

Final Denial entered in case not providing for minimum dividend to unsecured creditors as required by Means Test and Best Interests of Creditors Test and as required by budget

Case: 11-60013 *Jackson*

Docket: Confirmation Docket on 5/18/11 Tyler Docket

Facts: The above-median income debtors were up against a final denial deadline. Trustee objected to confirmation of the plan on three grounds:

First, the plan failed to provide for the minimum dividend to the unsecured creditors per the Means Test (required \$127,770; amended plan was not close nor did it provide 100% dividend to the unsecured creditors). Other than stating that they would not pay the Trustee one single dollar more than what was provided for in the plan, the debtors had not alleged any type of special circumstances that would relieve them of their obligation to pay such a dividend to the unsecured creditors.

Second, the plan failed to dedicate all of their projected disposable income as reflected in their budget (plan proposed a monthly payment to the Trustee of \$1,292 per month for 60 months; budget indicated that the debtors had \$2,080 left over each month after the payment of their expenses).

Third, the debtors' plan failed to provide a dividend to the unsecured creditors as required by the Best Interests of Creditors Test. In particular, the debtors' equity in non-exempt property exceeded \$300,000. Admittedly, the debtors failed to take advantage of some exemptions that they could have claimed but, by the time of the confirmation hearing, the debtors had failed to amend their Schedule C.

Ruling: The debtors and their counsel appeared at the time of hearing with full intention of going forward with confirmation. However, after further discussions with his client, debtors' counsel advised the Trustee as the Judge was taking the bench that they wanted confirmation to be denied. The debtors and their counsel then left. Upon calling of the case, I advised the Court of the last-minute communication with debtors' counsel and requested confirmation to be denied. Accordingly, the Court entered a final denial order and a subsequent dismissal order.

Result: Confirmation of the plan had to be denied for the three reasons stated above. If the debtors have valid "special circumstances" that justify relief of the dividend as required by the Means Test, such needs to be expressed (not wanting to pay any more to the Trustee does not constitute special circumstances). The burden on preparing and filing a Schedule C falls on the debtors. Their failure to take advantage of certain exemptions that may have been available to them does not relieve them of their obligations to meet the Best Interests of Creditors Test. Budgets still mean something. In this case, the debtors are not able to keep almost \$800 per month in excess income over their expenses without proposing a 100% dividend to the unsecured creditors with no future modifications to the plan to reduce this dividend.