Beaumont Confirmation Docket on 10/9/13:

13-10242 ***Sanders*****:** **Facts:** The Debtor owned and operated a business that was incorporated under the name of Quality Medical Equipment & Supply, LLC (the "corporation" herein). The corporation took out a loan with Community Bank of Texas secured by a security interest in favor of the Bank in the corporate assets. The Debtor also gave his personal guarantee to the Bank for the repayment of the corporate debt. In other words, the underlying claim was a secured claim between the Bank and the corporation by virtue of the security interest in the corporate assets; and an unsecured claim between the Bank and the individual Debtor by virtue of the Debtor's personal guarantee.

On 4/6/13, the corporation transferred its assets to the individual Debtor in consideration of the Debtor's assumption of the corporation's debts. The transfer of the assets by the corporation was done without the Bank's consent as required under the underlying loan documents. On 4/29/13, the Debtor filed a Chapter 13 bankruptcy thereby proposing, in his Chapter 13 Plan, to pay the Bank's $362,389.59 claim the "cram down" amount of $49,227.00, such representing the alleged "replacement value" of the underlying collateral.

The Bank objected to the proposed treatment of its claim based upon, among other things, bad faith. The Trustee also joined in the objection. The Bank filed its Motion to Lift Stay thereby seeking permission from the Court to foreclose on its assets. The hearings on confirmation and the Motion to Lift Stay were set for the same time. The Debtor was up against a final denial deadline due to the previous entry of an initial denial order relating to a previous Chapter 13 Plan.

The corporation also filed its own Chapter 7 bankruptcy (13-10389) wherein the Court had previously entered an Order lifting the stay in favor of the Bank to foreclose against the corporate assets.

At the hearing in the Debtor's case, the attorney for the Debtor proposed to call the Debtor as a witness to testify concerning the underlying facts of the case. The Court, however, questioned the appropriateness of providing for the payment of the corporate debt through the individual's Chapter 13 bankruptcy where the underlying transfers of corporate assets from the corporation to the individual Debtor was done without the Bank's consent (as required by the underlying loan documents) and without consideration (i.e., the Debtor's assumption of corporate debts that the Debtor was already liable on by virtue of the Debtor's personal guarantor). As set forth in his Brief as filed with the Court, the Debtor attempted to justify this transaction by arguing that the corporation was in fact the alter ego of the Debtor (a reverse piercing of the corporate veil) and that the secured relationship was actually between the Bank and the individual Debtor.

Issue: Was the Chapter 13 Plan proposed in good faith wherein the Debtor proposed to "cram down" the payment of the Bank's claim after a purported transfer by the corporation of all of its corporate assets to the Debtor in consideration of the Debtor's assumption of the corporate debts without first obtaining permission from the Bank as required by the underlying loan documents?

Ruling: The Court denied confirmation of the Plan, finding that the Plan was proposed in bad faith as a matter of law. In that there were other claims being paid for through the plan (i.e., home mortgage arrears), the Court did waive the final denial deadline thereby giving the Debtor one last opportunity to propose a Chapter 13 plan for confirmation. The Court also lifted the automatic stay to allow the Bank to foreclose on its underlying collateral.

In denying confirmation of the Plan without the necessity of testimony, the Court focused on the following:

--<u>Lack of consent by the Bank to the underlying transfer of assets from the corporation to the Debtor where the underlying loan documents required such consent</u>. In other words, the Debtor could not force the Bank into an involuntary contractual relationship that was not contemplated under the original loan documents and, then, once establishing such an involuntary contractual relationship, force the Bank to accept payment on its underlying claim as a secured claim under the "cram down" provisions of the Chapter 13 Plan.

--<u>Lack of consideration for the underlying transfer of assets</u>. The Debtor was already personally liable for the underlying debt by virtue of the Debtor's issuance of a personal guarantee to the Bank. The Debtor's assumption of the corporate debt for which the Debtor was already liable did not constitute consideration for the underling transfer of the assets from the corporation to the Debtor.

--<u>The reverse piercing of the corporate veil was not applicable under Texas law without a Court finding that the Debtor had initially defrauded the Bank at the time of the loan</u>. The Debtor's attorney acknowledged that he had found no Texas case law to justify the reverse piercing of the corporate veil in this circumstance.