UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND
- - - - - - - - - - - - - - - - - - -x

In re: :

PETER GILLESPIE and   :   BK No. 08-10279
MIRIAM GILLESPIE   Chapter 7
            Debtors
- - - - - - - - - - - - - - - - - - -x

ORDER DENYING, WITHOUT PREJUDICE,
UNITED STATES TRUSTEE'S MOTION TO DISMISS

Heard on May 28, 2008, on the U.S. Trustee's Motion to Dismiss this Chapter 7 case. In its brief and at oral argument, the U.S. Trustee pressed four separate grounds for dismissal: (1) the Debtors (improperly) included, on Form 22A, installment payments for secured property they intend to surrender; (2) non-dischargeable student loans are not *per se special circumstances* which rebut the presumption of abuse under §707(b)(2); (3) the Debtors did not satisfy the evidentiary standards enumerated under §707(b)(2)(B)(ii) for establishing special circumstances in the case at bar; and (4) if the presumption of abuse is deemed to have been rebutted, the case should nevertheless be dismissed pursuant to §707(b)(3)(B), under the totality of the circumstances test.

After this matter was taken under advisement, the Debtors filed three separate Motions to Continue hearing on a reaffirmation matter, stating as the basis for the continuance, that the Debtors are in the process of converting their case to one under Chapter 11. In light of the Debtors' reported intention to convert to Chapter 11, the U.S. Trustee's Motion to Dismiss is presently moot,

and the Court need not rule on said dismissal issues at this time. The Debtors are ORDERED to file their conversion papers no later than October 16, 2008.

Accordingly, the Motion to Dismiss is **DENIED, without prejudice**. If Debtors fail to convert the case by October 16, 2008, or any authorized extension thereof, the Court will sua sponte vacate this Order, and will issue its ruling(s) on the U.S. Trustee's Motion to Dismiss.

Dated at Providence, Rhode Island, this   7ᵗʰ   day of October, 2008.

_____
Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 10/7/08

2