Opinion Title: 07/23/2003 UNPUBLISHED In re Snow, 03-20144, Judge Thurman

Body: The United States Trustee brought a motion to dismiss the Debtors' case for substantial abuse of the bankruptcy system as provided by 11 U.S.C. § 707(b). The Debtors had filed a Chapter 7 case but their household income was greater than $150,000 per year. Applying the "totality of the circumstances" test set forth by the Tenth Circuit Court of Appeals in the case of Stewart v. United States Trustee (In re Stewart), 175 F.3d 796, 809 (10th Cir. 1999), the Court granted the Trustee's motion but stayed the effectiveness of the order for ten days to allow the Debtors to convert their case to one under Chapter 11 or Chapter 13. Although the Court determined that the Debtors' ability to repay debt was the primary factor in its analysis, the Court considered other factors as well including whether the Debtors suffered any unique hardships, whether cash advances and purchases exceeded the Debtors' ability to pay at the time they were incurred, whether the Debtors had a stable source of future income, whether the Debtors current expenses could be reduced without deprivation of necessities, whether the Debtors qualify for Chapter 13 relief, and the Debtors' good faith. The Court determined, based on an analysis of each factor, that the case should be dismissed primarily due to the amount of surplus income that the Debtors should have under a plan of reorganization and the Debtors' failure to provide accurate information regarding their household income and expenses on their bankruptcy schedules at the time the case was filed or in any written amendments.

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Judge: Judge William T. Thurman [2]

Date: Wednesday, July 23, 2003

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