

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION**

IN RE: Danny K. and Robyn Jean Snyder, Debtors

**No. 3:07-bk-73382
Ch. 7**

ORDER

Before the Court is the debtors' and the United States Trustee's [UST] Motion to Approve Joint Stipulation Extending Time to File Motion Pursuant to 11 U.S.C. § 704(b)(2). The motion is denied as a matter of law.

The debtors filed their chapter 7 bankruptcy petition on October 19, 2007. The first meeting of creditors was held on November 14, 2007. On November 20, the UST filed a statement with the Court that stated,

Having reviewed the documents, if any, provided by the debtor and any additional documents provided to the United States Trustee, the United States Trustee is currently unable to determine whether the debtor's case would be presumed to be an abuse under Section 707(b) of the Bankruptcy Code.

Finally, on December 19, 2007, the debtors and the UST filed the motion that is pending before the Court.

Section 704(b)(1) of the bankruptcy code requires the UST to review the materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file a statement "as to whether the debtor's case would be presumed to be an abuse under section 707(b)." 11 U.S.C. § 704(b)(1) [the 10-day statement]. If there is a presumption of abuse, then not later than 30 days after filing the 10-day statement required under (b)(1), the UST must either file a motion to dismiss or convert the case under § 707(b), or file a statement setting forth the reasons the UST does not consider such a motion to be appropriate. 11 U.S.C. § 704(b)(2). Although the reference in § 704(b)(2) refers generally to a motion to dismiss under § 707(b), § 704(b)(2) refers specifically to the

statement required under (b)(1), which is a *definitive* statement as to whether the debtor's case would be presumed to be an abuse.

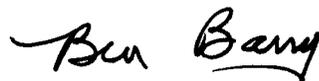
The 10-day statement is a prerequisite for the UST to file a motion to dismiss or convert under § 707(b)(2) based on a presumption of abuse. There is no language in the code that allows the UST to file a statement that it is "currently unable to determine whether the debtors' case would be presumed to be an abuse under Section 707(b) of the Bankruptcy Code;" the code requires a definitive statement as to whether a presumption of abuse exists. In the absence of a timely filed statement under § 704(b)(1), the UST is precluded from filing a motion to dismiss based on a *presumption* of abuse, i.e., a § 707(b)(2) motion. *In re Perrotta*, 2007 WL 4173491, at *3 (Bankr. D. N.H. Nov. 21, 2007) ("The filing of the No Determination Statement . . . cannot protect the UST from the consequences of failing to meet the statutory deadline"); *In re Robertson*, 370 B.R. 804, 810-11 (Bankr. D. Minn. 2007) (finding that the UST is mandated to state affirmatively within 10 days of the first meeting of creditors whether the debtor's case is presumed to be an abuse if the UST wishes to file a motion to dismiss under § 707(b)(2), not merely state that the UST is unable to make such a determination); *see also In re Byrne*, 376 B.R. 700 (Bankr. W.D. Ark. 2007).

Accordingly, the debtors' and the UST's Motion to Approve Joint Stipulation Extending Time to File Motion Pursuant to 11 U.S.C. § 704(b)(2) must be denied as a matter of law.

IT IS SO ORDERED.

December 20, 2007

DATE



BEN T. BARRY

UNITED STATES BANKRUPTCY JUDGE

cc: Richard H. Sforzini Jr., attorney for the UST
Mark D. Carney, attorney for the debtors
Jill R. Jacoway, chapter 7 trustee