IT IS ORDERED as set forth below:

Date: October 15, 2015

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 15-61378-WLH
SHEHNAZ ALI VERANI, a/k/a Shehnaz Alivirani,	CHAPTER 7
Debtor.	JUDGE WENDY L. HAGENAU
GIRISH MODI,	
Movant.	
v.	
SHEHNAZ ALI VERANI, a/k/a Shehnaz Alivirani,	
Respondent.	

ORDER DENYING MOTION TO DISMISS

This matter came before the Court on September 21, 2015 on the Motion to Dismiss, as amended [Docket Nos. 9 and 22] filed by Girish Modi. Mr. Modi appeared and prosecuted the Motion on his own behalf; Evan Altman appeared on behalf of the Debtor. For the reasons stated on the record, which are supplemented by this written order, the Motion is DENIED.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

FACTS

Procedural Background

Shehnaz Ali Virani filed her petition under Chapter 7 of the United States Bankruptcy Code on June 19, 2015 at 4:15 p.m. The original petition showed her name as "Shehnaz Alivirani". The original petition indicated that her debts were primarily consumer in nature. In answer to the question of whether Mrs. Virani had filed previous bankruptcy petitions, the space was left blank. The question of whether her spouse had a pending bankruptcy case was also left blank. The petition was signed as a *pro se* debtor.

Earlier the same day at 2:51 p.m., Mrs. Virani's husband, Ramzan Ali Virani, filed a petition under Chapter 13 of the United States Bankruptcy Code at Case No. 15-61364. Mr. Virani was represented in the filing of his case by Evan Altman.

Girish Modi ("Mr. Modi") immediately filed motions to dismiss in both cases. After the original motions to dismiss were filed, Evan Altman appeared as counsel for Mrs. Virani. Mr. Altman filed Mrs. Virani's schedules and statement of financial affairs on July 20, 2015 [Docket No. 18]. Mr. Modi then amended his Motion to Dismiss [Docket No. 22]. Mrs. Virani amended her petition to correct her name and to disclose a prior bankruptcy case [Docket Nos. 23 and 24]. Mr. Virani voluntarily dismissed his Chapter 13 case on September 13, 2015. Mr. Modi's Motion to Dismiss, therefore, proceeded only as to Mrs. Virani. At the trial, the Court heard testimony from Mr. Modi, Mr. and Mrs. Virani, as well as an attorney for the Viranis and a representative of another creditor of the Viranis.

Findings of Fact

Mrs. Virani is married to Ramzan Ali Virani. The Viranis have two children, a boy and a girl, 21 and 19 years of age respectively. Over the last 10 or so years, the Viranis have been involved in various businesses. In March 2012, they incorporated SH Mart, Inc., which operates an events facility. SH Mart is wholly owned by Mr. Virani.

Mrs. Virani worked part time with SH Mart in 2013 and 2014 and received some wages. Mrs. Virani testified she did not work at SH Mart as an employee in 2015. Although she continues to help her husband as needed, the help is provided to assist the family rather than as an employee. She has not received any funds from SH Mart in 2015. Mrs. Virani now works as a medical assistant. The company for which she works sends her to work in various doctors' offices in the area, some as much as an hour and a half away from her home. Mrs. Virani testified her hours can fluctuate. Her statement of financial affairs reflects that, as of her filing date in 2015, she had earned $10,814.48. Her Schedule I states her income is $2,392 a month, including overtime. Her Official Form 22A-1, Statement of Current Monthly Income form ("Means Test") shows gross income including overtime of $1,438 per month. The pay stubs she filed at Docket No. 19 show that, for the period April 21, 2015 through June 15, 2015, she earned regular pay of $960 every two weeks, and her overtime fluctuated from $-0- to $576 over the same time period.

Mr. Virani's sole source of income is from SH Mart. Mr. Virani testified the revenue generated by the events hall varies based on the events scheduled. He stated that monthly revenue to SH Mart could range from $6,000 to $17,000. Mr. Virani is paid $1,000 a month from SH Mart. He receives additional amounts from SH Mart based on the availability of funds. He contends his average monthly income is $1,800 a month, but that amount can also fluctuate. The evidence showed the total income for Mr. and Mrs. Virani in 2013 per their tax return was

$27,000. SH Mart pays the expenses of the business and also paid the filing fee and attorney's fee for both Mr. and Mrs. Virani.

The Viranis' son works part time. His income is used to make a payment on the car he owns and drives as well as to pay some of his other personal expenses. The Viranis' son does not otherwise contribute to the household, although he lives at home. The Viranis' daughter is a college student who also lives at home and is unemployed. The Viranis consider both children to be dependents.

Mr. Modi made two loans to Mr. and Mrs. Virani. On November 18, 2012, Mr. and Mrs. Virani and Mr. Modi executed a "Promissory Notes & Personal Guarantee" in the amount of $10,000. The note states, "On this date of Nov. 18, 2012 in return for valuable consideration received, the undersigned borrower [Ramzan Virani & Shehnaz Virani] Company is SH Mart Inc. dba Jungle Kids Place located at 3750 Venture Drive, Suite A-80, Duluth, Georgia 30096 jointly personal and Corporation." The note required monthly payments of $150 with the balance to be paid within 12 months. The note also provides,

> **Acceleration of Debt**. In the event that borrower[s] fail to make any payment due under the terms of this Note, or breach any condition relating to any security, security agreement, note, mortgage or lien granted as collateral security for this Note, the entire balance of this Note on Jungle Kids Place.

Finally, under the signature line for Mr. Virani is stated "Jungle Kids Place".

Subsequently, on December 1, 2012, the Viranis executed another "Promissory Note & Personal Guarantee" to Mr. Modi in the amount of $40,000. The Viranis were to make payments of $400 per month with the full balance of the note being due on December 31, 2013. One of the "Additional Terms and Conditions" in the note provides, "A sign 'Girish Modi Auditorium' shall be displayed conspicuously and permanently near the auditorium section of the facility. This name shall not be removed under any circumstances, even when the loan is fully paid off." Another of the Additional Terms and Conditions provides, "Girish Modi will have exclusive

rights to take photos and videos for any musical and dance programs organized by the borrowers and/or his agents in the auditorium. Other photographer's and videographer's services will be used only if Girish Modi declines his services. Girish Modi may demand at his discretion payment for his services." The Debtors did not pay the sums due under the notes and Mr. Modi commenced a lawsuit in 2013 in Gwinnett Superior Court. The parties ultimately participated in mediation and signed a mediation agreement on August 28, 2014. This mediation agreement was incorporated into an order of the Gwinnett Superior Court dated January 8, 2015. Both the agreement and the order required the Viranis to make payments of $300 per month to Mr. Modi. If any monthly payment was not made by the 6th of the month, the order and agreement provided that the Viranis would be in default and Mr. Modi could obtain a judgment for the total amount of $65,000 (minus any amounts paid) as well as a *fi fa*.

The Debtors made payments under the agreement and order, but the April 2015 payment was received by Mr. Modi one day late. Mr. Modi filed an affidavit to obtain a *fi fa* on April 8, 2015, to which the Viranis responded. The Gwinnett Superior Court ruled in favor of Mr. Modi and issued the *fi fa*. Mr. Modi sent an e-mail on June 17, 2015 to the Viranis' counsel, copying Mr. and Mrs. Virani stating in part that he would "send Sheriff to confiscate your personal property including cars" if the parties could not reach a resolution. It was at this point that Mr. and Mrs. Virani filed their petitions on June 19, 2015.

While the Viranis filed their bankruptcy cases separately, they function as a single family unit and pay their household bills together. They do not have a set allocation of expenses between them. Mr. Altman attempted to divide the expenses between the parties on the Schedule J filed in each case, as amended. The relatively arbitrary division of expenses led to confusion for Mr. Modi and others. Nevertheless, the combination of the expenses identified in the two cases does not exceed the household's actual expenses. Another source of confusion was the

Viranis' mode of transportation. The Viranis do not own any vehicles, although they each drive a vehicle and their son drives a third vehicle. Both Viranis testified that the vehicles are in their son's name due to their poor credit. Mrs. Virani drives a Honda Odyssey which is in her son's name. She makes the car payment, and the household pays for insurance on all three vehicles.

Mrs. Virani's schedules list the following debt, the origin of which was described at trial:

> Crown Asset Management, LLC – judgment for $5,300 – joint with husband. This debt was incurred as a result of a default on a car loan.
>
> Discover Bank – judgment for $5,200. This debt was incurred by Mrs. Virani in support of a prior business, which is no longer operating.
>
> Mr. Modi – civil action judgment for $65,000 – joint with her husband.
>
> Mills & Hoopes – no amount is identified as being owed to them. Mills & Hoopes represented Mr. and Mrs. Virani and SH Mart in the state court litigation with Mr. Modi. No evidence was presented as to the amount owing, if any, to Mills & Hoopes, and whether any of it was Mrs. Virani's responsibility.
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> DeKalb Medical - $300.
>
> Platinum Federal Credit - $10,500. A representative of Platinum Federal Credit Union testified that the loan was made on March 31, 2015 in the original amount of $12,000. Of that loan amount, $8,259.30 was paid directly by Platinum Federal Credit Union to various Gwinnett County licensing agencies for SH Mart. Another $3,740.16 was paid to Platinum on old debt, including old credit card debt and overdrawn accounts.
>
> Timothy Wread - $36,000 loan – joint with her husband. This debt was incurred for a business venture in 2005 that is no longer in existence.

APPLICABLE LAW

Mr. Modi, in his Motion to Dismiss as Amended, argues the case should be dismissed under 11 U.S.C. § 707(b)(2) and (b)(3). In his separate Motion for Sanctions against Attorney Evan Altman [Docket No. 25, as amended Docket No. 30], he asks that the case be dismissed under 11 U.S.C. § 707(a). The Court will enter a separate order on Mr. Modi's request for sanctions but will address all three possible grounds for dismissal in this order.

Section 707(b)

The Bankruptcy Code at Section 707(b) allows the court on its own motion, a motion by the United States Trustee, a Chapter 7 Trustee, "or any party in interest" to dismiss a case filed by an individual debtor "whose debts are primarily consumer debts" if the court finds that relief under the Bankruptcy Code would be an "abuse of the provisions" of the Bankruptcy Code. Section 707(b)(2) provides that an abuse exists if the debtor fails the means test. Finally, Section 707(b)(3) states it would be an abuse of the Bankruptcy Code if a debtor filed the bankruptcy petition in "bad faith" or if the "totality of the circumstances … of the debtor's financial situation demonstrates abuse".

Importantly, all of Section 707(b) applies only if the debtor's debts are primarily consumer debts. "Consumer debt" is defined in the Bankruptcy Code in Section 101(8) as debt incurred by an individual primarily for a personal, family or household purpose. A person may be personally liable for debt which is not primarily consumer debt, because debt is only "consumer debt" if the debt was incurred for personal, household or family purposes. The Court must find that the debts of Mrs. Virani are primarily consumer debts in order for Section 707(b) to apply.

As the recitation of facts shows, Mrs. Virani's debts are not primarily consumer debts. In fact, of the $122,300 in debt scheduled by Mrs. Virani, only the debt to DeKalb Medical and Crown Asset Management, totaling $5,600 are exclusively debt for family, household or personal purposes. Arguably, another $3,740.16 of the Platinum Federal Credit Union debt could be consumer debt to the extent it was used to pay off old consumer debts of the Debtor, such as credit card debt. Mr. Modi argued that the obligation to him was not for business purposes. As explained, though, a debt can be a personal obligation and be for business purposes. The Court finds that the loan from Mr. Modi to Mrs. Virani and her husband was for

business purposes. The $10,000 note specifically identifies SH Mart as an additional obligor. The note reflects that Mr. Virani signed, at least in part, on behalf of Jungle Kids Place and the note references the obligation of Jungle Kids Place in the paragraph marked "Acceleration of Debt". The $40,000 note, the Court finds is also primarily for business purposes. Although Mr. and Mrs. Virani are personally liable, the Additional Terms and Conditions of the note reflect that the purpose was business. The note required that the auditorium at the SH Mart events hall be named the "Girish Modi Auditorium". The note also provided that Girish Modi would have exclusive right to take photos and videos at the events hall owned by SH Mart. Thus, the Court concludes that Mrs. Virani's debt to Mr. Modi is not a consumer debt. Since less than $10,000 of the scheduled $122,000 debt was for personal, household or family purposes, the Court concludes Mrs. Virani was not a consumer debtor and Section 707(b) does not apply to Mrs. Virani.

Even if Mrs. Virani had primarily consumer debt and Section 707(b) were applicable to her, Section 707(b)(6) provides that only the judge or United States Trustee may file a motion to dismiss under Section 707(b) if the current monthly income of the debtor as of the date of the order for relief is less than that of median income of a family with the same number of dependents. It is important to note that, in applying Section 707(b)(6), the current monthly income is only that of the debtor and not her spouse. A spouse's income is only included for purposes of Section 707(b)(6) in a joint case.[1] Mr. Modi argued that, based on adjustments to Mrs. Virani's income, he believed she and her husband combined had at least $4,279 a month. Multiplying that times 12, Mrs. Virani's total income, according to Mr. Modi, was $51,348. Mrs. Virani claimed four dependents – herself, her husband and her two children. The median income for a family of four in Georgia is $68,066 and thus Mrs. Virani's income is below the

[1] Contrast Section 707(b)(6) with the language in 11 U.S.C. § 707(b)(7) which does take into account the current monthly income of the debtor and the debtor's spouse.

median, even accepting without challenge Mr. Modi's calculation and the inclusion of Mr. Virani's income.

Mr. Modi then argued that Mrs. Virani should not include her two children as dependents because they were over the age of 18. Mr. Modi relied upon the IRS definition of dependents for this position. Even if the Court were to accept Mr. Modi's argument regarding the determination of dependents, the median income for a family of two in Georgia is $52,827. Consequently, under Mr. Modi's most aggressive calculation of Mrs. Virani's income and dependents, Mrs. Virani is a below-median-income debtor and Mr. Modi does not have standing to bring a motion under Section 707(b).[2]

Section 707(a)

Mr. Modi did not reference Section 707(a) in his Motion to Dismiss, but he did refer to it in his Motion for Sanctions. Since Mr. Modi is proceeding *pro se*, the Court will not stand on formality and will address the applicability of Section 707(a), which permits a court to dismiss a case under Chapter 7 "for cause". Specific examples of cause are an "unreasonable delay by the debtor that is prejudicial to creditors, non-payment of fees or charges, … and the failure of the debtor" … to file certain documents as required by Section 521(a). The three enumerated examples of cause in Section 707(a) are "illustrative, not exhaustive." In re Piazza, 719 F.3d 1253, 1261 (11th Cir. 2013). The Eleventh Circuit stated further that "the ordinary meaning of 'cause' is adequate or sufficient reason." Id. at 1261-62. Cause has similarly been described as "any reason cognizable to the equity power and conscience of the court as constituting an abuse of the bankruptcy process." Little Creek Dev. Co. v. Commonwealth Mortgage Corporation (In re Little Creek Dev. Co.), 779 F.2d 1068, 1072 (5th Cir. 1986) (cites omitted).

[2] The Court disagrees with Mr. Modi's calculation of the Debtor's income. The Court also disagrees with Mr. Modi's position on dependents. See In re Ross, 508 B.R. 777 (Bankr. N.D. Ga. 2014); In re Robinson, 449 B.R. 473 (Bankr. E.D. Va. 2011).

Because the meaning of cause is so broad, there is no checklist of factors for determining whether cause exists. The Eleventh Circuit in the Piazza case held that pre-petition bad faith can constitute cause. The Piazza court stated, "In light of its inherently discretionary nature, a totality-of-the-circumstances approach is the correct legal standard for determining bad faith under § 707(a)." 719 F.3d at 1271. Factors that are relevant to determining bad faith under a totality-of-the-circumstances test include whether the bankruptcy filing was precipitated by an unforeseen catastrophic event, whether the debtor is eligible for Chapter 13 or Chapter 11 relief, whether there are non-bankruptcy remedies available to the debtor, whether the debtor can obtain relief through private negotiations, whether the debtor's proposed budget is excessive or unreasonable, whether the debtor has a stable source of future income, whether the debtor could provide meaningful distribution in a Chapter 13 case, and whether the debtor's expenses could be reduced significantly without depriving them and their dependents of necessities. In re Walker, 383 B.R. 830, 837 (Bankr. N.D. Ga. 2008). The Piazza court noted additional considerations such as the debtor's intent to abuse the judicial process, or the debtor's intentional efforts to delay or frustrate creditors, or the debtor deliberately racking up debts he has no ability to repay, or the debtor having non-economic motives for the filing of the bankruptcy case, or the debtor failing to make a significant lifestyle adjustment or other efforts to repay its debts. 719 F.3d at 1272 (cites omitted). The Court notes that Mr. Modi in his Motion and in his argument used the totality-of-the-circumstances criteria to argue that the case should be dismissed. Mr. Modi as the moving party bears the burden of proving cause for dismissal. Id. at 1266.

Looking at the factors, the Court concludes Mr. Modi has not established cause for the dismissal of Mrs. Virani's case. Mrs. Virani's bankruptcy filing was precipitated by Mr. Modi obtaining a judgment and threatening to execute on the judgment. While the filing was made to avoid the effects of the writ of execution, the Court does not conclude such a filing constitutes

bad faith without other factors. If filing bankruptcy to avoid the payment of a debt was cause for dismissal, no debtor would ever be able file a bankruptcy case. The purpose of a bankruptcy case is to allow debtors to avoid the payment of debt, preserve the exemptions they may have in property, and obtain a fresh start. Preserving property and receiving a discharge of dischargeable debt are valid purposes for filing a bankruptcy case. It is also relevant in this case that Mrs. Virani and her husband had a consensual resolution with Mr. Modi. Although the superior court determined that the Viranis were in default by having delivered their payment one day late, it is certainly relevant to their good faith that the payment was in fact mailed adequately and delivery was attempted to Mr. Modi on the date the payment was due. The reaction of Mr. Modi demonstrates to the Court that it is highly unlikely the Debtor would be able to obtain further relief from Mr. Modi through private negotiations. Further, Mrs. Virani's income shows that she is a below-median-income debtor by any calculation. Mr. Modi contends that Mr. and Mrs. Virani together have significant income that could be used to pay him and other creditors. It is fair for the Court to consider Mr. Virani's income in determining whether cause exists for dismissal of the case under Section 707(a). While Mr. Modi contends that Mr. Virani consistently brings home more than $1,800 a month, there was no evidence to support that contention. The only evidence in the record was Mr. Virani's testimony that $1,800 a month was his best estimate. The Court also notes the 2013 tax return of both Viranis showed total income of $27,000. There is simply no evidence in the record to indicate that Mr. and Mrs. Virani collectively have significant income that could be used to pay their creditors.

Mr. Modi raised numerous specific arguments with respect to why Mrs. Virani's case should be dismissed, which the Court will now address.

Ground One – Mrs. Virani filed bankruptcy under a false name. The original petition filed by Mrs. Virani stated her name was "Shehnaz Alivirani". In fact, the correct name was

"Shehnaz Ali Virani". The misrepresentation of Mrs. Virani's name can be significant since the last name would have been indexed under "A" for Alivirani under the original filing, when it should have been indexed under "V" for Virani. Any creditor seeking to determine whether she had filed bankruptcy might have been misled. On the other hand, the petition was amended after Mr. Modi's Motion to Dismiss was filed to reflect the correct presentation of her name. Moreover, the Court notes that the pay stubs issued to Mrs. Virani show her last name as "Alivirani". Mrs. Virani testified that Ali was technically one of her middle names but frequently she uses Ali and Virani together. In short, the Court does not find that the initial filing of bankruptcy in the name "Alivirani" as opposed to just "Virani" constitutes a basis for dismissal of the case.

Ground Two – Mrs. Virani failed to disclose her previously filed bankruptcy case. Mr. Modi is correct in this statement. Mrs. Virani had previously filed a Chapter 13 case, No. 10-92602. Mrs. Virani corrected this information in her amended petition filed on July 27, 2015. While the information should have been disclosed in the original petition, the Court does not find the failure to disclose the prior petition is an act of fraud. Mrs. Virani used the same Social Security number as had been used in the 2010 case, so both the Court and creditors could match the two cases.

Ground Three – Mrs. Virani filed her bankruptcy petition a few days after Mr. Modi's request for issuance of a *fi fa* and the filing of bankruptcy by both Mr. and Mrs. Virani was for the purpose of seeking "double discharge of joint debts which is considered as fraud". As addressed above, filing bankruptcy to protect one's property and obtain a discharge of dischargeable debts is not in and of itself sufficient grounds to justify dismissal of the case.

Moreover, Mr. Modi's understanding of bankruptcy law is not complete. It is appropriate for debtors who are jointly liable on debts to both file bankruptcy to obtain protection from the

bankruptcy court. It is also appropriate for married debtors to file separate bankruptcy cases as opposed to a single joint bankruptcy case. Each debtor is entitled to his or her own discharge based on the merits of their particular case.

Ground Four – Because both Mr. and Mrs. Virani live together in a single household, Mr. Modi contends they should have identified their income on Schedule I as combined income and further that their kids' incomes should have been reported in Schedule I. When debtors file separate bankruptcy cases, as opposed to a joint case, Schedule I requires they show both their own income and expenses as well the income and expenses of the non-filing spouse. Mrs. Virani's Schedules I and J did both. She disclosed in Schedule I $1,800 in income from her husband, and disclosed in Schedule J the portion of the household expenses which were being attributed to him. While the method of division of expenses between Mr. and Mrs. Virani is not exactly logical, the total of expenses between the two was equivalent to the actual expenses of the household. Both Mr. and Mrs. Virani testified without contradiction that they do not divide the expenses between themselves but make single payments for the benefit of the household. While the separate bankruptcy filings with different household expenses attributed to each debtor was confusing, the Court does not find it is fraudulent or provides a basis for dismissal of the case. As to the children, the uncontested testimony was that Mrs. Virani's daughter is unemployed and Mr. and Mrs. Virani's son has a part-time job. His money pays for a car for him to drive. The testimony was further that the car and obligation for the payment on the car was in the son's name and not in the name of either Mr. or Mrs. Virani. As such, there was no evidence the son's part-time income was a contribution to the household or a contribution to any debts on which Mr. and Mrs. Virani were liable.

Ground Five – Mr. Modi contends that, because Mrs. Virani lived in a rental property, she should have completed the certification on her petition as required by 11 U.S.C. § 362. Mr.

Modi is incorrect in this assertion. On the petition, there is a place for a debtor to state whether her landlord has a judgment against the debtor for possession of the debtor's residence and, if so, whether there are circumstances that would allow that judgment to be set aside. This certification is in accordance with 11 U.S.C. § 362(*l*) and (m). The uncontested testimony was that the Viranis were current on their rent and there was no evidence to suggest that a certification under 11 U.S.C. § 362(*l*) or (m) was necessary.

Ground Six – Mr. Modi contends that, according to Georgia law, a married couple cannot discharge their debt separately. Mr. Modi provides no support for this statement, and it is an inaccurate statement of Georgia law. Secondly, Mr. Modi contends that Mrs. Virani has omitted smaller creditors and listed large creditors in order to inflate debts "and get full discharge". However, no evidence was presented of any creditors whose debts were omitted from the schedules.

Ground Seven – Mr. Modi contends that Mrs. Virani obtains income from SH Mart. His evidence consisted of a check signed on an SH Mart bank account by Mrs. Virani in 2012, and Mr. Modi's observations that Mrs. Virani was periodically present at the events hall operated by SH Mart. Mrs. Virani testified she was an employee of SH Mart in 2012 and 2013, but she is no longer an employee of SH Mart and receives no income from it. She also testified that she periodically assisted her husband at events sponsored at the events hall, but those services were provided in her role as his wife and a member of the family, and not as an employee. Mr. Modi did not prove that Mrs. Virani in fact obtained income from SH Mart.

Ground Eight – Mr. Modi contends the Viranis "are making a lot of money" from the SH Mart event hall. He notes the various business expenses that must be paid. Mr. Modi, however, confused the concepts of revenue to the incorporated business and income to the individual debtor, Mrs. Virani. Mr. Virani testified that the business received anywhere from $6,000 to

$17,000 a month in revenue, depending on the events that were held at the facility. The business, however, paid for rent and all the expenses of operation. Mr. Modi, as the party who bears the burden of proof, did not establish that SH Mart provided significant additional sums of money to the Viranis. The only evidence of money being provided by the business to the Viranis was the payment of attorney's fees to Mr. Altman. The testimony was unclear as to whether those payments were reflected on the books of the business as distributions to Mr. Virani or as loans from the business to Mr. Virani.

Ground Nine – Mr. Modi contends that the Viranis have hidden assets in an off-shore bank account. Mr. Modi provided no evidence of this allegation and when asked on cross examination what the factual basis was for this allegation, Mr. Modi simply stated it was his "educated guess".

Ground Ten – Mr. Modi contends that the Viranis made a "secret agreement" with Mills & Hoopes, the law firm that represented the Viranis and SH Mart in the state court litigation. This belief comes from the fact that no amount of debt is listed as owing to Mills & Hoopes. However, again Mr. Modi did not elicit any evidence about any secret agreement between the Debtor and Mills & Hoopes, or the amount of fees that may be owed to Mills & Hoopes, or who was liable for those fees. Mr. Modi contends the Debtor failed to list Mills & Hoopes and another creditor, Ashok Goyal, to avoid a discharge of those debts. Mr. Modi misunderstands the bankruptcy law. Under 11 U.S.C. § 727, all debts of the debtors are discharged, whether listed or not, unless such debts are otherwise non-dischargeable under Section 523.

Additionally, Mr. Modi complained that Mrs. Virani's means test and her Schedule J were incorrect because she did not identify any cars as property on Schedule B but yet took an allowance for a car and included car expense and insurance expense in her Schedule J. The testimony was that Mr. and Mrs. Virani had poor credit ratings and so the cars were in the name

of their son. While one can argue whether such an action is fair to the son, the fact is that the household had three cars; the son made payments on one, and Mrs. Virani made payments on one. The amount she listed in Schedule J for her car payment matches her testimony. Moreover, the insurance costs for three cars do not appear to be unreasonable. Mr. Modi complained that the Debtor, in completing Official Form 22C, did not provide for gross receipts from operating a business but instead simply used a net monthly income for the non-filing spouse's income of $1,800. While Mr. Modi is correct that the form asks for disclosure of gross receipts and expenses, there was no evidence that the net result of $1,800 was inaccurate. The evidence was also clear that the business income, if there is any, is that of Mr. Virani and not that of Mrs. Virani. So, to the extent Mr. Modi complained that Mrs. Virani did not disclose her business income and expenses, his objection is misplaced.[3]

Looking at all of the circumstances involving the filing of the bankruptcy case and the Debtor's and her family's income and expenses, Mr. Modi has not carried his burden of proof to show that cause exists for dismissal of this bankruptcy case under Section 707(a).

CONCLUSION

For the reasons stated herein, the Motion to Dismiss, as amended, is DENIED.

END OF ORDER

[3] Many of Mr. Modi's objections deal with Mr. Virani and his petition and schedules. Mr. Modi called the attorney for the Chapter 13 Trustee as a witness to show that the Trustee had questions about Mr. Virani's income. However, Mr. Virani voluntarily dismissed his Chapter 13 case on September 13, 2015, so many of those allegations and concerns were no longer relevant.

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