

Plan confirmed over objection by creditor (ex-wife) after debtor amended the terms of the proposed plan in Court to allow the ex-wife to proceed with any collection actions under the divorce decree while the divorce decree is under appeal in State Court where the debtor had failed to file a supersedeas bond.

Case: 13-20129 *Blunck*

Docket: Confirmation Docket on 12/18/13 Tyler Docket

Facts: The debtor is in the process of appealing in State Court the division of property as set forth in a divorce decree that was entered in the underlying divorce. In the appeal, the debtor failed to post a supersedeas bond in order to prevent his ex-wife from proceeding with the enforcement of the terms of the divorce decree while the appeal is pending. The debtor filed the bankruptcy in an apparent effort to stop the ex-wife from enforcing the terms of the divorce decree during the pendency of the State Court appeal.

After a contested motion to lift stay hearing in Bankruptcy Court between the debtor and his ex-wife, the Bankruptcy Court lifted the automatic stay to allow the ex-wife to proceed with such collection actions. This order is currently on appeal in Federal Court.

After an initial denial of the debtor's first plan, the debtor filed his Amended Chapter 13 Plan with the following provision:

Pending the outcome of an appeal by Debtor to the Final Decree of Divorce issued by the 22nd Judicial District Court of Hays County, Texas (cause no. 11-1217). Debtor shall execute property transfers to Cathy A. Blunck consistent with the terms of any applicable court order and the bankruptcy code.

The ex-wife (Cathy A. Blunck) objected to the plan provision, arguing, in part, that the Amended Plan was proposed in bad faith in that it attempted to postpone the enforcement of the provisions of the divorce decree that had not been superseded while on appeal in State Court.

Ruling: At the hearing, the debtor amended the terms of the proposed Amended Chapter 13 plan to provide for the lifting of the stay to all the ex-wife to proceed with the enforcement of the underlying divorce decree. With that amendment, Judge Parker confirmed the terms of the Amended Chapter 13 Plan but took under advisement the issue whether the ex-wife may enforce the terms of the divorce decree by contempt. In so doing, the Court noted that a plan that attempted to post-pone the enforcement of the underlying divorce decree during the time of the appeal in State Court where the debtor had failed to post a supersedeas bond would have been proposed in bad faith and would have been denied confirmation.

The Court has since entered the confirmation order thereby providing therein that the lifting of the stay did not include the enforcement of the underlying State Court divorce decree through contempt.

Result: A debtor cannot give himself more rights through the bankruptcy process to delay the enforcement of a final judgment than he had in State Court. In this case, the debtor initially attempted, through the provisions of his amended Chapter 13 Plan, to post-pone the enforcement of the provisions of the divorce decree by his ex-wife during the time the divorce decree is on appeal. The Court noted

that such a plan would have been proposed in bad faith. However, upon the debtor's modification of that provision to allow for the enforcement of the divorce decree by the ex-wife, the Court confirmed the plan as modified over the objection of the ex-wife.