

[In re: Ng, No. 410-02001](#) (Bankr. D. Hawaii, February 9, 2011).

Companion Blog

When you file for [Chapter 7 bankruptcy](#), you are required to submit documents called Schedules that lay out your property and debts. If you misrepresent this information, or the information leads the court to believe you would be able to pay your creditors in a [Chapter 13 plan](#), the court will assume you are abusing the bankruptcy system.

The test the court uses to decide whether you are abusing the system is called the “totality of the circumstances” test. Under this test, the court will use its discretion and weigh factors such as your ability to repay your creditors and whether you have an extravagant budget to decide the outcome. If the court finds you are an abuser, your case will be converted to Chapter 13 and you may be required to pay more to your creditors.

In this case, the Ngs paid a large amount of money every month to their retirement plan, claiming that was an expense and that they could not use that money to pay back their debts. The court was suspicious that this was unnecessary and an attempt to get out of paying debt they could afford to pay. Because of its suspicion, the court ordered the Ngs to present evidence that they were not abusing the system.

It is always important to speak to a competent local bankruptcy attorney before deciding if bankruptcy is the right choice for you.

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