

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re)	Bankruptcy Case No. 00-21217 GEC
)	
BASHAR DABBAS and)	Chapter 7
OUHOUD A. DABBAS,)	
)	
Debtors.)	ORDER CONDITIONALLY
)	DISMISSING CASE UNDER
)	11 U.S.C. SECTION 707(b)

This matter is before the court on the United States Trustee’s Motion to Dismiss Chapter 7 Case Pursuant to 11 U.S.C. Section 707(b) as a substantial abuse of the provisions of Chapter 7. Peter J. Kuhn appeared on behalf of the United States Trustee; Gerald H. Suniville appeared on behalf of the Debtors; and Stephen P. Horvat appeared on behalf of American Express Travel Related Services Company, Inc.

1. The Debtors filed their voluntary Chapter 7 case on February 4, 2000.
2. The Debtors’ scheduled debt is primarily consumer debt.

3. The Debtors' schedules list the following assets:

Description	Value	Debt	Equity
Snyders Way home	\$410,000	\$394,000	\$16,000
Fort Rd. home	\$280,000	\$325,000	\$-0-
Cash	\$461	\$-0-	\$461
Household goods	\$6,000	\$3,722	\$2,278
Books and CDs	\$200	\$-0-	\$200
Clothes	\$1,000	\$-0-	\$1,000
Wedding band and Watches	\$450	\$-0-	\$450
Gun	\$50	\$-0-	\$50
Vehicles:			
'99 Suburban	\$30,000	\$36,000	\$-0-
'99 Audi	\$32,000	\$36,000	\$-0-
'00 BMW	\$36,000	\$42,000	\$-0-
'99 Mercedes	\$22,000	\$30,000	\$-0-
'99 Toyota	\$16,000	\$20,000	\$-0-
'97 Boat	\$30,000	\$33,000	\$-0-
Pension	\$285,000	\$-0-	\$285,000
Total:	\$1,151,161	\$919,712	\$305,439

Debts:

Secured Debt	\$874,222
Priority Debt	\$6,717
Unsecured Debt	\$184,920

4. The Debtors' schedule F--Creditors Holding Unsecured Nonpriority Claims--includes claims for deficiency balances on the following vehicles:

1997 Toyota	\$13,260 deficiency
1997 Mercedes E420	\$10,142 deficiency
1998 Mercedes SL500	\$16,816 deficiency

5. The Debtors indicate an intent to surrender the following:

- the residence located at 1623 W. Fort Road,
- the 2000 BMW vehicle,
- the 1999 Toyota vehicle,
- the 1997 Cobalt boat.

6. The Debtors indicate an intent to retain the following:

- Residence located at 4410 Snyders Way, Park City, Utah,
- the 1999 Suburban vehicle,
- the 1999 Audi vehicle,
- the 1998 Mercedes Benz vehicle.¹

7. Bashar Dabbas, M.D., is a pathologist employed by Utah Pathology Services which provides pathology services to LDS Hospital in Salt Lake City, Utah. As part of his responsibilities he must serve "on call" duty at odd hours. Because the Debtors reside in Park

¹This vehicle is being purchased by Bashar Dabbas's brother-in-law, Marwan Bustami. Bashar Dabbas co-signed on the obligation for the vehicle.

City, Utah, his “on call” duties require that he travel to and from Park City to Salt Lake City on a frequent basis.

8. The Debtor’s annual gross income during the last three years has been:

<u>Year</u>	<u>Amount</u>
1999	\$279,670 = \$23,305 per month
1998	\$228,380 = \$19,031 per month
1997	\$252,380 = \$21,031 per month

9. Beginning July 1, 2000, the Debtor’s employer will add two additional pathologists to the medical staff. The Debtor testified that as a result of the two additional pathologists, his income from employment will decrease from an average of \$22,940 per month in 1999 to \$12,000 per month.

10. At the hearing on the United States Trustee's motion, Dr. Dabbas testified that the Debtors were unable to reduce their monthly expenses to anything less than the following:

Mortgage payments	\$3,034
Electricity and heating	\$400
Water and sewer	\$196
Telephone	\$400
Cable TV	\$57
Alarm	\$26
Home maintenance	\$400
Food	\$1,500
Clothing	\$500
Laundry and dry cleaning	\$100
Medical and dental	\$50
Gasoline	\$400
Airfare	\$400
Automobile registration	\$30
Auto service/repair	\$50
Recreation	\$100
Charity	\$50
Life insurance	\$171
Disability insurance	\$174
Auto insurance	\$180
Umbrella insurance	\$20
Auto loan payment-Suburban	\$649
Auto loan payment-Audi	\$575

Installment payment-RC Willey	\$65
Alimony	\$1,200
Child support	\$1,458
Parent support	\$1,200
Professional expense-cell phone	\$200
Professional expense-books	\$200
Children's education fund	\$200
Child care-Ahmad	\$416
Child care-Omar	\$575
Wife's education expenses	\$345
Attorney fees	\$50
Accounting	\$25
Child expenses-Natalie-athletic club	\$133
Child expenses-Ahmad-The Little Gym	\$60
Total Monthly Expenses	\$15,589

ANALYSIS

Dismissal of a Chapter 7 bankruptcy case for substantial abuse is governed by 11 U.S.C. § 707(b). That section applies only to debtors whose debts are primarily consumer debts and where granting relief under the provisions of Chapter 7 would result in a substantial abuse of the bankruptcy laws. It is undisputed that the Debtors' debts are primarily consumer debts, thus

leaving the court only with the task of determining whether granting relief under the provisions of Chapter 7 to these Debtors would result in a substantial abuse of the bankruptcy laws.

Although the term substantial abuse is not defined by the Bankruptcy Code, the Tenth Circuit in In re Stewart, 175 F.3d 796 (10th Cir. 1999) has adopted a “totality of the circumstances” test for determining if substantial abuse exists. Of the elements of the totality of the circumstances test, the debtor’s ability to repay the debtor’s debts is the primary factor to be considered. Other factors include, but are not limited to: (1) whether the debtor will enjoy a stable source of future income; (2) whether the debtor’s expenses can be significantly reduced without depriving the debtor of adequate food, clothing, shelter, and other necessities; (3) sudden illness, calamity, disability, or unemployment; (4) cash advances and consumer purchases in far excess of the ability to repay; (5) excessive or unreasonable family budget; (6) accurate reflection of true financial condition in the debtor’s schedules and statements of income and expenses; (7) the debtor’s good faith; and (8) whether the debtor has suffered any unique hardships.

At first blush, it appears that the Debtors cannot repay their debts because the Debtors’ expenses as set forth in their budget exceeds their income by more than \$3,000 per month. However, because the Debtors’ ability to repay is dependent upon many variables, this question will be revisited after the remaining elements of the totality of the circumstances test have been considered.

The next factor to consider is whether the Debtors will enjoy a stable source of future income. At the hearing, Dr. Dabbas testified that beginning July 2000, because two pathologists

will be added to his organization's staff, his income will be reduced from an average of \$21,365 per month to \$12,000 per month. Although the court finds that this drop in Debtors' income borders on incredible, the court will, nonetheless, accept the representation as stated.

The next factor is whether the Debtors' expenses can be significantly reduced without depriving the Debtors and their dependents of adequate food, clothing, shelter, and other necessities. The Debtors claim that they are incapable of reducing their expenses below \$15,198.44 per month. The court rejects the Debtors' assertion that \$15,198.44 per month is necessary for a family of six² to meet its need for adequate food, clothing, shelter, and other necessities.

²Without ruling whether the support of the Debtor's father should be considered to be a necessary expense under the totality of the circumstances test, the court will view the father as a member of the family to be supported by the Debtors for purposes of this analysis.

The Debtors' expense budget is unreasonably high for a family of six.³ Unreasonable expenses include \$200 per month children's education fund,⁴ athletic club and little gym expenses for children,⁵ child care expenses,⁶ \$1,500 per month food expense for a family of six,⁷ and a second high priced automobile.⁸

³This court has reviewed thousands of expense budgets over the years. Examples of what appear to be reasonable expense budgets can be found as easily as looking at the bankruptcy cases filed just prior to and just after the Debtors' case.

Case number 00-21216 was filed just prior to the Debtors' case. It is a Chapter 13 proceeding. The schedules I and J indicate that the debtors' gross income is \$3,354 per month and that necessary expenses to support the debtors' family of three is \$2,850 per month thus leaving \$504 to be contributed to the debtors' plan of reorganization.

Case number 00-21218 was filed immediately after the Debtors' case. It is a Chapter 7 proceeding. The schedules I and J indicate that the debtors' gross income is \$3,232.67 per month and that necessary expenses to support the debtors' family of eight is \$3,406.98 per month, leaving no disposable income from which to repay creditors.

⁴Presumably this is a fund of money into which the Debtors contribute \$200 per month to pay for their three children's future education. The children's ages are nine, two, and one. Certainly this is not a reasonable expense for the Debtors' to claim on their schedule J. This is a voluntary contribution into an investment fund. If the fund is an irrevocable trust held in the children's names, the \$200 per month contribution should have been disclosed in the Debtors' statement of affairs at paragraph 7. If the fund is held in a revocable trust, the fund should have been disclosed with the Debtors' schedule of assets.

⁵The Debtors have shown no special circumstances or special needs on the part of the children that would justify the Debtors' monthly expenditure on the athletic club and little gym as necessary expenses.

⁶Dr. Dabbas testified that his wife does not work and made no showing that the children had any special educational needs or were in need of special counseling. In addition, Dr. Dabbas testified that his father resided in Debtors' home approximately six months out of the year. No explanation was offered as to why the father could not assist in the child care duties.

⁷Case number 00-21216 (family of three) budgets food expense at \$400 per month. Case number 00-21218 (family of 8) budgets food expense at \$600 per month.

⁸The court does not assert that Debtors are not entitled to reasonable transportation expenses. However, monthly lease payments totaling \$1,224.80 for two automobiles is inconsistent with a test that

The Debtors' housing expenses are unreasonable and can be reduced significantly. This includes both the direct and indirect expenses associated with Debtors' home such as mortgage payments, utilities, home maintenance, yard care, snow removal, and home owners associations fees. These housing expenses, which by themselves total \$4,030 per month, are excessive and extravagant. Dr. Dabbas testified that the Debtors' housing expenses could not be reduced by selling the home because the Debtors' financial situation makes it impossible for them to obtain financing on a replacement home. This argument is without merit. The Debtors could always sell their home and rent. It is also likely that the Debtors could qualify for a modest mortgage with which to purchase affordable housing.⁹

By selling their \$410,000 home and eliminating or reducing many of the expenses incident to the ownership of that home, the Debtors could significantly reduce their expenses. This may not be a pleasant experience for the Debtors, but under the totality of the circumstances test, if debtors can reduce expenses without bring deprived of adequate food, clothing, shelter, or other necessities, they must do so or risk dismissal of their case under 11 U.S.C. § 707(b).

Considering the other factors in the totality of the circumstances test, the Debtors have not suffered any sudden illness, calamity, disability, or unemployment. The Debtors have made consumer purchases far in excess of their ability to pay. The budget submitted by the Debtors at the hearing on the United States Trustee's Motion to Dismiss is both excessive and unreasonable.

looks to "adequate food, clothing, shelter, and other necessities."

⁹ Each month, this court approves dozens of successful loan applications to refinance or obtain new mortgage loans on home purchases. In almost every case, the debtors obtaining these loans support their applications with substantially less income than is enjoyed by the Debtors.

Despite the Debtors' budget, the court does not find bad faith, nor does the court find that these Debtors have filed their petition in good faith. The court finds that the Debtors have suffered no unique hardships.

In revisiting the question of the Debtors' ability to repay their debts, the court finds that the Debtors' expenses are so overstated and are so well suited for reduction that these Debtors, with reasonable effort and with a willingness to change their lifestyle, could repay their debts within a reasonable period.

Therefore, based upon the above, it is hereby

ORDERED that unless this case is converted to a case under another chapter within ten days, this case will be dismissed for substantial abuse of the bankruptcy laws.

DATED this 24th day of August, 2000.

BY THE COURT:

/s/ _____
GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2000, I served a true and accurate copy of the foregoing order on the following by depositing the same in the United States mail, postage prepaid, addressed as follows:

PETER J KUHN
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/s/ _____
Mareea Perry, Judicial Assistant to Judge Clark