

Debtor not allowed to amend plan to add post-petition mortgage arrears to the plan

Case: 11-10465 *Harper*

Docket: Trustee's Confirmation Docket on 1/11/12 Lufkin Docket

Facts: This case was put on the "call" docket due to an objection to the plan by the mortgage holder and by the Trustee based upon the Debtor's failure to provide him with a proper certification indicating that the Debtor had made all of his post-petition mortgage payments. Apparently, the Debtor had not made any of his post-petition mortgage payments because the Debtor had a mortgage loan modification pending with the mortgage company that would result in the reduction of his monthly mortgage payments. The mortgage company proposed to resolve its pending objection to the plan by the Debtor inserting an additional provision in the confirmation order to allow the mortgage company to amend its proof of claim to add the post-petition mortgage payments so that such could also be paid through the plan in the event the mortgage loan modification was not approved.

Ruling: The Court denied the request to add the provision to allow the mortgage company to amend its proof of claim to add post-petition mortgage payments. The Court was upset that the Debtor had not reserved the monthly mortgage payments for the five months that this case was pending thereby putting the Debtor in the position of losing the home in the event the mortgage loan modification was not approved. Again, the Court reiterated that the plan would not be later modified to add these post-petition mortgage payments into the plan. With that ruling, the Court did confirm the proposed plan.

Result: The Court continues to emphasize the importance of the debtors to make their on-going post-petition mortgage payments. Generally, the debtors must be able to provide the Trustee with their certification that all of their post-petition mortgage payments have been made in order to get their plan confirmed. In this case, the Court did confirm the plan after the Debtor failed to make such post-petition mortgage payments but only because there was a pending mortgage loan modification. The Court did emphasize that the Debtor will not be allowed to modify the plan to add these post-petition mortgage payments to the plan in the event that the mortgage loan modification is not approved.