

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

In re:

Chapter 7

NORMAN A. SPERRY, JR.

Case No. 22-20287 (JJT)

Debtor.

**UNITED STATES TRUSTEE'S MOTION FOR AN ORDER
DISMISSING DEBTOR'S CHAPTER 7 CASE PURSUANT TO
11 U.S.C. § 707(b)(1) and (2) FOR PRESUMED FOR ABUSE**

William K. Harrington, the United States Trustee for Region 2 (the "United States Trustee"), in furtherance of his duties and responsibilities set forth in 28 U.S.C. § 586(a)(3) and (5), hereby moves the Bankruptcy Court for the entry of an Order dismissing the Chapter 7 case of Norman A. Sperry, Jr. (the "Debtor") pursuant to 11 U.S.C. § 707(b)(1) based on both the presumption of abuse arising under 11 U.S.C. § 707(b)(2) and abuse under the totality of the circumstances arising under 11 U.S.C. § 707(b)(3). In support of this motion, the United States Trustee, through counsel, states as follows:

I. JURISDICTION

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1334(a) and (b), 28 U.S.C. § 157(a) and (b)(1), and 28 U.S.C. § 151. A motion to dismiss is a core proceeding impacting discharge and case administration. 28 U.S.C. § 157(b)(2)(A) and (B).

II. BACKGROUND

A. Relevant Procedural History

2. On April 29, 2022, the Debtor commenced this case by filing a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code along with his required bankruptcy schedules and statements. ECF 1. The Debtor was assisted and represented by The Law Office of Grafstein and Arcaro, LLC and Attorney Gregory F. Arcaro (“Attorney Arcaro”) specifically. *Id.* Also on April 29, 2022, the Debtor filed a Chapter 13 Statement of Current Monthly Income. ECF 3.

3. On April 29, 2022, the Standing Chapter 13 Trustee Roberta Napolitano (“Trustee Napolitano”) scheduled the Debtor’s initial meeting of creditors for June 7, 2022, at 9:00 a.m. ECF 5. That meeting was held and closed on June 7, 2022. ECF 11.

4. On April 29, 2022, the Debtor filed his initial Chapter 13 Plan (“Plan”). ECF 2. On August 18, 2022, Trustee Napolitano filed an Objection to the confirmation of Debtor’s Plan. ECF 20.

5. In response to Trustee Napolitano’s Objection, on August 19, 2022, the Debtor filed a First Amended Chapter 13 Plan before Confirmation was filed on August 19, 2022. ECF 21. The Debtor’s Plan’s confirmation hearing (“Confirmation Hearing”) was originally scheduled to be held on August 25, 2022, at 10:30 a.m. ECF 22. After that hearing, on August 26, 2022, an Order was entered by the Court Denying Confirmation of First Amended Chapter 13 Plan with Leave to Amend by October 17, 2022. ECF 26.

6. On October 17, 2022, the Debtor filed a Second Amended Chapter 13 Plan. ECF 28. The Court set down the hearing on confirmation hearing for December 1, 2022, at 11:30 a.m. ECF 29. Trustee Napolitano, on November 17, 2022, filed an Objection to the confirmation of Debtor’s Second Amended Chapter 13 Plan. ECF 33. On December 1, 2022, the Court held the

confirmation hearing on the Debtor's Second Amended Chapter 13 Plan and continued that hearing pursuant to statements made on the record to February 2, 2023. ECF 35.

7. On December 6, 2022, Attorney Vincent J. Averaimo, on behalf of Debtor's secured creditor NewRez, LLC d/b/a Shellpoint Mortgage Servicing the Debtor filed a Motion to Approve Loan Modification ("Loan Modification") which modification was requested by the Debtor. ECF 37. On December 12, 2022, Trustee Napolitano filed a statement of no objection to the Loan Modification. ECF 41. On January 5, 2023, the Court entered an Order approving the Loan Modification. ECF 42.

8. Prior to the continued confirmation hearing on his Second Amended Chapter 13 Plan, the Debtor, on January 30, 2023, filed a "Notice of Conversion from Chapter 13 to Chapter 7." ECF 48. On January 31, 2023, the Debtor filed an "Amended Notice of Conversion from Chapter 13 to Chapter 7." ECF 51. The Court converted the Debtor's Chapter 13 case to one under Chapter 7. Docket Entry for January 31, 2023.

9. On February 1, 2023, the Court entered an "Order Following Notice of Conversion" and a "Notice of Chapter 7 Bankruptcy Case." ECF 52 and 53, respectively.

10. Upon the conversion of the Debtor's Chapter 13 case to one under Chapter 7, the United States Trustee appointed Attorney Bonnie C. Mangan ("Trustee Mangan") as the Chapter 7 trustee of the Debtor's bankruptcy estate. ECF 53.

11. On February 20, 2023, the Debtor filed Official Form 122A-1 and 2 ("Chapter 7 Means Test") which actually contains information which was "current" upon the date Debtor filed his Chapter 13 petition which was April 29, 2022. ECF 56. The Debtor's Chapter 7 Means Test "concluded" that no abuse existed.

12. On March 7, 2023, Trustee Napolitano filed her "Chapter 13 Trustee's Final Report and Account for the Debtor's sojourn in Chapter 13 demonstrating that the Debtor did not pay any dividend to his unsecured creditors during the Chapter 13 phase of his case. ECF 57

13. Trustee Mangan scheduled and held the Debtor's Chapter 7 meeting of creditors on March 8, 2023, at 9:00 a.m. ECF 60. Thereafter, the Debtor's Chapter 7 meeting of creditors, was continued to April 5, 2023, but was not held but continued again to May 3, 2023. ECF 65. The May 3, 2023, continued meeting of creditors was not held but continued again to June 21, 2023, at 1:00 p.m. ECF 66.

14. The deadline for filing a Motion to Dismiss pursuant to 11 U.S.C. § 707(b)(1) and (2) is forty (40) days after the closing of the Debtor's Meeting of Creditors which has not yet occurred; therefore, this Motion is timely filed.

B. The United States Trustee Inquiries of the Debtors

15. On February 2, 2023, United States Trustee personnel emailed Attorney Arcaro informing him that the Debtor's newly converted Chapter 7 case was subject to dismissal pursuant to 11 U.S.C. § 707(b) for abuse and requesting that the Debtor provide such information which would demonstrate that such potential for abuse did not exist.

16. On February 20, 2023, Attorney Arcaro responded to the United States Trustee's February 2, 2023, email inquiry with some attached pdfs. On February 22, 2023, after having reviewed the documents sent by Attorney Arcaro and determining that it was likely that the Debtor's Chapter 7 case was presumably abusive under 11 U.S.C. § 707(b), United States Trustee personnel informed Attorney Arcaro, via email, of that "finding" and invited the further submission of documents which might demonstrate that abuse did not exist; however, no further documents were received by the United States Trustee.

C. The Debtor's Relevant Bankruptcy Schedules and SOFA

(a) The Debtors' Assets/Liens

17. The Debtor lists ownership of a residence at 25 Pierson Lane, Windsor, CT which he valued at \$335,000.00. ECF 1, Schedule A/B, page 10. The Debtor listed one lien against his residence: a first mortgage of \$314,724.00 owing to Shellpoint Mortgage Servicing. ECF 1, Schedule D, page 19.

18. On the Debtor's original filed Schedule B, he lists ownership of one motor vehicle: a 2019 Nissan Rogue valued at \$19,600.00 with a lien of \$24,160.01 owing to Santander Consumer USA. ECF 1, Schedules A/B and D, respectively.

19. On March 20, 2023, the Debtor filed Amended Schedules A/B and D. ECF 61. The Debtor lists a 2023 Hyundai Elantra which was purchased "new" on October 25, 2022. The value is listed at \$23,080.00. Amended Schedule D lists a secured loan against the vehicle to Credit Acceptance Corp. in the amount of \$39,176.80.

20. Besides his new vehicle and real property interest, the Debtor lists various personal property assets, including a checking account, which he values at a total of \$11,912.90 which value is largely exempted by the Debtor. ECF 1, Schedule A/B and Cs, respectively.

21. The Debtor also claims ownership of a retirement account from "TRB" from which he receives a monthly pension payment and which account has no lump sum value. ECF 1, Schedule B, Page 13.

(b) Debtor's Unsecured Creditors

22. The Debtor lists a total of \$3,635.00 in one priority unsecured claim and a total of \$25,842 owing to a total of 14 general unsecured creditors. ECF 1, Schedule E/F.

(c) The Debtor's Executory Contracts/Unexpired Leases

23. The Debtor states he has no "contracts or unexpired leases". ECF 1, Schedule G.

(d) The Debtor's Co-debtors

24. The Debtor states he has no "co-debtors." ECF 1, Schedule H.

(e) The Debtor's Income

25. The Debtor listed total gross monthly income of \$3,430.55. ECF 1, Schedule I.

He listed his occupation as a middle school teacher employed for eight months. Against this gross monthly income, the Debtor claimed a total of \$624.95 in payroll deductions resulting in total monthly take-home pay of \$2,805.60. *Id.* The Debtor also listed net monthly retirement income of \$4,307.92 for a combined net monthly income of \$7,113.52. *Id.* at page 30.

(f) The Debtor's Expenses

26. On April 29, 2022, the Debtor lists a household of one. ECF 1, Schedule J.

27. The Debtor lists monthly expenses of \$4,653.36. ECF 1, Schedule J. All of the monthly expenses claimed by the Debtor appear to be reasonable. Based on Schedules I and J, the Debtor lists monthly income of \$2,460.16. ECF 1, Schedule J, Line 23C.

D. The Debtor's Chapter 13 Means Test - Form 122C-1 and 2

28. On his Chapter 13 Means Test forms, the Debtor indicates that his gross wages, salary, tips, bonuses, overtime, and commission for calendar year 2022 was \$3,184.71 monthly and that his monthly retirement income was \$5,148.92 for a total of \$8,333.63 or \$100,003.56 annually. ECF 3.

E. The Debtors' Chapter 7 Means Test – Form 122A-1 and 2

29. On his Chapter 7 Means Test forms, the Debtor indicates that his gross wages, salary, tips, bonuses, overtime, and commission for calendar year 2022 was \$3,184.71 monthly

and that his monthly retirement income was \$5,148.92 for a total of \$8,333.63 or \$100,003.56 annually. ECF 56.

30. The Debtor claims a household of one. The applicable Connecticut median family income for a household of one is \$72,497.00 ECF 56. The Debtor's gross annual income exceeds the applicable median income by \$27,506.56. However, on line 40 of Form 122A-2, the Debtor states there is no presumption of abuse.

31. On February 2, 2023, United States Trustee personnel emailed Attorney Arcaro informing him that the Debtor's Chapter 7 case was subject to dismissal pursuant to 11 U.S.C. § 707(b) for presumed abuse and requesting that the Debtor provide such information which would demonstrate that such potential for abuse did not exist. Specifically, the United States Trustee requested documentation which would show a change in the Debtor's financial circumstances indicating that the Debtor's Chapter 7 case was not presumed abusive.

32. On February 20, 2023, Attorney Arcaro provided the following documentation to the United States Trustee: (a) Copies of eleven pay advices from September 9, 2022 through January 27, 2023 for the Debtor's new job; (b) a statement showing the Debtor's new monthly net retirement payment would be \$4,556.71; (c) a statement showing the Debtor's monthly health insurance premium would be \$838.58; (d) a statement showing the monthly payment for the Debtor's new car purchased in October 2023 would be \$489.71; and (e) the Debtor's new mortgage payment pursuant to his loan modification is \$2,448.22 with no arrearage.

33. The United States Trustee reviewed the documentation provided by Attorney Arcaro and concludes that while there is a decrease in net monthly income, that figure continues to provide sufficient disposable income to fund a Chapter 13 Plan with 100% dividend to creditors in a sixty (60) month plan. Based upon the pay advices, the Debtor's net monthly

income from wages decreased slightly from \$2,805.60 to \$2,611.00, an amount of \$194.60; however, the Debtor's net monthly retirement payment went from \$4,307.92 to \$4,556 for an increase of \$248.08 for an actual net increase in monthly income of \$53.48. The result is monthly income on line 12 of Schedule I of approximately \$7,167.00. As for the Debtor's monthly expenses, his mortgage payment went from \$2,097.38 to \$2,448.22 but with no arrearage to pay, his health insurance premium increased from \$831.00 to \$838.00, and the Debtor's vehicle installment payment went down from \$527.11 to \$489.71¹. Based upon the documents provided by Attorney Arcaro, the Debtor's monthly expenses increased by \$847.55 for combined monthly expenses on Schedule J, line 23b. of \$5,499.00 leaving the Debtor with monthly net income of \$1,668.00. ECF Schedule J, line 23c.

31. After reviewing the Debtor's Form 122A-2 filed on February 20, 2023, and the documentation provided to the United States Trustee, there will be a presumption of abuse pursuant to 11 U.S.C. § 707(b)(1) and (2). On Form 122A-2, the Debtor listed a "cure" amount on line 34 of \$1,745.86 to Shellpoint Mortgage Servicing and Santander Consumer USA. Since the Debtor entered into a loan modification agreement on October 19, 2022, with Shellpoint and purchased a new vehicle on October 31, 2022, financed by Credit Acceptance Corp., the "cure" amount is no longer a valid deduction on Form 122A-2 and is subject to a presumption of abuse because of those changes in circumstances occurred prior to conversion of the Debtor's case from Chapter 13 to one under Chapter 7.

F. Relief Requested

32. Upon the completion of discovery, the United States Trustee reserves the right to file additional pleadings, including briefing, concerning the results of that discovery or to seek to

¹ The Debtor's monthly vehicle payment on his now surrendered vehicle was never disclosed on his Schedule J. ECF 1, Schedule J.

withdraw his Motion to Dismiss if the Debtors can provide appropriate information and documents supporting their contention that their Chapter 7 case is neither presumptively abusive nor abusive under the totality of the circumstances.

IV. CONCLUSION

The United States Trustee is tasked with the duty to determine whether he believes a debtor's Chapter 7 case is presumptively abusive pursuant to 11 U.S.C. § 707(b)(1) and (2). After a review of the Debtor's converted Chapter 7 case and the documentation that was provided to the United States Trustee showing "special circumstances", the United States Trustee is convinced that the Debtor has failed to overcome a presumption of abuse and therefore seeks an order from the Court dismissing the Chapter 7 case of Norman A. Sperry, Jr. pursuant to 11 U.S.C. § 707(b)(1) based on the presumption of abuse arising under 11 U.S.C. § 707(b)(1) and (2).

WHEREFORE, the United States Trustee requests that the Court enter an order dismissing this case pursuant to § 707(b)(1) based on the presumption of abuse arising under 11 U.S.C. § 707(b)(2) without prejudice and granting such other relief as is just and appropriate.

Dated: May 12, 2023
New Haven, Connecticut

Respectfully submitted,
WILLIAM K. HARRINGTON
United States Trustee for Region 2

By: /s/ Steven E. Mackey
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

In re:

Chapter 7

NORMAN A. SPERRY, JR.

Case No. 22-20287 (JJT)

Debtor.

**PROPOSED ORDER
DISMISSING DEBTOR'S CHAPTER 7 CASE PURSUANT TO
11 U.S.C. § 707(b)(1), (2) FOR PRESUMED ABUSE**

This matter having been brought before the Bankruptcy Court, upon motion, by the United States Trustee and after notice and a hearing and for good cause shown, IT IS HEREBY

ORDERED that the Chapter 7 case of Debtor Norman A. Sperry, Jr. has been found to be abusive and is dismissed pursuant to 11 U.S.C. § 707(b)(1) and (2).

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CERTIFICATION OF SERVICE

In accordance with the applicable provisions of the Federal Rules of Bankruptcy Procedure, 2002 and 7004, the undersigned certifies that on the 12th day of May 2023, following documents were served on all appearing parties via the court's electronic filing system and by first class mail on the parties listed in section 2 below.

1. Documents Served

- a. United States Trustee's Motion to Dismiss, and
- b. Proposed order on same

2. Parties Served Via First Class Mail

Norman A. Sperry, Jr., 25 Pierson Lane, Windsor, CT 06095 (Debtor)

3. Parties Served Via ECF

Gregory Arcaro, Esq. (Debtor's Counsel) at garcaro@grafsteinlaw.com
Bonnie C. Mangan, Esq. (Trustee) at Trusteemangan@yahoo.com

Dated: New Haven, Connecticut
May 12, 2023

Respectfully submitted,
WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE FOR REGION 2

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