

Two cases relating to agreements made with objecting creditors at confirmation

Background for both of the cases cited below: It is not uncommon for the debtors and creditors to reach an agreement concerning the payment of the creditors' claim (examples include agreements concerning value of collateral being paid; agreements matching the creditors' proof of claim; agreement adding the claim to be paid that was not otherwise in the plan; and surrendering the collateral). Generally, I require these cases to be placed on the call docket to allow the Court to make the determination that (a) the modification of the plan through the confirmation order does not adversely affect any creditors; (b) any adversely affected creditor has consented; or (c) the adverse impact of the modification on creditors is de minimis. See Court's Local Rule 3015(f)(1). If the Court cannot make a finding on one of these exceptions, the Court will not, of all probability, approve the agreement and the debtors will be required to file an amended plan with full notice to the matrix.

Case: 12-60363 *Chapman*

Docket: Trustee's Confirmation Docket on 7/18/12 Tyler Docket

Facts: The proposed Chapter 13 plan failed to provide for the payment of a property tax claim. The property tax claimant objected to the plan and the parties reached a letter agreement to the effect that the claim would be paid at 12% interest. Debtor's counsel and I disagree on our respective interpretation of the letter agreement (I contended that the letter agreement required my paying it upon confirmation of the plan or including it to be paid upon the filing of the TRCC; Debtor's counsel contended that the letter agreement required the Debtor to later modify the plan to include the payment of the claim; diplomatically, I will say the agreement was vague). The property tax claim was greater than the amount of the projected dividend to the unsecured creditors so, unless the plan payments were raised, the immediate inclusion of the payment of this claim would totally eliminate the dividend to the unsecured creditors and also cause the plan to be underfunded. I suggested, with the agreement of Debtor's counsel, that an additional provision be added to the confirmation order stating that the letter agreement only imposed an obligation on the Debtor to modify the plan to include the claim for payment and no obligation on me as Trustee to pay the claim until the modification was filed. With that modification, I agreed to recommend the plan for confirmation.

Ruling: Judge Parker denied confirmation of the plan, noting that the claim needs to be provided for in a plan pre-confirmation, not through a promise by the Debtor to take care of the claim through some future motion to modify.

12-60368 *Smith*: **Facts:** The proposed plan drew two objections, one from a car creditor and another from the current holder of the mortgage. Debtor was able to negotiate an agreement with the car creditor with respect to value and the plan payments were accordingly adjusted in order not to have an adverse affect on any creditor. I had no objection to the agreement.

With respect to the mortgage holder, the creditor had proposed an agreement at the last minute where essentially nothing was resolved and it provided that I was to match the claim in the TRCC or the amount of an agreement to be made between the debtor and creditor or provide for an amount in the TRCC that is acceptable to the creditor. The agreement was not signed by the creditor. Upon reading the agreement, I had no idea what the agreement was attempting to get me to pay on a claim that had not yet been filed by the creditor.

Upon advising Debtor's counsel that I would not agree to the addition of the creditor's agreement on the confirmation order, the Debtor's attorney decided to go forward with the confirmation of the current plan with respect to the treatment of that mortgage creditor.

Ruling: Judge Parker approved the agreement with the car creditor and over-ruled the objection of the non-appearing mortgage creditor.

Practical considerations from these two case: The Court will continue to approve creditor agreements as long as such comply with the Court's Local Rules (not adversely affecting creditors, etc.). A number of such agreements were approved on the docket. The Court will not approve an agreement that obligates the debtor to modify the plan at some point in the future to meet the claim (if the claim is to be paid, it must be paid through the plan prior to confirmation) and the agreement must actually be understandable on what I am to pay.