, 1999. Instead, IPC continued to pay the Debtor his regular salary through February of 2000 which resulted in the Debtor receiving income of $14,340.00. IPC also made a severance payment to the male Debtor in the amount of $25,581.81 during early 2000. In addition, during the first half of 2000 the male Debtor worked at several part-time jobs from which he received substantial income. Such income included $29,000.00 received from Millikin University, $3,920.00 received from the State of North Carolina for consulting services, $1,444.13 received from North Carolina A & T State University and miscellaneous income of $3,871.55. The male Debtor also was successful in finding new, full-time employment as Dean of the School of Arts and Sciences at North Carolina A & T State University ("A & T") in Greensboro, North Carolina. Debtor began work in his new position on July 1, 2000, at a salary of $8,300.00 per month, which was some $1,200.00 per month more than he was paid at IPC. Debtor worked the remainder of the year at the higher salary and received a total of $49,800.00 for the period from July through December of 2000. Additionally, in mid-2000, the male Debtor began receiving retirement income of $1,300.00 per month from IPC, which resulted in his receiving $7,800.00 of additional income during the second half of 2000. The bottom line is that the male Debtor received total income of $135,757.49 during 2000. Thus, even though the male Debtor was without a full-time job during a portion of 2000, he nonetheless received income that was nearly $50,000.00 greater than he had received in prior years. Moreover, the female Debtor also had more income in 2000 than she had in the previous year. In 1999, the female Debtor had an income of $9,706.03 which was earned from a series of part-time jobs. When the Debtors moved to North Carolina, the female Debtor obtained full-time employment at A & T in September and worked the remainder of the year at a monthly salary of $1,600.00. As a result, the female Debtor received income of $12,026.32, consisting of part-time income of $5,626.32 earned prior to moving to North Carolina and $6,400.00 earned from her permanent job in North Carolina from September through December. Given Debtors' greatly increased income during 2000, the argument that the Debtors were forced into bankruptcy as a result of the male Debtor losing his job at IPC is entirely specious, and is not accepted as an explanation or cause for the filing of this Chapter 7 case.

The fact is, totally apart from the male Debtor's job loss, the Debtors have lived and spent beyond their means and in doing so have incurred consumer debt in excess of their ability to pay. As reflected in Debtors' schedules, when this case was filed they had unsecured indebtedness of some $38,828.50, which consisted primarily of credit card indebtedness owed on eight different credit cards along with two signature loans. The primary explanation offered by Debtors for this indebtedness was that the debt was incurred to pay living and educational expenses while the male Debtor was out of work in 2000. Since the Debtors had substantially more, and not less, income during 2000, it is clear that this explanation is not a correct assessment of why the debt was incurred.

A better and more accurate explanation for the debt which the Debtors now seek to shed is, as reflected in the record in this case, the expensive and high lifestyle chosen by the Debtors. For several years prior to the filing of this case, the Debtors resided in a large, five bedroom house located on Stevens Creek Boulevard in Forsyth, Illinois. An appraisal filed in this case by the mortgage holder reflects that this dwelling consists of 2,781 square feet of living space, not including a 1,509 square foot basement, and includes a living room, dining room, kitchen, family room, patio, covered porch and garage, as well as the five bedrooms. The property also includes a swimming pool and deck and is located one block from a golf course. In acquiring this property, the Debtors incurred a first mortgage that had a balance of $205,000.00 when this case was filed. Additional consumer debt was taken on by the Debtors when they placed a second mortgage on the property which had a balance of $19,000.00 when this case was filed. Thus, for several years prior to the filing of this case the Debtors spent the considerable sums required to service the debt on this residence and to pay the taxes, insurance and maintenance related to the residence and pool.

In June of 2000, when the Debtors moved to North Carolina, the Debtors incurred additional consumer indebtedness when they purchased a new home in North Carolina for a purchase price of $268,000.00. Debtors' new residence is a four bedroom, 2,900 square foot dwelling located in an upscale neighborhood in Jamestown, North Carolina, just outside of Greensboro. In purchasing their new home, the Debtors made a down payment of $15,000.00 plus closing costs of $5,000.00 and incurred mortgage indebtedness of $253,000.00. According to the male Debtor, the $20,000.00 or $21,000.00 required for the down payment and closing costs came from the severance payment that he received from IPC earlier in the year. The purchase of the North Carolina residence occurred while the Debtors still owned the residence in Illinois and were still obligated on the two mortgages on that property.

A further indication of the spending pattern of the Debtors is reflected by the number and types of motor vehicles that were financed or leased by the Debtors. The schedules reflect that shortly before this case was filed, the Debtors were leasing a 1999 Honda at $306.42 per month, were leasing a 2000 Jaguar at $665.41 per month, were purchasing a 2000 Acura at $565.00 per month, were purchasing a 1994 Cadillac at $321.58 per month and were purchasing a 1993 Cadillac at $135.71 per month. The 1999 Honda and the 2000 Acura apparently were provided for the two adult sons of the Debtors, while the female Debtor drove the Jaguar. Although the Debtors apparently surrendered the 1999 Honda shortly before filing this case, the fact remains that prior to that time the Debtors had incurred consumer obligations totaling $45,750.00, not including the leases for the Honda and Jaguar, and which required monthly payments totaling $1,994.12 per month and thus were spending that amount just for personal use automobiles.

While attempting to maintain the high standard of living reflected by Debtors' choices regarding their homes and automobiles, the Debtors also were paying for the education of their two sons. The choice made by the Debtors in that regard was to send both of their sons to expensive colleges and universities located in Texas and Tennessee. According to the Debtors, they spent some $25,000.00 per year to send their youngest son to a private college in Texas during the four years preceding the filing of their Chapter 7 case. The Debtors also paid the cost of a college education for their oldest son, plus three years of law school at a cost of $25,000.00 to $30,000.00 per year. One of the explanations offered by the Debtors for some of the debt listed in their schedules is that personal debt was incurred for living expenses when they ran short of money as a result of the college expenses. At the same time, however, the Debtors were continuing to live at a very high standard involving expensive homes and expensive automobiles. The reality is that the Debtors chose to incur such indebtedness rather than reducing their very comfortable standard of living and paying the college expenses from their own funds. As the court pointed out in In re Summer, 255 B.R. 555, 563 (Bankr. S.D. Ohio 2000), in doing so, the Debtors imposed unfairly upon their creditors and created a burden that should be borne by the Debtors and not by their creditors. A desire to provide one's children with a good education is understandable and commendable. However, Chapter 7 was not intended as a means for doing so at the expense of one's creditors.

Whether Debtors' proposed family budget is excessive or unreasonable is closely related to whether the Debtors have the ability to repay their creditors, and requires consideration of Debtors' Schedule I and Schedule J which set forth the income and expenses included in their budget.

On May 6, 2002, the day before the hearing, the Debtors filed amended Schedules I and J. Debtors' amended Schedule I shows the male Debtor's gross monthly income at $6,250.00 and his net monthly income at $5,169.00, which is a 25% reduction in the income shown in the original Schedule I. The amended Schedule I shows no income for the female Debtor.

The amended Schedule J shows Debtors' monthly expenses at $6,526.00 plus an additional $666.00 per month for the support of the Debtors' two adult sons, for a total of $7,192.00, which is some $2,100.00 less than the expenses shown in the original Schedule J. However, the reduction in expenses consist primarily of a reduction in the amount of support being provided to the adult children and reductions in car payments and taxes and insurance on cars.

In evaluating whether a Chapter 7 case should be dismissed as a substantial abuse of Chapter 7, it is appropriate for the court to consider whether the expenses claimed by a debtor can be reduced significantly without depriving the debtor of adequate food, clothing, shelter and other necessities of life. See In re Engskow, 247 B.R. 314 (Bankr. M.D. Fla. 2000). The expenses that may be reviewed in making such an analysis include the mortgage payments or rent paid by the debtor for housing. See id. at 317 (budget was "extravagant and unreasonable" based upon the amount included for mortgage payments and utilities); In re Smith, 229

B.R. 895, 899 (Bankr. S.D. Ga. 1997)(mortgage payment of $1,695.00 was not reasonable); In re Carlton, 211 B.R. 468, 473 (Bankr. W.D.N.Y. 1997)(residence rental of $3,000.00 per month for a family of four was unreasonable and excessive).

Debtors' amended Schedule J includes housing expenses which total $2,576.00 per month. This figure includes $2,418.00 per month to cover Debtors' mortgage payment, taxes and insurance on their residence in Jamestown, plus $133.00 per month for home maintenance. This figure does not include the $375.00 per month claimed by Debtor for utilities (electricity, water/sewer and gas) at the residence. Debtors' monthly housing expense of $2,576.00 enables the Debtors to live in a very nice four bedroom, 2,900 square foot residence and to steadily increase their equity in the home. Given that both of Debtors' children are college-educated adults who no longer are dependents and apparently will not be living in Debtors' home, the court concludes that such a large monthly housing expense is excessive and unreasonable for Debtors seeking a Chapter 7 discharge. See In re DeRosear, 265 B.R. 196, 218 (Bankr. S.D. Iowa 2001)("While the sentimental reason underlying the Debtors' desire to continue living in their current homestead may be understandable, it does not justify permitting them to erase an otherwise manageable debt load via a Chapter 7 proceeding."). The testimony that the Debtors are forced to remain in the residence because they could not qualify to rent or own another residence or apartment is rejected as not being credible. As a result, in deciding whether the Debtors have the ability to pay their creditors, this excessive monthly expense should be reduced significantly and such reduction treated as being available for payment to creditors.

Debtors have included in their expenses the sum of $180.00 per month for telephone expenses and the sum of $865.00 per month for payments on two automobiles which the Debtors have retained. Both of these expenses likewise are excessive and will be reduced in evaluating Debtors' ability to repay. The telephone expense includes two telephone lines for the home and a cell phone for one of their adult children. The $865.00 per month for automobiles includes a monthly rental of $665.41 on a luxury automobile driven by the female Debtor, which likewise is excessive. Debtors' monthly transportation expense of $225.00 also is excessive for two adults, neither of whom are required to travel other than a short commute to work. The evidence also established that Debtors' monthly expenses for food ($500.00 per month) was somewhat excessive for two adults. Another expense item that is excessive and inappropriate is the $666.00 per month which the Debtors have included in Schedule J in order to provide an automobile for an adult child who graduated from law school more than a year ago. See In re Haddad, 246 B.R. 27, 32-33 (Bankr. S.D.N.Y. 2000)("A debtor cannot 'unilaterally . . . subordinate his creditors' to those he chooses to subsidize. . . . Even if considered 'commendable' to voluntarily support such non-dependent family members, it cannot be at the expense of creditors."). Finally, the current expenditures claimed by the Debtors also include the sum of $300.00 per month for payment of one or more educational loans. Although nondischargeable, an educational loan is an unsecured debt that stands on the same footing as any other unsecured debt in the context of a § 707(b) analysis of a debtor's ability to repay. Accordingly, in evaluating Debtors' ability to repay in this case, the $300.00 per month will be treated as being available for use in repaying Debtors' unsecured debt. Based upon the foregoing, the court concludes that the Debtors' budget is excessive and unreasonable.

Making an analysis of a debtor's ability to pay under § 707(b), of course, involves examining the debtor's future income and future expenses. See In re Green, 934 F.2d at 572 (exploring "the relation of the debtor's future income to his future necessary expenses" is part of § 707(b) analysis); In re Krohn, 886 F.2d 123, 126 (6th Cir. 1989); Waites v. Bailey, 110 B.R. 211, 214-15 (E.D. Va. 1990). This is particularly true where, as in the present case, a debtor has stable income.

Generally, the ability to pay is measured by assessing how much disposable income a debtor would be able to pay his or her creditors under a three to five year Chapter 13 plan. See In re

DeRosear, 265 B.R. at 204. The debtor's disposable income is determined in accordance with the definition contained in § 1325(b)(2) of the Bankruptcy Code using income and expense figures that are reasonable and accurate. See id. Many courts base the ability to pay determination upon the percentage of unsecured debt that could be repaid by the debtor in a Chapter 13 case. The percentages regarded as reflecting an ability to pay have varied from case to case. See In re Norris, 225 B.R. 329, 332 (Bankr. E.D. Va. 1998). However, "the essential inquiry remains whether the debtor's ability to repay creditors with future income is sufficient to make the Chapter 7 liquidating bankruptcy a substantial abuse." In re DeRosear, 265 B.R. at 204.

Based upon the income reflected in the Debtors' original Schedule I it is quite clear that the Debtors had the ability to repay and could have funded a Chapter 13 plan. Thus, the joint net income reflected in the original Schedule I was $7,695.00 per month which clearly was sufficient to pay the Debtors' reasonable and necessary expenses and a high percentage of their unsecured debt. However, after the § 707(b) motion to dismiss was filed (in fact, one day before the hearing on the motion to dismiss), the Debtors filed an amended Schedule I which reflected drastically reduced income figures. The amended Schedule I reduced the male Debtor's gross income from $8,333.00 per month to $6,250.00 (a 25% reduction) and showed the female Debtor as having no income. As a result of these changes, Debtors' scheduled net monthly income went from $7,695.00 to $5,169.00. According to the male Debtor's evidence, his reduction in income is the result of his removal as Dean of the College of Arts and Sciences effective May 15, 2002. As of that date, the male Debtor apparently is to return to the faculty of the College of Arts and Sciences as a full professor in the Department of Sociology at a nine month salary of $75,469.00, instead of his former twelve month salary of $99,996.00. The Debtors argue that this represents a 25% decrease in income for the male Debtor. However, this argument ignores the fact that the male Debtor will be receiving the same monthly salary as he formerly was receiving for a period of nine months and will have the remaining three months of the year to consult or perform other work and earn additional income. Given the male Debtor's success at part-time earnings in 2000 when he lost his job at IPC, it seems unlikely that he will be without income during the three months when he is not teaching in the Department of Sociology. Although the male Debtor says that this change occurred without any prior discussion or explanation in March of 2002 when he received a letter from the University advising him of the change, he also says that he has made no effort to find out why the change occurred and could provide no explanation when he testified at the hearing.

The report of a change in the female Debtor's income picture likewise came after the filing of the § 707(b) motion. According to the amended Schedule I, as of June 1, 2002, the female Debtor "will be unemployed - medical." When this case was filed, the female Debtor was employed at A & T as an administrative secretary in the office of one of the Vice Chancellors at a salary of $1,600.00 per month. According to the testimony of the female Debtor, back and neck pain is forcing her to give up this job, effective June 1. However, the female Debtor admitted that she has missed very little time from work because of back pain since she began the job in September of 2000. In that regard, she estimated that she missed only one day during September through December of 2000, maybe two or three days in all of 2001 and only two days during 2002. The only medical evidence submitted in support of the alleged disability was an April 25, 2002 letter from a chiropractor who apparently has seen the female Debtor only three times during 2002. While providing no history of the Debtor's condition or course of treatment, the letter contains a recommendation that the female Debtor "discontinue" her employment "due to her neuro-musculo-skeletal condition of neck and shoulder pain as well as lower back pain and discomfort." According to the letter, termination of her job will give the female Debtor "the opportunity to receive therapeutic treatment." Viewed in its totality, the Debtors' evidence regarding the necessity for the female Debtor to stop working because of a bad back was unconvincing and insufficient to show by a preponderance that the female Debtor has any physical or mental condition that disables her from performing the job which she held when the § 707(b) was filed. It seems more likely that the amendment to Schedule I regarding the female Debtor's income and the apparent decision by her to stop working at the end of May of 2002, represent an effort to undercut the Bankruptcy Administrator's contention that the Debtors have the ability to fund a Chapter 13 plan. Perhaps the same should be said regarding the change in the male Debtor's income and Debtors' contention that he has sustained a 25% reduction in annual income as a result of his nine month salary of $75,469.00, totally ignoring the fact that the male Debtor can earn additional income during the other three months of the year if he chooses to do so. It is not appropriate for debtors to terminate or reduce earnings in an effort to defeat a motion to dismiss pursuant to § 707(b). If such conduct occurs, the court may and should look to the debtors' prior earnings picture in evaluating their ability to pay rather than the one manufactured in an effort to avoid dismissal. Moreover, it is appropriate for the court to take such conduct into account in evaluating whether the debtors have proceeded in good faith in seeking Chapter 7 relief. See In re Blum, 255 B.R. 9, 15 (Bankr. S.D. Ohio 2000); In re Dubberke, 119 B.R. 677, 679-80 (Bankr. S.D. Iowa 1990); In re Helmick, 117 B.R. 187, 190 (Bankr. W.D. Pa. 1990).

Based upon the foregoing, the court finds that the income figures reflected in the Debtors' original Schedule I are the figures that should be utilized for purposes of the § 707(b) analysis of the ability of the Debtors to pay their creditors. This means that a net income figure in the range of $7,500.00 per month will be used. At the same time, for the reasons previously discussed, the $7,192.00 monthly expense figure claimed by the Debtors in their amended Schedule J should be reduced by $750.00 based upon the unreasonableness of Debtors' housing expenses, by $200.00 based upon the unreasonableness of Debtors' telephone and food expenses, by $200.00 based upon the unreasonableness of Debtors' car payments and transportation expenses, by $660.00 to eliminate the expenses related to the automobile provided to their adult son and by $300.00 in order to deal properly with the educational loan. These are adjustments that can be made without depriving the Debtors of adequate food, clothing, shelter and other necessities and, in fact, leave the Debtors with a more-than-adequate standard of living.

The foregoing adjustments yield net monthly income of $7,500.00 and net monthly expenses of $5,082.00, leaving $2,418.00 per month available for distribution under a Chapter 13 plan. Thus, if the Debtors were in a Chapter 13 case and submitted only a 36 month plan, a total of $87,048.00 would become available for distribution under a Chapter 13 plan. There are no taxes or other priority debt in this case. The unsecured debt listed in

Schedule F is $38,828.50; however, the mortgage holder on the Illinois property apparently has a $40,000.00 deficiency claim which may increase the unsecured debt to $78,828.50. Even with such an increase, and taking into account the trustee fees and costs related to a Chapter 13 case, it appears that the Debtors could come very close to paying their unsecured creditors in full if they were willing to proceed under Chapter 13 rather than seeking a Chapter 7 discharge. This constitutes an ability to pay that, under the totality of the circumstances of this case, is sufficient to render this case abusive for purposes of § 707(b).

There also are aspects of this case that appear inconsistent with a good faith Chapter 7 filing. To the extent that the Debtors did incur indebtedness as a result of the male Debtor being out of work in 2000, the Debtors have attempted to take unfair advantage of those creditors through the use of Chapter 7. The male Debtor received a $25,581.81 severance payment that was more than adequate to pay such debt. Rather than paying those creditors, the Debtors used the severance payment to purchase a home in North Carolina, thereby creating equity which they now seek to exempt free of the claims of the creditors who were not paid in order for Debtors to purchase the property. Despite the ability to pay their creditors, Debtors seek to utilize Chapter 7 to retain such equity, as well as a $50,279.00 retirement fund, expensive automobiles and all of the other assets in which they have any equity, while walking away from all of their debt without paying their creditors one cent and without altering the comfortable lifestyle they enjoyed while incurring that debt. Debtors' efforts to minimize their income in response to the § 707(b) motion also is inconsistent with good faith. However, the decision to dismiss this case pursuant to § 707(b) is not based upon a finding of bad faith. Even assuming that this case was filed in good faith, the other circumstances of the case are such that the granting of Chapter 7 relief in this case would involve a substantial abuse of the provisions of Chapter 7.

CONCLUSION

Having considered the totality of the circumstances presented by this case, the court concludes that the granting of Chapter 7 relief in this case would be a substantial abuse of the provisions of Chapter 7 and that this case, therefore, should be dismissed under § 707(b) of the Bankruptcy Code.

This 11th day of July, 2001.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
JUL 15 2002
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Phillip Carey and	)	Case No. 01-12541C-7G
Arnet Melrose Carey,	)	
	)	
Debtors.	)	
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ORDER

For the reasons stated in the memorandum opinion filed contemporaneously with this order, this case is hereby dismissed pursuant to § 707(b) of the Bankruptcy Code.

This 11th day of July, 2002.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge