

In re: OMAR CASTILLO AND JANELLE BELARDO

CASE NO: 08-10878-PGH

At issue in this case was the proper interpretation of § 707(b)(2)(A)(iii)(I). Debtors filed for Chapter 7 bankruptcy relief. In the statement of intention, debtors indicated an intent to surrender real property that secured a mortgage and an equity line of credit. Debtors subsequently surrendered the real property. On Form 22A, Debtors listed payments for debt secured by the real property. The trustee filed a motion to dismiss pursuant to 11 U.S.C. § 707(b)(2) based on presumption of abuse. The trustee urged the Court to interpret § 707(b)(2)(A)(iii)(I) as forward looking and conclude that debtors could only take deductions on the means test for those expenses the debtors reasonably expect to pay during the next sixty months. The Court, however, adopted the snapshot approach, under which § 707(b)(2)(A)(iii)(I) requires deductions of payments scheduled as contractually due as of the petition date, regardless of whether the debtors actually intend to make the payments. Under this approach, the Court concluded that the debtors appropriately deducted payments for debt secured by the real property despite indicating an intent to surrender the real property. Consequently, the Court denied the trustee's motion to dismiss because the presumption of abuse did not arise under § 707(b)(2).