

10-1-07

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
CAROLYN JEAN HUMMEL,)	CASE NO. 06-68931-MHM
)	
Debtor.)	

FELICIA S. TURNER,)	
UNITED STATES TRUSTEE,)	
)	CONTESTED MATTER
Movant,)	
)	
v.)	
)	
CAROLYN JEAN HUMMEL,)	
)	
Respondent.)	

ORDER DENYING MOTION TO DISMISS UNDER §707(b)(2)

This case is before the court on the U.S. Trustee's motion to dismiss this case under §707(b)(2) or, in the alternative, §707(b)(3). Hearing was held July 17, 2007. At the hearing, the parties addressed the issue arising under §707(b)(2) and agreed to defer argument under §707(b)(3) until disposition of the §707(b)(2) issue.

The issue under §707(b)(2) is discrete and the case law is split. On Debtor's Official B22A form (the "Means Test Form"), Debtor included as an expense the full amount of the mortgage on her residence, even though at the time she filed the petition, she intended to surrender the property to the mortgagee. Shortly after this case commenced,

her mortgagee filed a motion for relief from stay, which was granted, and Debtor vacated the residence on or about October 14, 2006.

The U.S. Trustee asserts that Debtor should not be allowed to deduct the full amount of her home mortgage payment when her intent from the beginning of this case was to surrender the residence. The U.S. Trustee shows that if, instead of deducting the full amount of her monthly mortgage payment, \$1320, Debtor instead deducted the IRS allowance for housing, \$947, Debtor would have sufficient disposable income to be able to provide in a Chapter 13 case a meaningful dividend to unsecured creditors.

The discrete legal issue under §707(b)(2) is whether, on the Means Test Form, a debtor can deduct as an expense the full amount of payment to a secured creditor when Debtor intends to surrender the collateral. Although the case law is split, the majority appears to resolve that issue in favor of the debtor. *In re Walker*, 2006 WL 1314125 (Bankr. N.D. Ga. 2006)(J. Drake); *In re Simmons*, 357 B.R. 480 (Bankr. N.D. Ohio 2006); *In re Randle*, 358 B.R. 360 (Bankr. N.D. Ill. 2006); *In re Sorrell*, 359 B.R. 167 (Bankr. S.D. Ohio 2007); *In re Mundy*, 363 B.R. 407 (Bankr. M.D. Penn. 2007); *In re Longo*, 364 B.R. 161 (Bankr. D. Conn. 2007); *In re Galyon*, 366 B.R. 164 (Bankr. W.D. Okla. 2007); *In re Kogler*, 368 B.R. 785 (Bankr. W.D. Wis. 2007); *In re Wilkins*, 370 B.R. 815 (Bankr. C.D. Cal. 2007); *In re Benedetti*, 372 B.R. 90 (Bankr. S.D. Fla. 2007); *In re Palm*, 2007 WL 1772174 (Bankr. D. Kan. 2007). *Contra In re Skaggs*, 349 B.R. 594 (Bankr. E.D. Mo. 2006); *In re Harris*, 353 B.R. 304 (Bankr. E.D. Okla. 2006); *In re Singletary*, 354 B.R.

455 (Bankr. S.D. Tex. 2006); *Fokkena v. Hartwick*, 2007 WL 2350560 (D. Minn. 2007).

The majority position is persuasive. Accordingly, it is hereby

ORDERED that the U.S. Trustee's motion to dismiss under §707(b)(2) is *denied*.

The hearing on the motion to dismiss under §707(b)(3) will be scheduled for further hearing.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, the United States Trustee, and all creditors and parties in interest.

IT IS SO ORDERED, this the 28th day of September, 2007.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE