

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Dublin Division

IN RE:	)	Chapter 7 Case
	)	Number <u>90-30038</u>
HOWARD EUGENE JONES	)	
Route 7 Lakeview Lane	)	
Dublin, Georgia 31021	)	FILED
SS# 260-74-5992	)	at 4 O'clock & 59 min P.M.
	)	Date: 6-6-90
Debtor	)	
_____)	)	
UNITED STATES TRUSTEE	)	
	)	
Movant	)	
	)	
vs.	)	
	)	
HOWARD EUGENE JONES	)	
	)	
Respondent	)	

**ORDER OF DISMISSAL**

The United States Trustee seeks dismissal of this Chapter 7 proceeding pursuant to 11 U.S.C. §707(b)<sup>2</sup>. Based upon the

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<sup>1</sup>11 U.S.C. §707(b) provides:

After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, -but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor 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.

<sup>2</sup>11 U.S.C. §707(b) provides:

After notice and a hearing, the court, on its own motion or on a motion by the United

evidence presented at hearing this court makes the following findings of fact and conclusions of law which support the U. S. trustee's motion.

Howard Eugene Jones hereinafter referred to as "debtor" filed his petition for relief under Chapter 7 of Title 11 United States Code on January 29, 1990. Prior to and after filing, the debtor enjoys a very good income. In 1987, the debtor and his now former spouse had an adjusted gross income for federal income tax purposes of \$87,000.00. In 1988, the debtor received a base salary of \$52,000.00 plus a year-end bonus of ten percent of his base pay. In 1989, the debtor received a base salary of \$53,000.00 plus a year-end bonus of seven percent of his base pay. The debtor's current base salary is \$55,200.00. The debtor is not sure if his employer will pay a bonus this year.

By order entered July 7, 1989 in the Superior Court of Laurens County, Georgia, the debtor and his now former spouse were divorced. The decree of divorce incorporated an agreement between the parties which provided that the debtor was to pay to his former spouse monthly child support for his children of \$800.00. As additional child support, the debtor was required to maintain hospitalization, medical and dental insurance for the benefit of his minor children. The agreement provided that the home place, 338 Regency Circle, Dublin, Georgia would be sold and the proceeds divided equally. From the spouse's proceeds, Two Thousand and No/100 (\$2,000.00) Dollars would be paid to the debtor to be used by the debtor toward retiring all of the joint debts. The debtor agreed to pay to the spouse the sum of One Thousand and No/100 (\$1,000.00) Dollars per month as alimony which

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States trustee, -but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor 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.

payment was to continue until the spouse "obtains a degree in broadcast journalism and obtains a full-time job." At the time of the divorce, the parties owned a 1984 Mercedes Benz 300 CD automobile and a 1984 Porsche 911 automobile. The spouse received and was to pay for the Mercedes and the debtor retained and was to pay for the Porsche. With the exception of the Mercedes indebtedness, the debtor was responsible for all debts incurred or acquired by the parties during the marriage, and the debtor agreed to discharge those obligations as they become due and to hold the spouse harmless from any cost or liability for said debts.

The home place of the debtor was sold in September, 1989, and the debtor received slightly more than \$11,000.00 from the sale. At the time of the filing for relief, the debtor indicated total cash available of \$100.00. The debtor explained that the \$11,000.00 was spent trying to catch up outstanding bills. At the time of the filing, debtor's schedules reveal \$52,208.53 in unsecured debt of which \$39,000.00 represents credit card transactions. Debtor's schedules further reveal \$39,000.00 in secured debt secured by the two aforementioned automobiles which the debtor now intends to surrender to the lienholder. Unsecured

secured debt includes a debt in the original principal sum of \$6,340.00 as of August 23, 1988 due Southeastern Paper Manufacturing Company Thrift Plan (hereinafter referred to as "thrift plan"). By reaffirmation agreement dated May 4, 1990 and filed May 10, 1990, the debtor proposes to reaffirm this obligation requiring monthly payments of \$140.78.

The debtor's amended schedule of current income and expenses breaks down as follows:

Monthly Income	\$4,600.00
Monthly Deductions	
Payroll taxes including social security	-\$1 014.74
Net disposable income	\$3,585.26
Alimony and	
child support payments	<u>-\$1,800.00</u>
Total disposable income	
available to the debtor	\$1,785.26

Debtor's projected living expenses	
Rent	425.00
Utilities	220.00
Food	400.00
Clothing	75.00
Laundry and cleaning	20.00
Newspapers/periodicals	20.00
Medical and drug expense	50.00
Renter's Insurance	67.00
Health Insurance	156.57
Transportation	120.00
Religious contributions	50.00
Cable television	21.00
Health club membership	30.00
Thrift plan loan repayment	140.78
Savings	94.12
Total	<u>\$1 889.47</u>
Remaining income	(\$104.21)

Bankruptcy Code §707(b) creates a presumption in favor of granting a discharge under Chapter 7 to the debtor. Therefore, the burden of moving forward with evidence of substantial abuse rests with the United States trustee. 4 Collier on Bankruptcy ¶707.08 (L. King 15th ed. 1989). With a presumption in favor of the debtor, the court must give the benefit of any doubt to the debtor and dismiss a case pursuant to §707(b) only when substantial abuse is clearly present. In re: Kelly, 841 F.2d 908, 917 (9th Cir. 1988), 4 Collier on Bankruptcy, supra. In this case, the United States trustee has met not only the burden of going forward with evidence of substantial abuse, but also has carried the burden of persuasion by clear and convincing evidence of substantial abuse. In order to apply §707(b) it is necessary for this court to first determine that (1) the debtor is an individual, and (2) the debts incurred by the individual are primarily consumer debts. In this case, the debtor, Howard Eugene Jones is an individual. Of the more than \$52,000.00 of unsecured debt, \$39,000.00 was incurred in credit card purchases. The entire \$39,000.00 in secured debt is for automobiles used by the debtor and debtor's spouse prior to filing. The vast majority of the debts are consumer debts.

After this initial determination, in determining whether a Chapter 7 filing constitutes a substantial abuse of the bankruptcy process, the court must

consider "(1) whether the debtor has a likelihood of sufficient future income to fund a Chapter 13 plan

which would pay a substantial portion of the claims of the unsecured creditors; (2) whether the debtor has exhibited any bad faith in the filing of his petitions and schedules or has engaged in 'eve of bankruptcy purchases'; and (3) whether the debtor has suffered an unforeseen calamity, or is merely using the Chapter 7 provisions to gain relief from past excesses." 4 Collier on Bankruptcy ~707.07 (L. King 15th ed. 1989). In making the determination that this Chapter 7 filing constitutes a substantial abuse of the bankruptcy process, the principal factor considered is the debtor's ability to repay a substantial portion of the debts for which a discharge is sought, In re: Kelly, supra; In re: Walton, 69 B.R. 150, 154 (E.D. Mo. 1986); In re: Cord 86 B.R. 5, 7 (Bankr. W.D. Mo. 1986); In re: Gaukler, 63 B.R. 224, 225 (Bankr. D.N.D. 1986); In re: Crest, 57 B.R. 874, 878 (Bankr. D.N.D. 1985); In re: Hudson, 56 B.R. 415, 419 (Bankr. N.D. Oh. 1985); In re: Grant, 51 B.R. 385, 391 (Bankr. N.D. Oh. 1985); In re: Edwards, 50 B.R. 933, 936-37 (Bankr. S.D. N.Y. 1985); In re: White, 49 B.R. 869, 874 (Bankr. W.D. N.C. 1985), and this factor standing alone justifies a §707(b) dismissal. See, In re: Cord, supra at 7; In re: Hudson, supra at 419; In re: Edwards, supra at 937.

Since at least 1987 the debtor has enjoyed a substantial income and "the good life". Obviously, from the debts incurred and in spite of his substantial income, the debtor has lead too good a life. As a part of his divorce decree until his former spouse

completes her education and obtains employment, the debtor is obligated to pay her the total sum of \$1,800.00 per month. From his net income after payroll taxes this result in nearly the identical sum (\$1,785.26) for his support which according to the debtor's monthly expense budget is insufficient to fund his present lifestyle. Especially, in view of the fact that the debtor expects his former spouse and two minor children to meet their necessary monthly living expenses on \$1,800.00, his lifestyle is extravagant.

Without taking into consideration any potential year-end bonus, the debtor's monthly income is sufficient to support a Chapter 13 payment of at least Four Hundred and No/100 (\$400.00) Dollars per month to include the repayment of his secured debt due the thrift plan at the rate of One Hundred Forty and 78/100 (\$140.78) Dollars per month. A payment of \$400.00 per month in a Chapter 13 case would result in a substantial payment to unsecured creditors over three years and would result in a remaining monthly disposable income available to the debtor of One Thousand Three Hundred Eighty Five and 26/100 (\$1,385.26) Dollars, a reasonable sum to meet necessary living expenses for a single person.

In this case, the debtor has not suffered an unforeseen calamity. The debtor is merely attempting to use the provisions of Chapter 7 to gain relief from his past excesses without any meaningful financial sacrifice on his part.

From the evidence presented, the United States trustee

has established that this Chapter 7 bankruptcy proceeding represents a substantial abuse of the bankruptcy process, and this case is ORDERED dismissed.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 6th day of June, 1990.