

Below is a summary of the cases that I feel were significant from yesterday's Tyler docket. A copy of this e-mail will be posted as "5/18/11 Tyler Docket" under the tab entitled "Trustee's Emails" on my website at www.ch13tyler.com. The two cases below were cases that I thought were going to be tried but, at the last minute, the debtors decided to enter into final denials and the cases were dismissed by the Court.

Confirmation Docket:

10-61216 *McQueen*: Facts: The below-median debtors had testified at their 341 meeting that the husband was on the verge of obtaining a new job. Based upon that testimony, I requested that the debtors amend their budget to reflect the new job. An initial denial order was previously entered in this case and this case was up against a final denial deadline. In my Trustee's Report that I filed approximately two and half weeks prior to Court, I objected to the debtors' failure to dedicate the income from the husband's new job. On the Friday before confirmation, the debtors filed an amended budget disclosing for the first time that the husband had obtained a new job approximately four months earlier, thereby increasing the household income by \$2,700. The debtors also increased their household expenses on Schedule J by the same exact amount. During the course of some e-mail exchanges with debtors' counsel, I was able to confirm and/or suspect that some of the expenses (in excess of \$1,000) on the Amended Schedule J were not actual expenses that the debtors were incurring. I also believed that most of the other increased expenses on the amended Schedule J were inflated. I advised debtors' counsel that I would be raising an objection that the amended budget and the amended plan based upon such were filed and proposed in bad faith by the debtors. By an e-mail sent to me at approximately 10:00 p.m. on the Tuesday night before Court, debtors' counsel advised me that the debtors could not overcome my objection and accordingly wanted the proposed plan denied and the underlying case dismissed pursuant to the final dismissal deadline.

Ruling: Neither the debtors or their attorney appeared in Court the next morning. I advised the Court of the e-mail that I received and accordingly requested the Court to enter a final denial order. The Court so ruled and a final denial order and a dismissal order were entered later that day.

Result: Budgets need to be filed timely and accurately. In this case, an amended budget filed on the Friday before Court to advise me, the Court, and the creditors of a new job that the debtor had obtained four months prior is not timely. In addition, a budget that increases expenses by the exact amount of the increase in income, I believe, is proposed in bad faith and will draw an objection from me. There are exceptions. Obviously, an unemployed debtor will have an increase in transportation expenses and other expenses as a result of the new employment. In addition, if this was a case where the original budget, due to lack of income, reflected unrealistic low expenses that no one could reasonably live on, I would not have had a problem with an amended budget, due to the increase in income, raised some of the original expenses to reasonable levels. Neither of these exceptions applied to this case. Since the debtors declined to try the issue, I did not get a specific ruling from Judge Parker on this issue.

11-60013 *Jackson*: Facts: This case involved above median income debtors who were up against a final denial deadline. Debtors' counsel and debtors appeared the morning of Court with full intention of going forward with the confirmation of their proposed Chapter 13 plan. I advised debtors' counsel that I was going to argue that the proposed plan, as a matter of law, was not confirmable for three reasons: *First*, the plan failed to provide for the minimum dividend to the unsecured creditors per the Means Test. Per Form B 22C, the minimum dividend that needed to be paid to the unsecured creditors was \$2,129.50 (Line 59) times 60 months (the applicable commitment period) for a total of \$127,770.00. The proposed amended plan was not even close on providing this dividend to the unsecured creditors nor was the amended plan close to providing for a 100% dividend to the unsecured creditors. Other than stating that they would not pay the Trustee one single dollar more than what was provided for in

the plan, the debtors had not alleged any type of special circumstances that would relieve them of their obligation to pay such a dividend to the unsecured creditors. I believed that the plan, as proposed, was not confirmable as a matter of law.

Second, the plan failed to dedicate all of their projected disposable income as reflected in their budget. In particular, the amended plan provided for the debtors to pay the Trustee a total of \$1,292 per month for a total of 60 months. The debtors' projected disposable income as reflected in their budget indicated that they had \$2,080 left over each month after the payment of their expenses. Again, other than their refusal to pay the Trustee one single dollar more, the debtors had not alleged any reason why the excess money should not be paid to the Trustee.

Third, the plan failed to meet the Best Interests of Creditors Test by failing to provide a dividend to the unsecured creditors a sufficient amount to equal the debtors' equity in non-exempt property (here, in excess of \$300,000 in non-exempt property). Admittedly, the debtors could have reduced some of the non-exempt property by amending their Schedule C to more fully take advantage of some exemptions that the debtors did not claim. However, the debtors failed to so amend their Schedule C so they were left with non-exempt property in excess of \$300,000 and the proposed plan did not come close to providing a dividend to the unsecured creditors for this amount.

After some discussions with his clients, debtors counsel advised me right before the Judge took the bench that the debtors wanted confirmation of the proposed plan to be denied. The debtors' attorney then signed a final denial order and left.

Ruling: I advised the Court of the debtors' attorney executing the final denial order and the Court entered the final denial order and a dismissal order later that day.

Result: For above median income debtors, the proposed plan must meet the minimum dividend to the unsecured creditors unless the debtors can assert valid special circumstances that legitimately relieve them of that obligation. Budgets still mean something. I do not believe that the debtors are able to keep almost \$800 in excess income over expenses unless the debtors are proposing to pay the unsecured creditors a 100% dividend on their claims. Finally, debtors must provide a dividend to the unsecured creditors in an amount that they would have received had the case been filed under Chapter 7. I have no problem with the debtors fully utilizing their exemptions in order to try to reduce this amount. However, whatever their exemptions are, the debtors must meet the minimum dividend to the unsecured creditors as required by the Best Interests of Creditors' Test. I wanted to argue that, as a matter of law, the debtors' plan was not confirmable as filed for these reasons. Since the debtors declined to try the issue, I did not get a specific ruling from Judge Parker that the plan should be denied as a matter of law.

If you have any comments concerning these cases (or others from this docket) that you would like to have posted and if I feel that the comments are appropriate, please forward such comments to Comments@ch13tyler.com.

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