

Objection to Claim to set value of underlying collateral subject to cram down denied in part to the extent that Debtor sought to value the collateral in an amount more than its true value

Case: 13-90033 *Fertitta*

Docket: Miscellaneous Docket on 7/30/14 Beaumont Docket

Facts: The Court set several matters at the same time: Trustee's Motion to Dismiss for Infeasibility (based upon the failure of value not yet being set on collateral subject to cram down); Debtor's Motion to Modify (which included an objection that such provided for a cram down value of collateral that had not yet been set by the Court); Debtor's Objection to Claim to set value of the underlying collateral in question; and Debtor's Motion for Valuation of the underlying collateral in question. The problem with the Objection to Claim was that the Debtor was requesting that the value of the collateral be set at a higher amount than the NADA and Kelly Blue Book values. In particular, the following was attached to the Debtor's Objection to Claim:

--Affidavit of the Debtor indicating that the value of the underlying collateral is \$9,350.00.

--NADA indicated rough trade-in value of \$4,800.00; average trade-in value of \$6,175.00; clean trade-in value of \$7,250.00; and clean retail value of \$10,225.00; and a notation that the average of these values was \$7,125.00.

--Kelly Blue Book Value is \$7,562.00.

The secured creditor failed to appear at the hearing. The Judge questioned why the Debtor was attempting to set the value of the underlying collateral at an amount higher than the values of NADA and Kelly Blue Book to which the attorney could not give an adequate explanation other than the Debtor believed the true value of the vehicle was higher.

Ruling: Judge Parker issued an order granting in part and denying in part the objection to claim, thereby rejecting the higher amount (\$9,350.00) as requested by the Debtor but set the value of the collateral at \$7,562.00 (Kelly Blue Book value as noted above). The Court also entered an order dismissing the Motion for Valuation as moot in that value of the collateral was set by the objection to claim. The Court also denied the pending Motion to Modify in that such was based upon the higher value of the collateral as requested by the Debtor. The Trustee's Motion to Dismiss for Infeasibility was continued to 10/8/14 in order to allow the Debtor an additional opportunity to cure the infeasibility of the underlying plan presumably through a new Motion to Modify.

Result: Objection to Claim must be based upon evidence to overcome the presumptive validity of the proof of claim, in this case, the Kelly Blue Book value. The Debtor cannot reject the valuations as set forth in Kelly Blue Book or NADA and attempt to set the value at a higher amount simply because the Debtor "believes" that the underlying collateral is worth more. Judge Parker stated in Court that, in this case, the Debtor was wrong based upon the evidence properly before the Court.