

Interesting cases/rulings/comments from the Court from the 4/20/11 Tyler Docket:

Confirmation Docket:

10-61275 *Carnley*: Facts: Debtor had testified at the 341 meeting that he had not yet made his first post-petition mortgage payment. After an initial denial, this case came up for confirmation a second time on the 4/20/11 docket. At that time, the Debtor was current on his plan payments and all issues had been resolved with the Trustee except the Debtor's providing proof that he had made his post-petition mortgage payments.

Ruling: Judge Parker sustained the Trustee's objection about the Debtor's failure to provide proof of post-petition mortgage payments and entered a final denial order.

Result: Judge Parker continues to emphasize the importance of making post-petition mortgage payments. My office will now seek verification of the debtors' making all of their post-petition mortgage payments.

10-61296 *Ferrell*: Debtors were represented by an attorney whose office is located outside of the Eastern District of Texas who does not file many cases here. Confirmation was previously denied and the case was up against a final denial on the 4/20/11 docket. The amended plan before the Court had an error in it in that it failed to provide for the cram down of the claim secured by the debtors' mobile home. Debtors' attorney requests a local attorney to appear in Court on his behalf to request a continuance so that an amended plan could be filed that provided for the cram down of the mobile home. Debtors were present in the Courtroom.

Ruling: Judge Parker ultimately gave the continuance but was not happy about it. Questions or comments made by the Judge from the bench about the case and debtors' counsel were as follows: Why is the debtors' attorney not present to make the request? Does the debtors' attorney even exist (an apparent reference to the debtors' attorney failure to appear in Court when he does have a case)? In granting the continuance, Judge Parker commented that the debtors' attorney cannot use "his incompetence" (Judge Parker's words) as an excuse to get future continuances in his courtroom.

Result: If you file an amended plan after an initial denial, be sure that the plan accurately reflects the terms you intend to propose to the creditors. Do not assume that the Judge will grant a continuance if you need to fix something with an amended plan.

Modification Docket:

08-60984 *Reeves*: A motion to modify was filed in a case for the stated purpose of bringing the debtors current on their plan payments after one of the debtors lost their job. I filed an objection to the motion to modify based primarily upon the debtors' failure to file a new budget showing feasibility of the case as well as a poor payment history. The matter initially came up for hearing on 3/23/11 wherein the debtors filed an amended budget as well as strung a couple of recent payments together and was otherwise current under the modification. Accordingly, my office recommended confirmation and the Court did in fact orally confirm the modification in Court. The Trustee did not realize that the mortgage company had filed a motion for relief from stay prior to the 3/23/11 docket alleging that the debtors had failed to make post-petition mortgage payments.

Ruling: Judge Parker entered an order setting aside the oral confirmation of the modification and reset such for hearing for the 4/20/11 docket. Based upon the lack of post-petition mortgage payments, the debtors' attorney requested that the pending motion to modify be denied.

Result: As noted above, Judge Parker continues to emphasize the importance of making post-petition mortgage payments, even in a modification setting. My office will now watch closely for pending motion for relief from stay due to failure to make post-petition mortgage payments when we are

reviewing cases that are set for confirmation and/or modification, thereby declining to recommend either for confirmation.

10-60213 *Stevens*: Facts: Debtors' attorney is no longer practicing law. The Debtors' confirmed plan needed to be modified after the TRCC due to a feasibility issue. Normally, such a motion to modification is done as part of the attorney's "no-look" fee. New attorney filed the motion to modify but in so doing requested a fee for \$600 for preparing and filing the motion to modify. The Trustee supported the attorney being paid the extra fee but placed the matter on the "call" docket in order to get approval from Judge Parker for such.

Ruling: Judge Parker granted the request for attorney's fees in the amount of \$600 for the modification without the necessity of the attorney filing a formal fee application.

Miscellaneous Docket:

09-20335 *Huddleston*: Facts: Proposed plan was confirmed in 3/24/10 providing for the payment of a claim secured by the debtors' travel trailer that the debtors use when one of the debtors works out-of-town. Neither the creditor or the debtors filed a proof of claim to support the payment of the claim. The TRCC was filed 8/9/10 and was approved without objection on 9/20/10. Trustee filed his certification that all claims had been properly adjudicated. No disbursements were made or accrued to the creditor with the lien on the travel trailer. Motion to Allow Late-Filed Claim was filed jointly by the debtors and the creditor on 2/22/11 (approximately 5 months after the approval of the TRCC). Judge Parker set the Motion for hearing.

Ruling: Judge Parker denied the Motion, expressing his displeasure on a number of grounds. First, Judge Parker stated that res judicata (the order approving the TRCC that did not provide for the payment of the claim) barred the creditor from now seeking permission to file a late filed claim so it can somehow now be paid. Judge Parker expressed his opinion that the debtors' attorney should have timely filed a claim on behalf of the creditor if the debtors did in fact want that creditor paid through the plan. Judge Parker did make an additional statement that the debtor's attorney's failure to meet the time deadline for filing such a claim does not constitute excusable neglect to justify the allowance of the late filed claim. Second, Judge Parker also stated that the doctrine of laches prevented the filing of the late filed claim.....5 month delay after the approval of the TRCC is too long.

Result: First, the TRCC does mean something by setting out who is getting paid and in what amounts. If any party disagrees that the TRCC does not accurately represent the terms of the plan as reconciled by the Trustee with the claims as filed, that party needs to object to the TRCC or be bound by the treatment to that treatment under the concept of res judicata and maybe laches. Second, If debtors want a particular claim paid through the plan and the creditor fails to file such by the bar date, the debtors must exercise their right to file a claim on behalf of that creditor within 30 days after the claims' bar date. In this case, the debtors' attorney made a fairly good argument on why he had not filed a claim on behalf of the creditor.....an argument that was summarily rejected by the Court. Do not count on a motion to allow late filed claim being granted by the Court if you fail to file such a claim.