**Supreme Court to Decide Meaning of "Applicable" Transportation Expenses –**
***Ransom v. FIA Card Services, N.A., fka MBNA America Bank, N.A.***

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On October 4, 2010, the United States Supreme Court opened its 2010 term with the case of *Ransom v. FIA Card Services, N.A., fka MBNA, American Bank, N.A*. The Court agreed to consider what appears to be a straightforward, yes-or-no question: may a chapter 13 debtor, who is not making any loan or lease payments on a vehicle, claim a vehicle ownership expense deduction in calculating the projected disposable income he has available to pay unsecured creditors in a chapter 13 plan? In the Fifth, Seventh and Eighth Circuits,[1] the answer is yes. In the Ninth Circuit, the answer is no.[2] In each case, the "plain language of the statute," namely 11 U.S.C. § 707(b)(2)(A)(ii)(I), dictated the result. This article highlights the "plain language" issue as argued before the Supreme Court.[3]

Background

Chapter 13 of the Bankruptcy Code permits a debtor with regular income, whose debts fall within certain limits, to obtain a discharge of those debts if he confirms a plan that provides for repayment to creditors of a portion of his future income. If the chapter 13 trustee or an unsecured creditor objects to confirmation, the bankruptcy court may not approve the plan unless "all of the debtor's projected disposable income to be received" during the plan period "will be

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[1] *See Tate v. Bolen*, 571 F.3d 423, 428 (5th Cir. 2009) (the "plain language approach" provides the best reading of § 707(b)(2)(A)(ii)(I), and permits a transportation ownership deduction regardless of whether the debtor had a loan or lease payment on his cars); *eCast Settlement Corporation v. Washburn*, 579 F.3d 934, 940 (8th Cir. 2009) ("a debtor need not in fact owe a vehicle loan or lease payment to claim a vehicle-ownership expense in accordance with § 707(b)(2)(A)(ii)(I)"); *Ross-Tousey v. Neary*, 549 F.3d 1148, 1158 (7th Cir. 2008) (reversing decision of the district court, which had disallowed a vehicle ownership deduction where the debtors were not making car payments, based on its reading of the "plain language" of § 707(b)(2)(A)(ii)(I)). *Tate* and *Ross-Tousey* are chapter 7 cases. Section 707(b)(2)(A)(ii)(I) applies in chapter 7 to determine whether an individual is eligible for bankruptcy relief, and also applies in chapter 13 to calculate an above-median income debtor's "projected disposable income" for purposes of confirming a plan. Therefore, the Court's decision in this case may affect the disposition of chapter 7 bankruptcy cases as well as cases under chapter 13.

[2] *Ransom v. MBNA America Bank, N.A.*, 577 F.3d 1026, 1030 (9th Cir. 2009) (deciding the issue on the "statutory language, plainly read").

[3] The Petitioner, the Respondent, and the United States made several other arguments before the Supreme Court but they are not discussed in this article.

applied to make payments to unsecured creditors under the plan."[4]

In order to determine a chapter 13 debtor's "projected disposable income," the court must first calculate the debtor's "disposable income." This phrase is defined as a debtor's "current monthly income" minus "reasonably necessary" expenses for maintenance or support, certain charitable contributions, and business expenditures.[5] For a debtor who has above-median income, the amounts that are "reasonably necessary" are those allowed under 11 U.S.C. § 707(b)(2) (commonly known as the "means test").[6]

Under the means test, certain allowed monthly expenses are deducted from the debtor's income. The allowed monthly expenses include:

> the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service [IRS] for the area in which the debtor resides, as in effect on the date of the order for relief . . . . Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. . . .[7]

The IRS has established that certain expenses fall within Local Standards, including vehicle ownership expenses, which are the subject of dispute in the *Ransom* case.

<u>Facts of *Ransom*</u>

In *Ransom*, the debtor filed a voluntary chapter 13 petition on July 5, 2006. Among his assets, he listed a 2004 Toyota Camry on which he made no loan or lease payments. Other information he reported on his schedules about liabilities and income reflected that he was an above-median income debtor. In his plan, the debtor proposed to pay $500 per month. Of this total, he proposed to pay $389 to unsecured creditors. The chapter 13 trustee and two jointly filing unsecured creditors, MBNA America Bank, N.A. ("MBNA") and Chase Manhattan Bank, objected to confirmation. The debtor was therefore required by 11 U.S.C. § 1325(b)(1) to commit all of his "projected disposable income" to unsecured creditors over the life of the plan. Because the debtor had income above the median, he was required by § 1325(b)(3) to calculate his "projected disposable income" under the means test.

In making this calculation, the debtor claimed a vehicle ownership deduction of $471, the

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[4] 11 U.S.C. § 1325(b)(1)(B).

[5] 11 U.S.C. § 1325(b)(2).

[6] 11 U.S.C. § 1325(b)(3).

[7] 11 U.S.C. § 707(b)(2)(A)(ii)(I).

amount established by the IRS for vehicle "ownership costs" under the Local Standards. The objecting parties argued that the debtor understated his projected disposable income because he claimed the vehicle ownership expense deduction but had no loan or lease payment. The bankruptcy court agreed and denied confirmation.[8] The debtor appealed and the Bankruptcy Appellate Panel for the Ninth Circuit affirmed.[9] At the same time, the Panel certified the question to the Ninth Circuit pursuant to 28 U.S.C. § 158(d)(2).

The court of appeals affirmed. It ruled that the "statutory language, plainly read" does not allow a debtor to deduct an ownership cost he does not have.[10] The court also explained that the ordinary meaning of "applicable" is "capable of or suitable for being applied," and, therefore, the vehicle ownership expense deduction is "applicable" only if the debtor actually has an expense associated with vehicle ownership.[11]

Supreme Court Proceeding

On January 25, 2010, the debtor filed a petition for *writ of certiorari*. The Court granted the petition on April 19, 2010. The debtor argued that a "plain reading of the statute" entitles all car owners, not just those with loan or lease payments, to take the ownership deduction under § 707(b)(2)(A)(ii)(I) because Congress drew a distinction between "applicable monthly expense amounts" and "actual monthly expenses." The statute defines monthly expenses not only as a debtor's "applicable monthly expense amounts" under the "National and Local Standards," but also the debtor's "actual monthly expenses" for the categories the IRS specifies as "Other Necessary Expenses." Therefore, he argued, "Other Necessary Expenses" must be the debtor's "actual" expenses, and expenses under the "Local Standards" are those "applicable" to the debtor because of where he lives and how large his household is. It makes no difference whether he "actually" has them.

The United States[12] argued that the term "applicable" in § 707(b)(2)(A)(ii)(I) modifies "monthly expense amounts," which are the dollar amounts listed in the National and Local Standards. It also argued that the purpose of the term "applicable" in § 707(b)(2)(A)(ii)(I) is to identify those expenses that are relevant to the particular debtor, and therefore Congress required a threshold determination, based on the debtor's circumstances, that a particular expense category is "appropriate" or "suitable." Because the debtor owns his vehicle outright and does

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[8] Memorandum Denying Confirmation, *In re Ransom*, Case No. 06-11566, at 4 (Bankr. D. Nev., June 6, 2007).

[9] *Ransom v. MBNA America Bank, N.A. (In re Ransom)*, 380 B.R. 799 (B.A.P. 9th Cir. 2007).

[10] *Ransom v. MBNA America Bank, N.A.*, 577 F.3d at 1030.

[11] *Id*. at 1031.

[12] The Office of the Solicitor General, with the assistance of the Office of the General Counsel in the Executive Office for United States Trustees, filed a Brief as Amicus Curiae Supporting Respondent.

not make loan or lease payments on the car, the government argued he is not entitled to deduct vehicle ownership expenses in calculating his "disposable income." The United States further argued that, because the Bankruptcy Code does not define "applicable," the term should be given its ordinary meaning: "relevant," "appropriate," or "suitable."[13]

During oral argument, the Court spent most of its time grappling with the question of "plain reading." For example, after asking debtor's counsel to read aloud the text of the statute, Justice Antonin Scalia stated, in part: "'Amount specified under' the standard . . . applicable amount specified, not the amount specified, if applicable," to which counsel replied "Correct."[14]

Justice Stephen Breyer then opined:

> Of course you have all kinds of costs dealing with ownership, but what the IRS says, what it says in the statute, is you are supposed to take the applicable costs from IRS. And … it has something called ownership costs... and it defines those as $471 . . . here it says what ownership costs are, it says 'the transportation standards consist of nationwide figures for monthly loan or lease payments, referred to as ownership costs.' So when I read that, I said: ownership costs means monthly loan or lease payments, nothing else. Now, you have all kinds of other things. It's just these words 'ownership costs' don't refer to those other things, because of that definition given right there. . . .
>
> And – how do you get out of that what I think of as very, very clear language which says what these standards refer to. . . . I mean, ownership costs refers to lease and loan payments. Nothing else.[15]

Justice Elena Kagan posed the following questions:

> The $471 is derived by looking at the average loan or lease payments nationwide. Then in addition to that we know that the IRS has a separate category for operating costs that is meant to reflect costs of having a car that are not your loan and lease

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[13] *See* The New Oxford American Dictionary 74 (2d ed. 2005) ("applicable" is "relevant or appropriate"); The Oxford English Dictionary 405 (1978) ("applicable" is "[c]apable of being applied" or "fit or suitable for its purpose, appropriate"); Webster's Third New International Dictionary of the English Language 105 (1993) ("appropriate" is "capable of being applied; having relevance" or "[f]it, suitable, or right to be applied: appropriate").

[14] Transcript of Oral Argument at 11, *Ransom v. FIA Card Services, N.A., fka MBNA America Bank, N.A.*, __ U.S. __ (2010) (No. 09-907).

[15] *Id*. at 9-10.

> payments. So between those two things, why wouldn't we say that ownership costs means your loan and lease payments, but operating costs means your other costs of having a car, and that you get the operating costs if you have a car but don't make loan and lease payments and you get the ownership costs if you do make loan and lease payments?[16]

Conclusion

The answers to these questions will turn on how the Court interprets the term "applicable" in § 707(b)(2)(A)(ii)(I). The Court is being asked to "plainly read" the language of the statute to determine whether the debtor may deduct the amounts specified under the Local Standards without regard to his actual monthly expenses, or whether he may only take deductions for amounts specified if he actually makes loan or lease payments. Regardless of how the Court ultimately decides *Ransom*, it is hoped that a decision will lay to rest one of the most litigated issues to have arisen under BAPCPA. Although the decision may affect how some trustees process the cases assigned to them, the finality of a decision by the Supreme Court should lead to greater uniformity in the application of the law for both chapter 13 and chapter 7 cases.

[16] *Id*. at 15.