

Plan must meet the Best Interests of Creditors' Test in order to be confirmed

Case: 11-60998 *Sessions*

Docket: Trustee's Confirmation Docket on 1/18/12 Tyler Docket

Facts: The Debtors own two tracts of land, one being their exempt homestead and the other non-exempt property with over \$50,000 in equity. The Debtors were also disputing whether the mortgage holder on their homestead had in fact a valid lien on the property. The Debtors' plan proposed that they sell the non-exempt property and pay the net proceeds to the Trustee to be held until the dispute over whether there was a valid lien on the homestead was resolved. Upon the resolution of the dispute, the Trustee would either pay off the lien on the homestead with these non-exempt proceeds or refund the non-exempt proceeds back to the Debtors. The plan also estimated a dividend of \$6,000.00 to the unsecured creditors holding claims of approximately \$10,381.00. The Trustee objected to the plan in that it failed to meet the best interests of creditors' test by failing to dedicate the net proceeds of the sale of the non-exempt property for the benefit of the unsecured creditors. The unsecured creditors should receive at least the amount that they would receive had this case been filed under Chapter 7 of the Bankruptcy Code.

Ruling: The Court denied confirmation of the plan at the request of the Debtors.

Result: The Trustee will object to any plan that proposes to use non-exempt proceeds to pay off a lien on exempt property (or, in the alternative, to pay such to the Debtors). The Trustee asserts that such a provision not only violates the best interests of creditors' test but may also constitute a plan proposed in bad faith.