

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

MAR 31 1994

BARBARA A. EVERLY, CLERK

In re:

Chapter 7

LON MICHAEL CASLAVKA,

Bankruptcy No. 92-12304LC

Debtor

-----  
FARMERS SAVINGS BANK &  
TRUST - TRAER, IOWA,  
Plaintiff

Adversary No. 93-1049LC

vs.

LON MICHAEL CASLAVKA,

Defendant

**JUDGMENT**

This proceeding having come on for trial or hearing before the court, the Honorable Paul J. Kilburg, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

IT IS ORDERED AND ADJUDGED that Debtor's Stipulation of Judgment is approved.

IT IS FURTHER ORDERED AND ADJUDGED that Debtor's debt to Plaintiff is nondischargeable in the amount of \$50,000.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is granted in the amount of \$50,000 with interest at 4.22 percent pursuant to 28 U.S.C. § 1961(a).



BARBARA A. EVERLY  
Clerk of Bankruptcy Court

By: *Michael A. Golay*  
Deputy Clerk

[Seal of the U.S. Bankruptcy Court]

Date of Issuance:

MAR 31 1994

Vol. III  
page 209/19

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

MAR 31 1994

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

BARBARA A. EVERLY, CLERK

IN RE:	)	
	)	Chapter 7
LON MICHAEL CASLAVKA	)	
	)	
Debtor(s).	)	Bankruptcy No. 92-12304LC
-----		
FARMERS SAVINGS BANK &	)	
TRUST - TRAER, IOWA,	)	Adversary No. 93-1049LC
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LON MICHAEL CASLAVKA,	)	
	)	
Defendant.	)	

**RULING**

The above-captioned matter came on for trial March 23, 1994. Plaintiff Farmers Savings Bank & Trust was represented by Attorneys Eugene J. Kopecky and Larry J. Thorson. Debtor/Defendant Lon Michael Caslavka was not present at the hearing. He was represented by Attorney Thomas McCuskey.

This adversary proceeding raises claims of false representation and fraud under § 523(a)(2). At the time of hearing, Mr. McCuskey presented the Court with a Stipulation of Judgment authorized by Debtor who is presently incarcerated. It provides that Debtor stipulates to the entry of a judgment of nondischargeability with respect to Plaintiff's debt in the amount of \$50,000. Plaintiff accepts this stipulation. The Court considered the record made as well as the entire file and hereby approves the stipulation and concludes that judgment should be entered in the amount stipulated.

The Court, on its own motion, raised the issue of the appropriate rate of interest to be applied to the judgment. Plaintiff requested interest at 21 percent in its Pre-Trial Statement. The debt to Plaintiff is based on notes which provide for interest on default at that rate.

28 U.S.C. § 1961(a) states that "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court." The rate set out in § 1961(a) is a floating rate tied to the coupon yield of U.S. Treasury bills. Benson v. Richardson, 1990 WL 290145, slip op. at 5 (N.D. Iowa 1990). This statute applies to bankruptcy proceedings as the bankruptcy court is a part of the district court. In re Pester Refining

Co., 964 F.2d 842, 849 (8th Cir. 1992). The rate under 28 U.S.C. § 1961(a) is currently 4.22 percent.

Some bankruptcy courts have concluded that judgments entered in adversary proceedings based on § 523(a)(2) should earn interest at the contract rate. In re Steinbrunner, 149 B.R. 484, 489 (Bankr. N.D. Ohio 1993), granted both pre- and post-judgment interest at the contract rate. See also In re Touchard, 121 B.R. 397, 403 (Bankr. D. Utah 1990) (judgment entered with interest at the contract rate). In re Samford, 39 B.R. 428, 432 (Bankr. M.D. Tenn. 1984), ordered interest at the contract rate as part of damages under the benefit-of-the-bargain rule.

The 8th Circuit has approved interest at the contract rate as damages under the benefit-of-the-bargain rule when it is provided for in the contract. In re Hunter, 771 F.2d 1126, 1132 (8th Cir. 1985). In re Foster, 38 B.R. 639, 641 (Bankr. M.D. Tenn. 1984), stated that the statutory rate only applies if the contract is silent. In re Fasulo, 25 B.R. 583, 586 (Bankr. D. Conn. 1982), ruled that the contract rate applies unless there is no contract rate or the parties do not request it. Hunter cited Foster and Fasulo in remanding the case on the issues of interest and the applicable rate of interest. Hunter, 771 F.2d at 1132.

Fasulo was decided before the current version of § 1961(a) was in effect. Prior to 1982, § 1961(a) provided for interest on federal judgments "at the rate allowed by state law." If relevant state law provided for post-judgment interest at the contract rate, that would explain Fasulo's award of the contract rate of interest on the judgment. Foster states in footnote 2 that the applicability of the amended version of § 1961(a) was not in issue.

The "benefit-of-the-bargain" rule of applying the contract rate of interest has been rejected in In re Bonnifield, 154 B.R. 743, 745 (Bankr. N.D. Cal. 1993). The court reasoned that a § 523(a)(2) claim is not a breach of contract claim allowing the creditor to recover its profits or the benefit of its bargain. Id. The court entered judgment with interest at the legal rate. Another case stated that awarding interest at the contract rate until satisfaction of the debt serves the goals of making the creditor whole and deterring fraudulent conduct. In re Kellar, 125 B.R. 716, 721 (Bankr. N.D.N.Y. 1989). However, the court then ordered the contract interest rate only to the entry of judgment. Id. It further ordered that the legal rate of interest applied post-judgment until the debt is satisfied. Id.

Iowa Code § 535.3 allows that the rate of interest on judgments is ten percent "unless a different rate is fixed by

the contract on which the judgment or decree is rendered." No such exception is contained in § 1961(a). Pester specifically states that federal law, not state law, governs the award and the rate of post-judgment interest. Pester, 964 F.2d at 849.

The Eighth Circuit has considered the allowance of interest in diversity cases in Iowa. Happy Chef Systems v. John Hancock Mutual Life Ins. Co., 933 F.2d 1433, 1435 (8th Cir. 1991); Drovers Bank v. National Bank and Trust Co., 829 F.2d 20, 23 n.3 (8th Cir. 1987). While prejudgment interest is provided for in Iowa Code § 535.3 at either 10 percent or the contract rate, 28 U.S. C. § 1961(a) sets the interest rate on judgments in federal suits based on Treasury bill yield. Happy Chef, 933 F.2d at 1435; Drovers Bank, 829 F.2d at 23 n.3. This conclusion appears to apply equally well to adversary proceedings in bankruptcy court as it does to diversity actions in district court.

In conclusion, the federal rate in 28 U.S.C. § 1961(a) applies to this judgment. Foster and Fasulo were decided before § 1961(a) was amended and thus their validity is extremely suspect. Bankruptcy cases which more recently grant interest at the contract rate do not discuss the applicability of § 1961(a). The statute does not contain an exclusion for judgments rendered on contracts. The Eighth Circuit has held that the federal rate is applicable to diversity actions based on contracts. The Court concludes that the current rate of 4.22 percent under 28 U.S.C. § 1961(a) applies to the judgment in this action.

**WHEREFORE**, Debtor's Stipulation of Judgment is hereby approved.

**FURTHER**, Debtor's debt to Plaintiff is nondischargeable in the amount of \$50,000.

**FURTHER**, judgment is granted in the amount of \$50,000 with interest at 4.22 percent pursuant to 28 U.S.C. § 1961(a).

**SO ORDERED** this 31 day of March, 1994.

  
PAUL J. KILBURG, Judge  
U.S. Bankruptcy Court

Notice sent to: *is/Assignment*

Larry J. Thorson  
500 Higley Building  
PO Box 75062  
Cedar Rapids, IA 52407

Eugene J. Kopecky  
500 Higley Building  
P.O. Box 75062  
Cedar Rapids, IA 52407

Thomas G. McCuskey  
PO Box 10020  
Cedar Rapids, IA 52410

Lon Michael Caslavka  
RR  
Buckingham, IA 50612

US Trustee - CR  
675 The Center, Box 47  
425 Second Street SE  
Cedar Rapids, IA 52401

*3-31-84*  
*ny*

# United States Bankruptcy Court

NORTHERN District of IOWA

In re LON MICHAEL CASLAVKA

Bankruptcy Case No. 92-12304LC

Debtor LON MICHAEL CASLAVKA

Plaintiff FARMERS SAVINGS BANK & TRUST - TRAER

v.

Adversary Proceeding No. 93-1049LC

Defendant LON MICHAEL CASLAVKA

## WRIT OF EXECUTION TO THE UNITED STATES MARSHAL

Name and Address of Judgment Creditor
Farmers Savings Bank & Trust - Traer P.O. Box 435 Traer, Iowa 50675

Amount of Judgment:  
\$ 50,000.00

Clerk's Fee:  
\$

Other Costs:  
\$ 0

Interest From:  
\$ 0

Costs of this writ:  
\$ 0

vs.

Name and Address of Judgment Debtor
Lon Caslavka Address Unknown

TO THE UNITED STATES MARSHAL FOR THE Northern DISTRICT OF Iowa:  
You are directed to levy upon the property of the above named judgment debtor to satisfy a money judgment in accordance with the attached instructions.

**TO THE JUDGMENT DEBTOR:**

You are notified that federal and state exemptions may be available to you and that you have a right to seek a court order releasing as exempt any property specified in the marshal's schedule from the levy.

March 3, 1995  
Date

*Lochana K. Eddy*  
Clerk of the Bankruptcy Court

<b>UNITED STATES MARSHAL'S RETURN</b>	
I received this writ on _____, (date)	and executed the same on _____, (date)
United States Marshal	
By: _____ Deputy Marshal	

*Recorded - Vol. III pg 209*

U.S. Department of Justice  
United States Marshals Service

**PROCESS RECEIPT AND RETURN**  
See Instructions for "Service of Process by the U.S. Marshal"  
on the reverse of this form.

PLAINTIFF <i>Farmers Savings Bank &amp; Trust - Traer</i>	COURT CASE NUMBER <i>Bky Case No 92-12304LC</i>
DEFENDANT <i>Lon Michael Caslauka</i>	TYPE OF PROCESS <i>Execution</i>

**SERVE** **AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN  
*Joanne McBride - Deputy Sheriff, Tama County, Iowa -*

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)  
*Tama County Courthouse - Toledo, Iowa*

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

<i>Eugene J. Kopycky 500 Higley Bldg. Cedar Rapids, Iowa 52401</i>	Number of process to be served with this Form - 285	
	Number of parties to be served in this case	
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

*Please serve Tama County Sheriff to seize all funds that will be due and owing to Lon Caslauka as a result of a Sheriff's sale of foreclosure that will take place on Tuesday March 7, 1995 at 10:00 am. Please serve before that time and date.*

Signature of Attorney or other Originator requesting service on behalf of: *[Signature]*

<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER <i>319 3642463</i>	DATE <i>3/3/95</i>
-------------------------------------------------------------------------------------	----------------------------------------	-----------------------

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin No. <i>29</i>	District to Serve No. <i>29</i>	Signature of Authorized USMS Deputy or Clerk <i>DR1</i>	Date <i>3-3-95</i>
----------------------------------------------------------------------------------------------------------------------------------	---------------	----------------------------------	---------------------------------	------------------------------------------------------------	-----------------------

I hereby certify and return that  have personally served,  have legal evidence of service,  have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)  
*ANN Hendricks - Clerk of Court*

Address (complete only if different than shown above)  
*U.S. BANKRUPTCY COURT NORTHERN DISTRICT OF IOWA*

Date of Service: *3-6-95* Time: *9:30* *am*

Signature of U.S. Marshal or Deputy  
*Blain H. Michael*

Service Fee <i>40<sup>00</sup></i>	Total Mileage Charges (including endeavors) <i>25<sup>00</sup></i>	Forwarding Fee <i>-</i>	Total Charges <i>65<sup>00</sup></i>	Advance Deposits	Amount owed to U.S. Marshal or <i>65<sup>00</sup></i>	Amount of Refund
---------------------------------------	-----------------------------------------------------------------------	----------------------------	-----------------------------------------	------------------	----------------------------------------------------------	------------------

REMARKS:  
NOTE: USMS NOT TO SEIZE ACTUAL MONEY. USMS TO SERVE THIS EXECUTION UPON THE TAMA COUNTY SHERIFF AND THEY IN TURN WILL SEND MONEY TO THE ABOVE NAMED ATTORNEY.

SERVE WRIT MONDAY MARCH 6th OR BEFORE SINCE THE SHERIFF NEEDS TO HAVE IT PRIOR TO SALE ON TUES. MARCH 7th at 10:00 AM.

**ACKLEY, KOPECKY & KINGERY**  
ATTORNEYS AT LAW

Warren C. Ackley (1918-1989)  
Eugene J. Kopecky  
Gregory D. Kingery  
Karen A. Volz  
Christine L. Crilley  
Franklin R. York  
Larry J. Thorson  
Douglas C. Meyer

500 Higley Building  
P.O. Box 75062  
Cedar Rapids, Iowa 52407-5062  
Phone: 319/364-2463  
FAX: 319/364-7665

BRANCH OFFICES  
24 North Fourth Street  
P.O. Box 277  
Central City, Iowa 52214-0277  
Phone: 319/438-6117

Franklin at Iowa Street  
Center Point, Iowa 52213  
Phone: 319/849-2499

March 3, 1995

United States Marshall  
Northern District of Iowa  
United States Courthouse  
100 First St. SE  
Cedar Rapids, Iowa 52401

RECEIVED  
U.S. MARSHAL  
55 MAR -3 AM 10:41  
N/A  
CEDAR RAPIDS

Re: Execution

Dear Marshall:

Please issue the attached Writ of Execution to Joann McBride, Deputy Sheriff, Tama County Sheriff's Office, Toledo, Iowa 52342-0034. The telephone number for Joann McBride is 515-485-4111. We are requesting the levy for monies due and owing to Lon Caslavka arising from a sheriff's sale to be held on Tuesday, March 7, 1995, at 10:00 a.m. It is essential that this levy be served on the sheriff's office in Tama County on or before March 7, 1995, at 10:00 a.m.

If I may be of further assistance, please contact me. Thank you.

Sincerely,

ACKLEY, KOPECKY & KINGERY



Eugene J. Kopecky

EJK/ps  
Enc.

# United States Bankruptcy Court

NORTHERN District of IOWA

In re LON MICHAEL CASLAVKA

Bankruptcy Case No. 92-12304LC

Debtor LON MICHAEL CASLAVKA

Plaintiff FARMERS SAVINGS BANK & TRUST - TRAER

v.

Adversary Proceeding No. 93-1049LC

Defendant LON MICHAEL CASLAVKA

## WRIT OF EXECUTION TO THE UNITED STATES MARSHAL

Name and Address of Judgment Creditor
Farmers Savings Bank & Trust - Traer
P.O. Box 435
Traer, Iowa 50675

Amount of Judgment:  
\$ 50,000.00

Clerk's Fee:  
\$ \_\_\_\_\_

Other Costs:  
\$ 0

Interest From: \_\_\_\_\_  
\$ 0

Costs of this writ:  
\$ 0

vs.

Name and Address of Judgment Debtor
Lon Caslavka
Address Unknown

TO THE UNITED STATES MARSHAL FOR THE Northern DISTRICT OF Iowa:

You are directed to levy upon the property of the above named judgment debtor to satisfy a money judgment in accordance with the attached instructions.

### TO THE JUDGMENT DEBTOR:

You are notified that federal and state exemptions may be available to you and that you have a right to seek a court order releasing as exempt any property specified in the marshal's schedule from the levy.

March 3, 1995  
Date

*Deborah K. Early*  
Clerk of the Bankruptcy Court

### UNITED STATES MARSHAL'S RETURN

I received this writ on \_\_\_\_\_, and executed the same on \_\_\_\_\_  
(date) (date)

United States Marshal

By: \_\_\_\_\_  
Deputy Marshal

CARB-OUT.  
DE LUXE CHECK PRINTERS, INC.  
DOUBLE VOUCHER

CLERK UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

280

March 30, 19 95

X47-1  
739 O

PAY TO THE ORDER OF EUGENE KOPECKY, ATTY FOR FARMERS SVGS. BANK & TRUST, PLFF. \$ 798.52

SEVEN HUNDRED NINETY-EIGHT and 52/100-----DOLLARS

**Merchants National Bank**  
A BANK OF IOWA BANK  
Cedar Rapids, Iowa 52401

Per Court Order 3-31-94

*Letha Hamill*  
LETHA HAMILL  
Deputy Clerk

⑈000280⑈ Ⓜ ⑆073900014⑆ 121287072⑈

DELUXE CHECK PRINTERS

CLERK UNITED STATES  
BANKRUPTCY COURT

DETACH AND RETAIN THIS STATEMENT  
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.  
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM DVC-2 V-7

RE: Farmers Savings Bank & Trust, Traer  
vs.  
Lon Michael Caslavka  
ADV. NO. 93-1049LC

Funds seized pursuant to judgment entered by this Court on 3-31-94.  
Funds receipted for on 3-22-95.

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