The Means Test – Keep Moving To The Egress - Part II

By John Gustafson, Standing Chapter 13 Trustee, Northern District of Ohio, Western Division

C. The B22A Means Test, For Chapter 7 Cases, And The B22C For Chapter 13 Cases – Structural Differences.

The Means Tests for Chapter 7 and Chapter 13 are different in two ways. One, they are different in the information that is being captured, because of Code difference between Chapter 7 and Chapter 13. Two, they are different on a line-by-line basis, because some of the deductions allowed in a Chapter 13 budget, are not permitted deductions on a Chapter 7 Form 22C.

1. The Chapter 7 Means Test – Only Applies If Debtors Have Primarily Consumer Debts.

The BAPCPA grafted the Means Test onto Section 707(b) of the Bankruptcy Code - a section that only applies to debtors who have primarily consumer debts. Section 707(b)(1) permits dismissal for "abuse" only of "a case filed by an individual debtor under this chapter whose debts are primarily consumer debts . . . ." In re Adolph, 441 B.R. 909, 914 (Bankr. N.D. Ill. 2011); see also, United States Trustee v. Mohr, 436 B.R. 504, 509-10 (S.D. Ohio 2010)("To become involved in section 707(b), the debtor must first have primarily consumer debts."); In re Lapke, 428 B.R. 839, 842 (8th Cir. BAP 2010)(§707(b) applies only to debtors whose debts are primarily consumer debts); In re Baird, 456 B.R. 112, 119 (Bankr. M.D. Fla. 2010)(same); and cf., In re Falch, 450 B.R. 88, 92-93 (Bankr. E.D.Pa. 2011)(where debtor did not have primarily consumer debts, movants could only proceed under §707(a)).

The BAPCA was intended to lessen the number of debtors filing Chapter 7 bankruptcies. One change that was designed to accomplish this goal was the creation of a 'Means Test' that had to be "passed" or the filing of a Chapter 7 case would be presumed to be an "abuse" and subject to dismissal. The other major change was the amending §707(b) of the Bankruptcy Code to relax the standard for dismissing a Chapter 7 case as abusive.

Prior to the effective date of the BAPCPA, a showing of "substantial abuse" was required for dismissal of a Chapter 7 case, and there was a presumption in favor of granting the relief sought by the debtor. As amended by the BAPCA, §707(b) dropped the qualifying word "substantial," permitting a bankruptcy court to dismiss a Chapter 7 proceeding brought by an individual debtor who has mostly consumer debts if the court finds that the granting of relief would be an "abuse'. See, 11 U.S.C. §707(b)(1)." In re Rudler, 576 F.3d 37, 40 (1st Cir. 2009); see also, In re Hilmes, 438 B.R. 897 (Bankr. N.D. Tex. 2010)(requiring 'substantial abuse' after BAPCPA was reversible error); In re Tucker, 389 B.R. 535, 538 (Bankr. N.D. Ohio 2008)

("Congress has clearly lowered the dismissal standard" by changing it from substantial abuse to abuse).

a. General Criteria For Determining "Consumer Debt"

There are two major approaches to determining whether debts are primarily "consumer debts". One approach is that there are consumer debts, and other kinds of debts, all of which are non-consumer. For example, in In re Brasher, 216 B.R. 59 (Bankr. N.D. Okla. 1998), the court stated:

> This Court agrees with the analysis rendered in In re Stovall, 209 B.R. 849 (Bankr. E.D. Va. 1997), in concluding that there are (1) consumer debts which fall within the definition of Section 101(8); (2) business debts, or debts incurred with a "profit motive," which are non-consumer debts; and (3) other non-consumer debts that are not incurred with a motivation for making a profit.

See also, In re Strausbaugh, 376 B.R. 631, 637-638 (Bankr. S.D. Ohio 2007). "The profit motive analysis is used, and is clearly appropriate, to determine whether a debt falls outside the category of consumer debt. There is nothing inherent in this test, or direction from the Bankruptcy Code to suggest, that the test defines the only category of non-consumer debt. Therefore, while the profit motive analysis may assist in the determination of which debts are not consumer debt, it does not prohibit other debts from falling outside of the category of consumer debt." See also, In re Marshalek, 158 B.R. 704, 708 (Bankr. N.D. Ohio 1993) ("The profit motive test is normally applied to cases involving expenditures. . . . An inability to classify a particular debt as a business debt does not automatically relegate it to the status of a consumer debt.").

Other courts appear to focus on whether or not the debt was business related or incurred with a profit motive. For example, the Booth court stated: "The test for determining whether a debt should be classified as a business debt, rather than a debt acquired for personal, family or household purposes, is whether it was incurred with an eye toward profit". In re Booth, 858 F.2d 1051, 1055 (5th Cir.1988); see also, In re Runski, 102 F.3d 744, 747 (4th Cir. 1996)(examining Section 101(8) in the context of Section 722, stating "debt incurred for a business venture or with a profit motive does not fall within the category of debt incurred for 'personal, family, or household purposes'" and is therefore not "consumer debt"); In re Sekendur, 334 B.R. 609, 618 (Bankr. N.D. Ill. 2005)("This is to be contrasted with "debt incurred for a business venture or with a profit motive," which is not consumer debt."); In re Manning, 126 B.R. 984 (D. Tenn. 1991)(under no circumstances could a loan procured by a debtor to purchase a limited partnership interest or commercial real estate for investment be held to be for a "consumer" purpose).

It appears that incurring a debt with a profit motive or business purpose is *sufficient* to make a debt "non-consumer". And it may be that courts like Runski are using that analysis to eliminate debts that are clearly non-consumer. However, if the logic of cases like Brasher, having a profit motive is not a *necessary* condition for a debt not to be properly classified as "consumer".

Of course, only a real human being can incur consumer debt. A business entity cannot. In re SWF, Inc., 83 B.R. 27 (Bankr. S.D. Cal. 1988)(a corporation is not an individual within the meaning of the Bankruptcy Code and cannot incur a consumer debt).

One dilemma for practitioners in this area – while a debtor's attorney might like to argue that, for §707(b) purposes, certain classes of debt should not be considered "consumer debts" – there is a down side to winning that argument. Only consumer debts are protected by the co-debtor stay. If, for example, medical bills are not consumer debts, co-debtors on those medical bills would not be protected from collection efforts in a Chapter 13. Student loans – same problem. So, pick your poison. . . wisely.

b. Meaning of "Primarily" Consumer Debts.

The majority of courts that have considered the issue have found that "primarily" means more than half of the total dollar amount owed. In re Stewart, 175 F.3d 796, 808 (10th Cir. 1999)("primarily means more than fifty percent of the amount of the debt); In re Kelly, 841 F.2d at 913, 916. n11 (9th Cir. 1988); United States Trustee v. Mohr, 436 B.R. 504, 509-10 (S.D. Ohio 2010); In re Baird, 456 B.R. 112, 119 (Bankr. M.D. Fla. 2010); In re Pollard, 296 B.R. 531 (Bankr. W.D. Okla. 2003)(in 10th Circuit, "primarily" means that the debts are over 50% consumer debts); In re Hall, 258 B.R. 45, 48 (Bankr. M.D. Fla. 2001); In re Shelley, 231 B.R. 317, 319 (Bankr. D. Neb. 1999); In re Martens, 171 B.R. 43, 45 (Bankr. N.D. Ohio 1994); In re Martinez, 171 B.R. 264, 266 (Bankr. N.D. Ohio 1994)(Consumer debt is defined under 11 U.S.C. § 101(8) as debt incurred by an individual primarily for a personal, family, or household purpose. The debtor has "primarily consumer debt" when more than one-half of the dollar amount owed is consumer debt.); In re Farrell, 150 B.R. 116 (Bankr. D.N.J. 1992)(50% of amount test).

A minority of courts have concluded that it is appropriate for the court to consider both the percentage of consumer debt as well as the number of consumer debts in deciding whether the debt is primarily consumer debt. In re Lamanna, 153 F.3d 1 (1st Cir. 1998)(The term "primary" refers to an overall ratio of consumer to nonconsumer debts of over fifty percent, and the consumer debts should be evaluated not only by amount, but by their relative number. – considering "number" of creditors appears to be a minority position); In re Booth, 858 F.2d 1051, 1055 (5th Cir. 1988)("The controlling inquiry, therefore, is whether or not the Booths'

indebtedness is primarily consumer in nature in light of the fact that the amount of their consumer debt, though less than their business debt, is owed to more creditors. We hold that it is not. It has been noted, we believe correctly, that "primarily" suggests an overall ratio of consumer to nonconsumer debts of over fifty percent. Furthermore, the consumer debts should be evaluated not only by amount, but by their relative number."); In re Restea, 76 B.R. 728, 735 (Bkrtcy.D.S.D. 1987). The ratio of consumer to nonconsumer debt in the instant case, even allowing for $50,000 in additional taxes, is not great enough under these facts to justify dismissal under section 707(b)."); In re Bell, 65 B.R. 575, 577 (Bankr. E.D. Mich. 1986) (it is appropriate in defining "primarily consumer debt" to give more weight to the portion of total debt that is consumer debt and less weight to the portion of the total number of debts that are consumer debts).

c. Home Mortgages

The vast majority of recent decisions have held that a debt secured by real property used as a debtor's personal residence is a consumer debt because a personal residence is intended primarily for personal, family, or household use, rather than for profit. See, In re Price, 353 F.3d 1135, 1139 (9th Cir. 2004)("We specifically rejected this notion in Kelly, noting that "the statutory scheme so clearly contemplates that consumer debt include debt secured by real property that there is no room left for any other conclusion. Id. at 912. Price claims that this holding was *dicta* in Kelly that we may disregard. Clearly, it was not."); In the Matter of Booth, 858 F.2d 1051, 1055 (5th Cir. 1988); In re Kelly, 841 F.2d 908, 913 (9th Cir. 1988)(although bankruptcy debtors' debts were secured by real property, the debts constituted consumer debt); In re Cox, 315 B.R. 850, 855 (B.A.P. 8th Cir. 2004)(Consumer debt can be both secured and unsecured debt. With respect to debt secured by real property, if the debtor's purpose in incurring the debt is to purchase a home or make improvements to it, the debt is clearly for family or household purposes and fits squarely within the definition of a consumer debt under §101(8)); In re Morris, 385 B.R. 823, 829 (E.D. Va. 2008); In re Lowe, 109 B.R. 698, 699 (W.D. Va. 1990); In re Hlavin, 394 B.R. 441, 445-46 (Bankr. S.D. Ohio 2008)(rejecting argument that security by real estate made mortgage debt non-consumer); In re Davis, 378 B.R. 539, 547 (Bankr. N.D. Ohio 2007); In re King, 362 B.R. 226, 230 (Bankr. D. Md. 2007)("A debt securing a debtor's principal residence qualifies as a consumer debt."); In re Hall, 258 B.R. 45, 49-50 (Bankr. M.D. Fla. 2001); In re Praleikas, 248 B.R. 140, 144-45 (Bankr. W.D. Mo. 2000); In re Bertolami, 235 B.R. 493, 496-97 (Bankr. S.D. Fla. 1999)("a note and residential mortgage may be consumer debt if they are executed primarily for personal, family, or household purposes." But, "Debts incurred on real property for business purposes cannot be consumer debts"); In re Dickerson, 193 B.R. 67, 70 (Bankr. M.D. Fla. 1996); In re Vianese, 192 B.R. 61, 68 (Bankr. N.D.N.Y. 1996); In re Gentri, 185 B.R. 368, 372 (Bankr. M.D. Fla. 1995); In re Harris, 203 B.R. 46, 50 (Bankr. E.D. Va. 1994)("Since the parties incurred the debt to purchase a family residence, a personal and household purpose, it is classified as consumer debt."); In re Tindall, 184 B.R. 842, 844 (Bankr.

M.D. Fla. 1994); In re Nolan, 140 B.R. 797, 800-01 (Bankr. D. Colo. 1992)(mortgage a consumer debt); In re Goodson, 130 B.R. 897, 900 (Bankr. N.D. Okla. 1991); In re Bryant, 47 B.R. 21, 26 (Bankr. W.D.N.C. 1984); McDaniel v. Nationwide, 85 B.R. 69 (Bankr. D. Ill. 1988)(nothing in definition of consumer debt requires exclusion of a debt secured by real estate); and c.f., In re Hall, 258 B.R. 45, 49 (Bankr. M.D. Fla. 2001)(mortgage on debtor's former marital home, although a contingent debt, was a consumer debt and was considered in determining whether debts were primarily consumer debts.)

Debtors have argued that the subjective hope that their personal residence would appreciate in value makes the mortgage debt an 'investment', and therefore the debt should be considered "non-consumer." This argument has been rejected by the courts. See, In re Cox, 315 B.R. 850, 855 (B.A.P. 8th Cir. 2004); In re Naut, Case No. 07-20280, 2008 Bankr. LEXIS 175 at *18-*19, 2008 WL 191297 (Bankr. E.D. Pa. Jan. 22, 2008)("Debtor did not lease the Heather Lane home to a tenant or use it for any other business purpose. Although Debtor, like all other homeowners, apparently hoped that the Heather Lane home would appreciate in value, the objective evidence in the record shows that the Heather Lane home was purchased and used as Debtor's personal residence. I find that such use constitutes 'family or household purpose' under Section 101(8) of the Bankruptcy Code.").

Debtors have also been unsuccessful in arguing that the failure to sign certain loan documentation make a home loan something other than a consumer debt. See, In re Lapke, 428 B.R. 839, 842 (8th Cir. BAP 2010); In re Evans, 334 B.R. 148, 151 (Bankr. D. Md. 2004)(debt on debtor's home was consumer debt even though debtor did not sign the promissory note evidencing it).

Obviously, there are other types of real estate, and non-consumer loans secured by real estate may be classified differently than a residential mortgage. The Fifth Circuit Court of Appeals stated:

> Applying the profit motive test, we find that the district court misclassified some of appellants' debts. In regard to the three loans secured by the Booths' residence, the district court correctly looked to the use to which the money was put. Accordingly, the $11,000 loan and the $133,000 loan were properly classified as nonconsumer related debt. The district court erred, however, in its classification of the entire $152,507.99 as consumer debt. Only $75,000 was used to pay off the mortgage on the residence; the remainder, $77,507.99, was applied to the marina venture. Only the initial $75,000 may be properly characterized as consumer debt.

In re Booth, 858 F.2d 1051, 1055 (5th Cir. 1988); see also, In re Burge, 377 B.R. 573, 578-79 (Bankr. N.D. Ohio 2007)("income producing property would not appear to fit this mold [of consumer debts]"); In re Pedigo, 296 B.R. 485, 491 (Bankr. S.D. Ind. 2003)(loan to prepare property for tenant not a consumer debt).

However, the fact that the underlying use of the real estate has changed, does not alter the character of the debt. That is determined at the time the debt is incurred:

> Consumer debt" is defined in §101(8) as "debt incurred by an individual primarily for a personal, family, or household purpose." The operative word in that definition is incurred. The Debtor does not dispute that she and her husband originally incurred their obligation for the Bank's mortgage loan for personal, family and household purposes. The fact that the mortgaged property is no longer used for consumer purposes, or that the payment terms were modified does not turn back the clock and change the purpose for which the debt was incurred. A debt is "incurred" only once, and that is when a debtor becomes liable for its payment. With respect to the mortgage owing to Brantley Bank, that debt was incurred in 1998 for consumer purposes.

In re Victoria, 2011 Bankr. LEXIS 2505 at *10 (Bankr. N.D. Ala. June 22, 2011), citing, In re Bertolami, 235 B.R. 493, 496-97 (Bankr. S.D. Fla. 1999); In re Lemma, 393 B.R. 299, 302 (Bankr. E.D.N.Y. 2008).

Some older cases had adopted the position that debts secured by real property, including home mortgages, were not consumer debts: See, In re Ikeda, 37 B.R. 193, 194-95 (Bankr. D. Hawaii 1984)(" The intent of Congress that "consumer debts" not include mortgage liens secured by real property is clearly stated in the legislative history. To then include mortgage liens secured by real property used as debtors' principal residence within the definition of "consumer debts" would undermine this Congressional intent.); In re Nenninger, 32 B.R. 624, 626 (Bankr. W.D. Wis.1983); In re Randolph, 28 B.R. 811, 813 (Bankr. E.D. Va.1983)("A debt which is secured by real property is not a consumer debt. . .") ; In re Burgess, 22 B.R. 771, 772 (Bankr. M.D. Tenn. 1982)("The legislative history of 11 U.S.C. § 101(7) states that the term consumer debt does not include any debt which is secured by real property. 124 Cong. Rec. H. 11,090 (Sept. 28, 1978) (remarks of Rep. Edwards). The definition of consumer debt in § 101(7) does not, however, specifically exclude an unsecured debt obtained by an individual to purchase residential real property."); In re Stein, 18 B.R. 768, 769 (Bankr. S.D. Ohio 1982)("a consumer debt does not apparently include a debt to any extent the debt is secured by real property. See 124 Cong. Rec. H. 11,090 (Sept. 28, 1978) and S. 17,406 (Oct. 6, 1978)"). As reflected in the earlier citations, this approach has been overwhelmingly rejected by the last fifteen years of case law.

The 'legislative history' is based on statements made by two members of Congress that "[a] consumer debt does not include a debt to any extent the debt is secured by real property." 124 Cong. Rec. H11,089 (daily ed. Sept. 28, 1978) (statement of Rep. Edwards); 124 Cong. Rec. S17,406 (daily ed. Oct. 6, 1978) (statement of Sen. DeConcini). See, In re Hlavin, 394 B.R. 441, 445 (Bankr. S.D. Ohio 2008). The response has been that, to the extent the statement of two members of Congress even qualify as legislative history that a court can rely upon, "[l]egislative history, however, does not override the plain language of a statute.". Id.

d. Taxes

The majority view is that tax debts are not consumer debts. See, In re Westberry, 215 F.3d 589 (6th Cir. 2000)(in the context of §1301(a)'s co-debtor stay, held that income tax liabilities are not consumer debts); In re Brasher, 216 B.R. 59 (Bankr. N.D. Okla. 1998); In re Stovall, 209 B.R. 849 (Bankr. D. Va. 1997)(personal property taxes are not consumer debts); In re Greene, 157 B.R. 496 (Bankr. D. Ga. 1993)(majority view is that a tax liability is not a consumer debt); In re Reiter, 126 B.R. 961 (Bankr. D. Tex. 1991)(tax debt does not qualify as consumer debt); see also, In re Dye, 190 B.R. 566, 567 (Bankr. N.D.Ill. 1995); In re Goldsby, 135 B.R. 611, 613 (Bankr. E.D.Ark. 1992); In re Traub, 140 B.R. 286 (Bankr. D.N.M. 1992); In re Gault, 136 B.R. 736, 738 (Bankr. E.D.Tenn. 1991); In re Harrison, 82 B.R. 557, 558 (Bankr. D.Colo. 1987); In re Pressimore, 39 B.R. 240, 244-5 (N.D.N.Y. 1984).

The Westberry court distinguished income tax debt from consumer debt in four ways. First, income tax debt is not voluntarily incurred. In re Westberry, 215 F.3d 589, 591 (6th Cir. 2000). Second, a tax debt is incurred for a public purpose rather than a personal, family, or household purpose. Id. Third, it results from earning activities rather than from consumption. Id. Fourth, it does not involve the extension of credit. Id.; see also, In re Brasher, 216 B.R. 59, 60 (Bankr. N.D. Okla. 1998)(concluding income tax liability is not consumer debt for purposes of § 707(b) because it "is not 'incurred' as part of a consumption activity, but is involuntarily imposed in the course of earning income.").

e. Student Loans

It appears that the case law either looks at the individual circumstances associated with the student loan to determine if it is a consumer debt, or assumes that student loans are consumer debts. See, In re Stewart, 175 F.3d 796 (10th Cir. 1999)("we are unwilling to characterize the entire $ 218,000 as consumer debt. However, based on the evidence in the record, we can comfortably conclude a substantial portion of Dr. Stewart's student loan debt is indeed "consumer debt." * * * The record does, however, establish a substantial amount of Dr. Stewart's loans went toward his family's expenses. As to student loans received during their

marriage, Dr. Stewart's testimony, read in its entirety, together with his brief on appeal, establishes he used a portion of the money on family expenses in addition to any direct educational costs. Specifically, in his brief, Dr. Stewart admits he used his student loan money during his marriage to pay for tuition and books as well as to support "his five dependents." Finally, the record shows during the two years following their divorce, Dr. Stewart obtained over $ 100,000 in student loans, paying Barbara $60,000 of it for support obligations and $3,000 on his children's medical expenses. Under these circumstances, an appreciable portion - $ 63,000 - of his student loans went toward family expenses, which fairly may be characterized as "consumer debt."); In re Dowleyne, 400 B.R. 840, 843 (Bankr. M.D. Fla. 2008)("The Debtors' debts are primarily consumer debts consisting of two home mortgages, a time-share mortgage, credit card debts, and student loans.").

A recent decision specifically holds that there is no *per se* rule that student loans are either consumer or non-consumer debts. In re Rucker, 454 B.R. 554 (Bankr. M.D. Ga. 2011). The Rucker court rejected the debtor's attempt to analogize student loans to tax obligations, citing the Westberry factors recited above. Rucker, 454 B.R. at 558. Instead, the Rucker decision held: "the Court must inquire into the purpose of the debt. Such an inquiry is consistent with the language of §101(8), which defines consumer debt according to its purpose. Furthermore, the Court cannot conclude that all student loans are incurred for the same purpose. Instead, the Court must consider all facts relevant to purpose when the characterization of student loans is in dispute." Id.

f. Tort Claims

The majority of courts have held that tort debts are not consumer debts. See, In re Thongta, 401 B.R. 363, 366 (Bankr. E.D. Wis. 2009); In re Melcher, 322 B.R. 1, 6 (Bankr. D.D.C. 2005)(a determination of consumer debt status under §523(d)); In re Marshalek, 158 B.R. 704 (Bnkr N.D. Ohio 1993)(Tort claims are not consumer debts); In re White, 49 B.R. 869 (Bankr. D.N.C. 1985)(judgment debt arising from automobile accident attributable to debtor's negligence was not a "consumer debt"); In re Alvarez, 57 B.R. 65 (Bankr. D. Fla. 1985).

g. Condominium Association Fees

In re Haugland, 199 B.R. 125 (Bankr. D.N.J. 1996)(condominium association fees are consumer debts); In re Galvan, Case No. 97 C 591, *unpublished*, 1998 U.S. Dist. LEXIS 7156 (N.D. Ill. April 30, 1998)(consumer debts). But, where the property was to be rented, the condominium association fees were not consumer debts. See also, In re Swartzentruber, Case No. 08-63666, *unpublished*, 2009 Bankr. LEXIS 2596 (Bankr. N.D. Ohio September 4, 2009).

h. Alimony and Child Support

Courts have held that alimony and child support are consumer debts. See, In re Stewart, 175 F.3d 796, 807 (10th Cir. 1999)(alimony constitutes a consumer debt); In re Kestell, 99 F.3d 146, 149 (4th Cir. 1996)(alimony, child support, and lump-sum award are considered "consumer debt" as they were not incurred with a profit motive or in connection with a business transaction); In re Traub, 140 B.R. 286, 290 (Bankr. D. N.M. 1992)(property settlement owed ex-wife is consumer debt as it is a distribution of the net value of the community interest of the debtor's medical practice and not owed because of a profit-seeking activity); In re Palmer, 117 B.R. 443, 447 (Bankr. N.D. Iowa 1990)(lump-sum alimony award is consumer debt because the debt was created to allow the debtor to retain ownership of the home and his pension); In re Hall, 258 B.R. 45, 49 (Bankr. M.D. Fla. 2001)("the court will consider the unscheduled alimony debt in its determination of whether the debt is primarily consumer debt").

i. Medical Debts.

It appears that most courts assume (by lumping them with consumer debts) that medical bills are consumer debts. See, In re Thompson, 457 B.R. 872, 875 (Bankr. M.D. Fla. 2011)("Debtors' debts are primarily consumer debts consisting of two home mortgages on a property at 12351 Scottish Pine Lane, Clermont, Florida ("the Clermont Property"), medical bills, automobile loans, credit cards, and student loans."); In re Dickerson, 193 B.R. 67, 70 (Bankr. M.D. Fla 1996)(Nonconsumer debts included medical bills, student loans and IRS debt); In re Martinez, 171 B.R. 264, 267 (Bankr. N.D. Ohio 1994)(Medical Bills are consumer debts).

j. Gambling, and Speculative 'Investments'.

In re Vianese, 192 B.R. 61 (Bankr. N.D.N.Y. 1996)("The Court in a previous decision rendered in connection with this case concluded that gambling debts are consumer debts. See In re Vianese, Case No. 95-60060, Adv.Pro. No. 95-70066, slip op. at 9 (Bankr. N.D.N.Y. November 3, 1995). The first mortgage on the Debtors' residence, as well as the home equity loan, are also to be considered debts incurred primarily for personal purposes. See Kelly, *supra*, 841 F.2d at 913. So too the student loans made in furtherance of the Debtors' sons' education were for "family purposes" and should be considered consumer debt. The Debtors testified that neither the credit card debt, the lines of credit or the monies borrowed against J. Vianese's annuity were used for anything but personal and/or family purposes, primarily gambling.")

In re Baum, 386 B.R. 649 (Bankr. N.D. Ohio 2008)(debtor had $40,000 in gambling debts and court found that her debts were primarily consumer debts – but there was no breakdown of her other debts in the decision).

Lind-Waldock & Co. v. Morehead, 1 Fed. Appx. 104 (4th Cir. 2001)("The Moreheads incurred the debt while speculating in the futures market. The debt is therefore not a consumer debt.").