

Objection to Claim is proper mechanism to convert an unsecured claim to a secured claim, not motion to set value

Case: 09-61137 *Moody*

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

Facts: The Trustee filed a motion to dismiss for infeasibility due to the failure to set value of collateral that was subject to being "crammed down" under the terms of the confirmed plan. The Debtors filed their motion for valuation of the collateral as well as a motion to modify. All three matters were set for hearing. The creditor had failed to file a response to the motion for valuation. The creditor had filed an "unsecured" claim but had attached thereto a copy of the title to the vehicle indicating that the creditor did in fact have a valid security interest in the underlying vehicle.

Ruling and Result: The Court continued all three matters to the March Tyler docket, thereby stating that the Debtors cannot set value of collateral where the creditor's proof of claim was filed as a general unsecured claim which in turn indicates that there is no underlying collateral. The Court noted that there were probably two alternatives: one, the creditor amend its claim to a secured claim and the Court would then rule upon the motion for valuation; or two, file an objection to claim in order to convert a claim that was obviously filed incorrectly as an unsecured claim to a secured claim (as supported by the creditor's exhibit attached to the proof of claim). However, a motion to set value is not the proper mechanism to convert an unsecured claim to a secured claim.