

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In re

**Matt T. Leslie,

Debtor.**

**Case No. 02-15609

Chapter 7**

Memorandum Opinion and Order re United States Trustee's Motion to Dismiss

The Court conducted a hearing on the United States Trustee's Motion to Dismiss on June 11, 2003. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2)(A), this is a core proceeding. The Court has reviewed the testimony from the hearing and the record as a whole. This Memorandum Opinion and Order shall serve as the Court's findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

The debtor in this case, Matt Leslie, (hereinafter "Leslie" or "debtor"), filed his bankruptcy petition on November 26, 2002. At the time of filing, the debtor was leasing a 2000 Dodge Ram from Daimlerchrysler for \$510.00/month. The debtor abandoned his interest in the Dodge Ram to Daimlerchrysler on March 7, 2003. Leslie testified at the hearing in this matter that the estimated purchase price for the Ram at the conclusion of the lease in November 2003 would have been between \$13,000 and \$14,000.

Ten days prior to filing for bankruptcy relief, Leslie purchased a 2003 Jeep Liberty for \$27,000. The Jeep was financed with First Third Bank on November 16, 2002, with a monthly payment of \$530.43 for sixty (60) months. Leslie listed the Jeep and First Third's lien on his bankruptcy petition and schedules. Leslie reaffirmed the debt with First Third on March 4, 2003, in the amount of \$28,228.31.

At Leslie's meeting of creditors on January 15, 2003, the chapter 7 trustee asked Leslie why he purchased the Jeep in November 2002. Leslie answered by testifying that the lease on the Dodge was going to expire, that he needed a family vehicle for his fiancée and her two children, and that his fiancée did not like driving the Dodge back and forth to school in Memphis. Leslie further stated that at the time of purchasing the Jeep he "had a pretty good idea" he was going to file bankruptcy.

Upon further questioning by the chapter 7 trustee at the § 341 meeting, Leslie admitted that he had looked at some less expensive vehicles before deciding to purchase the Jeep. Leslie also stated that he had tried to convince his fiancée that he could not afford the Jeep. Despite his best efforts, however, Leslie was unsuccessful in convincing his fiancée to get a less expensive car:

We looked at some [less expensive cars], yes, and I tried to convince her that that was acceptable and I didn't really have much luck. Yes, I could have put my foot down but I thought it was better for the overall situation at home to kind of cave in to her.

See, Trial Exhibit 2, Transcript of 341 meeting, p. 5, lines 18-21. In addition to the Jeep, Leslie and his fiancée also own a 1997 Chevy Monte Carlo. Leslie listed this vehicle and the lien thereon on his bankruptcy schedules. Leslie is currently making the payment on this car as well as supporting his fiancée’s children.

At the June 11, 2003, hearing in this matter, Leslie’s testimony was consistent with that given at the § 341 meeting. Leslie admitted that he purchased the Jeep to make his fiancée happy and that he knew when he bought the Jeep that he would more than likely have to file bankruptcy. Specifically, Leslie stated that he knew he would have “zero credit” once he filed his chapter 7 petition and that he wanted to purchase a vehicle before this occurred.

II. CONCLUSIONS OF LAW

Section 707(b) of the Bankruptcy Code 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 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). In the Sixth Circuit, whether or not a debtor is guilty of “substantial abuse” is to be decided by looking at a totality of the circumstances. *In re Krohn*, 886 F.2d 123, 126 (6th Cir. 1989). Factors to take into consideration when making such an inquiry include the “debtor’s good faith and candor in filing schedules and other documents, whether he has engaged in ‘eve of bankruptcy purchases,’ and whether he was forced into Chapter 7 by unforeseen or catastrophic events.” *Id.*; *In re Zick*, 931 F.2d 1124, 1126-27 (6th Cir. 1991). In making a § 707(b) inquiry, a court must necessarily determine whether or not the debtor acted in good faith in filing for bankruptcy relief. *Zick*, 931 F.2d at 1129:

The Bankruptcy Code is intended to serve those persons who, despite their best efforts, find themselves hopelessly adrift in a sea of debt. Bankruptcy protection was not intended to assist those who, despite their own misconduct, are attempting to preserve a comfortable standard of living at the expense of their creditors. Good faith and candor are necessary prerequisites to obtaining a fresh start. The bankruptcy laws are grounded on the fresh start concept. There is no right, however, to a head start.

Id. A party seeking dismissal of a case under § 707(b) has the burden of proof by a preponderance of the evidence. *In re Sumner*, 255 B.R. 555, 563 (Bankr. S.D. Ohio 2000).

In the case at bar, the debtor did include both the Dodge Ram and the Jeep, as well as his fiancée’s Monte Carlo in his schedules. The debtor also abandoned the Dodge Ram to Daimlerchrysler, thereby deleting \$510.00/month in expenses. Despite these facts, however, the debtor admitted to making an “eve of bankruptcy” purchase with full knowledge that he would probably have to file chapter 7 within a few days. The debtor also admitted that he could have purchased a less expensive vehicle, but that he did not because he “thought it was better for the overall situation at home to kind of cave in to” his fiancée.

At the hearing in this matter, the debtor argued that the Jeep purchase did not have a large impact on his unsecured creditors because the payment on the Jeep was only \$20.00 more a month than the payment on the Dodge Ram. While this is true, the debtor is missing the bigger picture. Had he continued making the lease payments on the Ram until the lease expired, Leslie could have purchased the Ram for between \$13,000 and \$14,000. Instead of doing this, however, he went out and purchased a \$28,000 vehicle. In theory, this decision has the effect of depriving Leslie’s creditors of \$14,000. Given that his total unsecured debt is between \$24,000 and \$26,000, this is quite a significant impact.

Looking to a totality of the circumstances, the Court finds that Leslie acted in bad faith in filing for chapter 7 relief after purchasing the Jeep in November 2002. While the Court can understand the debtor’s reluctance to disappoint or go against his fiancée, it cannot stand by and allow a debtor to purchase luxury vehicles ten days prior to filing for chapter 7 relief. The fact that Leslie knew he would probably have to file bankruptcy at the time he purchased the Jeep only reinforces this Court’s conclusion that the petition was filed in bad faith.

III. ORDER

It is therefore **ORDERED** that the United States Trustee’s Motion to Dismiss is **GRANTED**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: July 22, 2003