

In the United States Bankruptcy Court

for the Northern District of Iowa

LON MICHAEL CASLAVKA

Bankruptcy No. 92-12304LC

Debtor(s).

Chapter 7

FARMERS SAVINGS BANK &
TRUST - TRAER IOWA

Adversary No. 93-1049LC

Plaintiff(s)

vs.

LON MICHAEL CASLAVKA

Defendant(s)

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 31st day of March, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge