Mobile home determined to be personal property subject to cram down, rejecting creditor's argument that such had become part of the real property

Case: 12-20046 *Dutton*

Docket: Trustee's Confirmation Docket on 5/23/12 Tyler Docket

Facts: Debtors' plan proposed to cram down a mobile home based on the assertion that it was personal property. Debtor further asserted that *Till* interest rate applied and proposed a 5.25% rate in the Plan. Land creditor objected and asserted that the mobile home had become part of the real property and consequently could not be crammed down. Land creditor further asserted that the proposed interest rate in the Plan was too low.

**Ruling:** After taking the matter under advisement, Judge Parker issued on opinion on 5/30/12 (Docket #29) thereby determining that the mobile home was personal property and could be crammed down. The Judge also determined that 5.25% was a reasonable interest rate.

**Reasoning:** The Court determined that Texas state law controlled, specifically Texas Property Code § 2.001. Per this statute, a mobile home is real property if (1) the home is permanently attached to the real property and (2) the manufacturers certificate of origin or title document is filed in county property records. The Court found that the evidence put on by both the Debtor and Creditor was inconclusive as to whether the mobile home had attached (some relevant testimony from the Debtor was that the home was only tethered down but the wheels and axels had been removed, the Debtor had built a porch around the home, and had attached a septic system to the structure. There was also testimony that it was very rare for people to move mobile homes off property in the subdivision). However, neither party presented evidence as to whether the certificate of origin/title had been recorded. Accordingly, the Court held that the statutory requirements had not been met and the mobile home was personal property.

Regarding the interest rate, the Court applied the reasoning in *Till v. SCS Credit Corp.* 541 U.S. 465 (2004), as applied by *Drive Financial Services v. Jordan* 521 F.3d 343(5th Cir. 2008). The Court held that the appropriate formula to calculate interest was prime rate plus 1%-3%, depending on the amount of risk associated to the particular debtor. In what I believe is the most relevant portion, the Court opined:

> The objective of imposing an interest rate under §1325(a)(5)(B)(ii) is to place the creditor in the same economic position that it would have enjoyed had it received the value of its allowed secured claim upon the effective date of the plan. The purpose is not to put the creditor in the same position as if a "new" loan had been arranged or to imitate the methodology whereby a lender seeks to reduce the impact of projected defaults by spreading them among an entire portfolio of loans.

The Court found that *Till* applied and that the interest rate of 5.25% (prime rate of 3.25% plus an additional 2% risk adjustment) proposed in the Plan was reasonable.

**Effect on Trustee's Procedure:** To conform with the Court's holding, the Trustee will begin objecting to interest rates proposed to secured creditors that exceed a reasonable *Till* rate. The Trustee also reserves the right to object to any creditor agreement reached that proposes an excessive interest rate.