

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
Laurence A. Crink and) Case No. 08-10824C-7G
Janet Marie Crink,)
)
Debtors.)
)

ORDER

This case came before the court on July 29, 2008, for hearing on a Motion to Strike Schedule I and Set a New Time Period for Determining the Debtors' Current Monthly Income ("Motion") that was filed on behalf of the United States Bankruptcy Administrator ("BA") on July 15, 2008. Robert E. Price, Jr. appeared on behalf of the BA and John H. Boddie appeared on behalf of the Debtors. For the reasons that follow, the court has concluded that the Motion should be denied.

The pertinent facts are not disputed. This case was commenced on May 31, 2008. The Debtors' filings on that date included a petition for relief under chapter 7, Schedules A through J, Statement of Financial Affairs, Statement of Intention and Chapter 7 Statement of Current Monthly Income and Means-Test Calculation ("B22A").

According to Schedule I, the male Debtor is employed with gross monthly income of \$16,666.65 and net monthly income of \$11,929.00 and the female Debtor is a housewife with no income. The Debtors' current monthly income ("CMI") as reflected on the

B22A, however, is only \$9,615.38, which represents the Debtors' average monthly income from all sources received during the six-month period ending on the last day of the calendar month immediately preceding the date of the commencement of this case, i.e., their average monthly income during the months of November and December of 2007 and January through April of 2008. Because the Debtors filed their Schedule I on May 31, 2008, the date on which this case was commenced,¹ it is undisputed that this methodology for determining CMI was required by section 101(10A) (A) (i) which provides:

The term "current monthly income" . . . means the average monthly income from all sources that the debtor receives . . . derived during the 6-month period ending on . . . the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a) (1) (B) (ii). . . .

As pointed out in the BA's motion, the CMI figure is lower because the Debtors had no income during November and December and only a partial month's income during January and did not begin receiving the level of income reflected in Schedule I until February. Because of uneven income during the November-April period, the BA asserts that "[d]etermining the Debtors' CMI pursuant to 11 U.S.C. §101(10A) (A) (i) does not accurately depict the

¹Rule 1007(c) of the Federal Rules of Bankruptcy Procedure requires that the schedules be filed with the petition or within 15 days thereafter.

Debtors' current financial condition." As a result, the BA argues that "just cause exists for Court to order that the Schedule I be stricken, a new time period for determining CMI be established, such as February-July 2008, pursuant to 11 U.S.C. § 101(10A)(A)(ii),² and that a new Schedule I and Form B-22A be filed based on the new time period." The reason that the BA seeks this relief is that if the Debtors' "actual present income" is used to calculate CMI, a presumption of abuse will arise under section 707(b)(2).

In requesting that the court strike Debtors' Schedule I and establish a new time period for determining CMI the BA asserts that such relief should be granted pursuant to section 105 of the Bankruptcy Code. Under section 105, a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]. . . ." This is a broad grant of power, but there are limits, one of which is that "[s]ection 105 does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code. . . ." 2 Collier on Bankruptcy ¶ 105.01[2] (15th ed. rev. 2008). In accord, Official Comm. Of Equity Sec. Holders v. Mabey (In re A.H. Robins Co., Inc.), 832 F.2d 299, 302 (4th Cir. 1987) (stating that

²Under section 101(10A)(A)(ii), CMI is the debtor's average monthly income "during the 6-month period ending on . . . the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii). . . ."

equitable powers of bankruptcy court "are not a license for a court to disregard the clear language and meaning of the bankruptcy statutes and rules."). The relief requested by the BA falls squarely within this limitation and may not be granted.

There is no allegation in the present case that the Schedule I is inaccurate or that it was filed improperly or in bad faith. To the contrary, the Schedule I was filed strictly in accordance with section 521(a)(1) of the Bankruptcy Code and Bankruptcy Rule 1007(c). If, as in the present case, the debtor files a Schedule I, section 101(10A)(A)(i) clearly specifies that the debtor's CMI is the debtor's average monthly income during the six-month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case. It is undisputed that the Debtors have determined their CMI according to this mandate. Thus, in asking the court to require a different methodology, the BA seeks to overrule "the clear language and meaning" of section 101(10A)(A)(i) and to insert in its place a procedure that is not provided for in the bankruptcy statutes and rules. Section 105 is not a source for such relief.

To the extent that the BA relies upon section 101(10A)(A)(ii) as support for the Motion, such reliance is misplaced. Section 101(10A)(A)(ii) provides an alternative methodology for determining CMI "if the debtor does not file a the schedule of current income required by section 521(a)(1)(B)(ii). . . ." That eventuality did not occur in this case. The Debtors did file the Schedule I, which

means that section 101(10A)(A)(i) and not section 101(10A)(A)(ii) is controlling.

Section 101(10A)(A)(ii) may afford the debtor with an alternative regarding the manner in which CMI is determined. Such alternative involves the debtor obtaining leave of court not to file a Schedule I when the case is commenced,³ in which case section 101(10A)(A)(ii) arguably would be controlling and the six-month period ending on the date on which current income is determined by the court would be utilized in computing CMI rather than the six-month period preceding the date of the commencement of the case. Such an alternative might be attractive to a debtor in a chapter 13 case in which the debtor's income dropped significantly during the six months preceding the commencement of the case. While such an alternative may be available to a debtor under section 101(10A)(A)(ii), there is no language in section 101(10A)(A)(ii) that reasonably could be interpreted as granting the BA standing to seek the relief sought in this case. Nor do the decisions⁴ cited by the BA support the granting of the relief sought by the BA. Unlike those decisions, this case does not

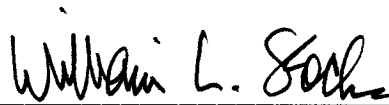
³Section 521 provides: "(a) The debtor shall- (1) file (A) a list of creditors; and (B) unless the court orders otherwise . . . (ii) a schedule of current income and current expenditures. . . ." 11 U.S.C. § 521(a).

⁴In re Montgomery, No. 07-51781, 2008 WL 597180 (Bankr. M.D.N.C. March 4, 2008); In re McQueen, No. 07-03011, 2007 Bankr. LEXIS 4591 (Bankr. E.D.N.C. December 21, 2007).

involve a chapter 13 case in which it is the debtor that is seeking to strike or withdraw a previously filed Schedule I. Such facts raise different issues which need not be addressed in this order.

It is, therefore, ORDERED that the BA's Motion to Strike Schedule I and Set a New Time Period for Determining the Debtors' Current Monthly Income shall be and hereby is overruled and denied.

This 31st day of July, 2008.



WILLIAM L. STOCKS
United States Bankruptcy Judge