

Continuance Reluctantly Given to Allow Attorney to Fix Error in Plan up for Final Denial

Case: 10-61296 *Ferrell*

Docket: Confirmation Docket on 4/20/11 Tyler Docket

Facts: Debtors were represented by an attorney whose office is located outside of the Eastern District of Texas who does not file many cases here. Confirmation was previously denied and the case was up against a final denial. The amended plan before the Court had an error in it in that it failed to provide for the cram down of the claim secured by the debtors' mobile home. Debtors' attorney, through the appearance of a local attorney, requested a continuance so that an amended plan could be filed that provided for the cram down of the mobile home. Debtors were present in the Courtroom.

Ruling: Judge Parker ultimately gave the continuance but was not happy about it. Questions or comments made by the Judge from the bench about the case and debtors' counsel were as follows:

--Why was the debtors' attorney not present to make the request?

--Does the debtors' attorney even exist (an apparent reference to the debtors' attorney's failure to appear in the Court when he does have a case)?

--In granting the continuance, Judge Parker commented that the debtors' attorney cannot use "his incompetence" (Judge Parker's words) as an excuse to get future continuances in his courtroom.

Result: If you file an amended plan after an initial denial, be sure that the plan accurately reflects the terms you intend to propose to the creditors. Do not assume that the Judge will grant a continuance if you need to fix something with an amended plan.

Update: The amended plan was ultimately confirmed and the debtors successfully completed their plan.