

Modification to bring plan payments current denied where there was a pending motion to lift stay due to debtor's failure to make post-petition mortgage payments

Case: 08-60984 *Reeves*

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

Facts: A motion to modify was filed in a case for the stated purpose of bringing the debtors current on their plan payments after one of the debtors lost their job. I filed an objection to the motion to modify based primarily upon the debtors' failure to file a new budget showing feasibility of the case as well as a poor payment history. The matter initially came up for hearing on the 3/23/11 docket wherein the debtors filed an amended budget as well as strung a couple of recent payments together and was otherwise current under the modification. Accordingly, my office recommended confirmation and the Court did in fact orally confirm the modification in Court. I did not realize that the mortgage company had filed a motion for relief from stay prior to the 3/23/11 docket alleging that the debtors had failed to make post-petition mortgage payments.

Ruling: Judge Parker entered an order setting aside the oral confirmation of the modification and reset such for hearing for the 4/20/11 docket. Based upon the lack of post-petition mortgage payments, the debtors' attorney requested that the pending motion to modify be denied.

Result: Judge Parker continues to emphasize the importance of making post-petition mortgage payments even in a modification setting. My office will now watch closely for pending motions for relief from stay due to failure to make post-petition mortgage payments when we are reviewing cases that are set for confirmation and/or modification, thereby declining to recommend either for confirmation.