

Generally, while feasibility is determined at TRCC, a plan must at least have a likelihood of feasibility/success at confirmation

Case: 11-61108 *Hawkins* (Note: Although there were many case specific issues raised in this case, this memo is limited to those issues involving the Trustee)

Docket: Trustee's Confirmation Docket on 5/23/12 Tyler Docket

Facts: Debtors were 100% shareholders of a tree farm LLC which was concurrently in Chapter 11. Though the LLC owned the timber on the land, the Debtors owned the land personally. As such, the two cases were very much intertwined. The tree farm itself had equity of approximately \$4,000,000.00. As the Debtor's 100% ownership interest in the LLC was non-exempt, the best-interests-of-creditors test required a 100% + 6% dividend to the unsecured creditors. The Debtors tendered an order providing for such a dividend prior to the hearing and the Trustee recommended confirmation, subject to outstanding creditor objections.

Two large creditors, one secured and one unsecured, objected to the Plan's feasibility, stating that the proposed Plan payments could not fund a 100% Plan. The Debtor took the stand and stated that, if necessary, some of the tree farm's land could be sold to fund the Plan. The Court stated that such a provision was nowhere in the Plan and the sale of land too speculative to fund the Plan. He gave the Debtors an hour to meet with their attorney and propose an amended Plan.

The Debtors returned with an amendment to the Plan providing a specific date, amount of land and estimated selling price that could fully fund the Plan. Both creditors asserted that this sale was still too speculative and maintained their feasibility objections.

Ruling: The Court disagreed and confirmed the Plan over the objections. In so holding, the Court opined that there is uncertainty with any Plan proposed in Chapter 13, and when evaluating feasibility, the Court looks for events and/or conditions precedent that are concretely known and more likely than not to occur.

Effect on Trustee's Position: Although feasibility cannot be mathematically determined until after all claims are filed, a case must at least have a likelihood of feasibility/success at confirmation. The Trustee will continue to object at confirmation when the conditions-precedent to funding a Plan are speculative or unlikely to occur.