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High living dooms bankruptcy petition

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A husband and wife who continued "living high on the hog" despite owing more than half a million dollars don't deserve to walk away from their debts, a federal appeals court has held.

The 7th U.S. Circuit Court of Appeals declined to revive the petition that Michael D. and Aseneta Schwartz filed under Chapter 7 of the U.S. Bankruptcy Code.

The Burr Ridge couple sought to discharge their debts after an arbitrator ordered Michael Schwartz to pay $568,568 to his former employer, Barclays Capital Inc.

But U.S. Bankruptcy Judge Pamela S. Hollis dismissed the Schwartzes' petition "for cause" under Section 707(a) of the Bankruptcy Code.

Hollis based the dismissal on the couple's failure to repay any of the money they owe Barclays even though they still had a substantial income and substantial assets.

In affirming the dismissal, a three-judge panel of the 7th Circuit wrote Monday that the Schwartzes were not expected "to live in a tent" or "dress in rags."

But they were expected to pay "as much of their indebtedness as they could without hardship," the panel wrote.

Instead, it wrote, the Schwartzes spent about $11,100 a month despite having an income of $9,500 a month and a mound of debt.

Much of the monthly expenditures went toward optional rather than essential items, the panel wrote, including tuition at a private school for the couple's children and an $850 monthly payment for a Range Rover.

"Their action was deliberate and selfish and provides good cause for denying the discharge," Judge Richard A. Posner wrote for the panel.

Michael Schwartz, who argued the case before the 7th Circuit on behalf of himself, said he and his wife will challenge the ruling.

Schwartz contended Hollis and the appeals court interpreted Section 707(a) too expansively.

Bankruptcy petitions may be dismissed under that provision only because of technical or procedural issues, Schwartz said.

He contended a dismissal under Section 707(b) based on his income

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wouldn't have been appropriate either because that provision applies only to consumer debts.

He incurred the debt to Barclays with the intent to make a profit, Schwartz said, and so it qualified as a business rather than a consumer debt.

Patrick G. King of Ulmer & Berne LLP argued the case on behalf of Barclays.

The 7th Circuit's ruling, he said in a statement, "significantly curtails a debtor's ability to easily escape repayment of their debts."

"It further provides a significant latitude to bankruptcy courts to keep their dockets free from bankruptcy petitions by all but the most unfortunate debtors," he said.

Barclays loaned Schwartz $400,000 when it hired him to work as a financial adviser in its Chicago office.

The investment bank agreed to forgive the loan in seven equal installments on the anniversaries of Schwartz's start date.

Barclays fired Schwartz before the second anniversary. The bank alleges he lost his job because of poor performance; Schwartz contends he was fired because he blew the whistle on what he alleges was Barclays' mischaracterization of loans on its books.

Barclays demanded Schwartz repay about $340,000 in principal on the loan.

The dispute went to arbitration before the Financial Industry Regulatory Authority.

An arbitrator awarded Barclays a total of $568,568 in principal, interest and attorney fees.

Schwartz and his wife then filed for bankruptcy under Chapter 7.

After dismissing the petition, Hollis granted a joint motion from Barclays and the Schwartzes to allow the couple to appeal directly to the 7th Circuit rather than to the federal trial court.

In its opinion, the 7th Circuit panel rejected the argument that petitions may be dismissed under Section 707(a) only for technical or procedural reasons.

"We agree with the cases that allow 'for cause' to embrace conduct that, while not a violation of required procedures, avoids repayment of debt without an adequate reason," Posner wrote, citing cases that included *In re Piazza*, 719 F.3d 1253 (11th Cir. 2013), and *In re Zick*, 931 F.2d 1124 (6th Cir. 1991).

The panel noted Hollis "went out of her way to emphasize that she was not finding the Schwartzes guilty of 'bad faith.'"

But the fact that the couple didn't cut down on their spending so they could pay off some of their debts, the panel wrote, "was sufficient cause for denying a discharge of their debts."

Joining the opinion were Judges Michael S. Kanne and Ilana Diamond Rovner. *In re Michael D. Schwartz, et al.*, No. 15-1416.

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