

Attorney waived attorney's fees at confirmation due to poor handling of case

Case: 12-10147 *McKnight*

Docket: Trustee's Confirmation Docket on 8/15/12 Beaumont Docket

Facts: This case had had an initial denial order previously entered and the latest amended plan was set for confirmation on this docket under a final denial deadline. The Trustee raised a number of objections to the amended plan, including insufficient notice for the amended plan pursuant to Local Bankruptcy Rule 3015(a); pro rata plan payments to a creditor; plan proposes to set value of certain collateral in the "cram down" provision of the plan; failure to provide a proper Debtor certification that she was current on all of her post-petition mortgage payments; and an objection on the reasonableness of certain expenses including horse feed of \$100.00 per month and an additional \$600.00 horse feed per month listed as a business expense. The Debtor's attorney failed to appear at the scheduled pre-confirmation meetings and the Trustee did not otherwise receive any type of communication from the Debtor's attorney. The Trustee did not receive a proposed confirmation order. On the evening before Court, the Debtor's attorney sent an e-mail to a local bankruptcy attorney, requesting the local bankruptcy attorney to make an appearance at the scheduled hearing.

On the morning of Court, the case was called for hearing. The Debtor was present but her attorney failed to appear. The local bankruptcy attorney that received the FAX did stand up and announced that he received the FAX but did not want to make an appearance (Judge Parker's reply was "too late", that the attorney has made an appearance on behalf of the Debtor by standing up at the podium). The local bankruptcy attorney requested that the matter be called at the end of the docket so that he could have an opportunity to talk to the Debtor.

Upon the case being recalled, the local bankruptcy attorney advised the Court that he was not making an appearance on the case and then sat down. The Debtor then took to the podium and, through tears, was able to ask for a continuance of the hearing. The Debtor explained that she was attempting to save her home through this bankruptcy.

Ruling: Judge Parker did grant the continuance to the next Lufkin docket. The Judge did take the opportunity to express his displeasure on the handling of the case by the Debtor's attorney, noting that the Court had had previous problems with this particular attorney due to the fact that the attorney does not normally practice in the Eastern District of Texas. The Judge also advised the Debtor that she is bound by the actions (or, in this case, the inactions) of her attorney and that she may suffer the consequences by the dismissal of her case with prejudice for 120 days if the case is not ready for confirmation at the next Lufkin docket.

Conclusion: If an attorney undertakes the representation of a debtor in a Chapter 13 bankruptcy proceeding, the attorney needs to actively work the case. The attorney needs to be familiar with the procedures in the Eastern District of Texas in order to get a proposed plan confirmed. The attorney should participate at the pre-confirmation meetings with the Trustee. Most of the problems (except lack of notice) could have been resolved at a pre-confirmation meeting with the Trustee. Even assuming that all of the remaining problems could have been resolved, this case

would have been placed on the “call” docket to allow the Debtor’s attorney to request the Court to shorten the notice period if such was appropriate.

In this case, the Trustee has instructed his staff attorney to amend the Trustee’s Report to object to the attorney’s fees being charged in this case due to the way such is being handled by the Debtor’s attorney.

Update: This case came up for confirmation on the 9/28/12 Lufkin docket. Upon the Debtor’s attorney waiving his attorney’s fees, the case was ultimately confirmed.