

In the United States Bankruptcy Court

for the Northern District of Iowa

DAVID GOOD
Debtor.

Bankruptcy No. L89-01577W
Chapter 7

LARRY S. EIDE, TRUSTEE
Plaintiff

Adversary No. L90-0187W

vs.

TOM TROLARD
dba Commemorative Guns
Defendant.

ORDER RE: PLAINTIFF'S MOTION TO AMEND JUDGMENT

On October 28, 1994, the above-captioned matter came on for telephonic hearing pursuant to assignment. Plaintiff Larry S. Eide appeared with Attorney Randy Nielsen. Defendant Tom Trolard appeared pro se. The matter before the Court is Plaintiff's Motion to Amend Judgment. After the presentation of evidence and arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E).

STATEMENT OF THE CASE

The issue before the Court is whether Plaintiff is entitled to prejudgment interest. Plaintiff, Larry S. Eide, Trustee, filed this adversary proceeding on September 27, 1990, requesting turnover from Defendant of certain firearms which were property of Debtor David Good. The Court entered partial summary judgment against Defendant on September 21, 1994. Plaintiff received a judgment in the amount of \$10,000, which constitutes the amount Defendant received from the March 1994 sale of Debtor's guns. The ruling did not provide for prejudgment interest.

Plaintiff asserts that interest should be granted on the \$10,000 judgment from the date of the commencement of the adversary proceeding on September 27, 1990, at a rate of 10 per cent in accordance with Iowa Code sec. 535.3. Defendant argues that no prejudgment interest should be awarded as the guns were available for the Trustee to collect at any time. Further, the guns were not sold and reduced to cash until March 29, 1994.

CONCLUSIONS OF LAW

Federal law controls the grant of interest in bankruptcy proceedings. In re Missionary Baptist Found., 69 B.R. 536, 538 (Bankr. N.D. Tex. 1987); In re Caslavka, No. 92-12304LC, Adv. 93-1049LC, slip op. at 1 (Bankr. N.D. Iowa March 31, 1994) (stating that interest awards in bankruptcy proceedings are governed by 28 U.S.C. § 1961, not Iowa Code sec. 535.3). Postjudgment interest on federal judgments is governed by 28 U.S.C. § 1961(a) which states that "interest shall be allowed on any money judgment in a civil case recovered in a district court." This statute applies to bankruptcy proceedings as the Bankruptcy Court is a division of the District Court. In re Haugen, 998 F.2d 1442, 1448 (8th Cir. 1993), cert. denied, 114 S. Ct. 925 (1994). The postjudgment interest rate is provided for as follows:

Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction

price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment.

28 U.S.C. § 1961(a).

Neither the Bankruptcy Code nor any other federal statute specifically provides for prejudgment interest. Missionary Baptist, 69 B.R. at 537. However, such interest is not specifically prohibited either. Id. Despite the lack of statutory authority, it is in the equitable discretion of the Bankruptcy Court to grant prejudgment interest. Id. at 538; In re Suburban Motor Freight, Inc., 124 B.R. 984, 1005 (Bankr. S.D. Ohio 1990) (recognizing the Bankruptcy Court's authority to award prejudgment interest).

Prejudgment interest is typically awarded to compensate the prevailing party for the loss of the property or its value during the period the losing party wrongfully withheld such property. Stroh Container Co. v. Delphi Indus. Inc., 783 F.2d 743, 752 (8th Cir.), cert. denied, 476 U.S. 1141 (1986). Courts award prejudgment interest as a compensatory measure, not as a punitive device. In re Osage Crude Oil Purchasing, Inc., 103 B.R. 256, 264 (Bankr. N.D. Okla. 1989). It is appropriate to award prejudgment interest in turnover actions. In re Bridge, 106 B.R. 474, 477 (Bankr. E.D. Mich. 1989). Prejudgment interest is deemed necessary in turnover actions to carry out the statutory mandate of § 542 that the defendant deliver to the trustee "the value of the property." 11 U.S.C. § 542(a). The value of the property includes interest that has been denied the bankruptcy estate through the defendant's wrongful retention of the property. Bridge, 106 B.R. at 477.

No federal statute addresses the appropriate rate for prejudgment interest. Most courts hold that the Bankruptcy Court has discretion to determine the prejudgment interest rate. Bridge, 106 B.R. at 477 (stating that the average interest rate for the period the defendant wrongfully withheld the property, 8%, should be applied as the prejudgment interest rate); In re Gillett, 55 B.R. 675, 680 (Bankr. S.D. Fla. 1985) (using the state interest rate for prejudgment interest as 28 U.S.C. § 1961 did not provide a prejudgment interest rate). In the exercise of this discretion, many courts apply the § 1961 postjudgment rate to prejudgment interest. In re Southern Indus. Banking Corp., 87 B.R. 518, 523 (Bankr. E.D. Tenn. 1988). "In the absence of a specific statutory directive, it seems only logical that the Bankruptcy Court should apply the interest provided for in 28 U.S.C. § 1961 both pre- and post-judgment." Missionary Baptist, 69 B.R. at 539; In re H.P. King Co., 64 B.R. 487, 491-92 (Bankr. E.D.N.C. 1986) (noting that applying § 1961 to both prejudgment and postjudgment interest awards fosters uniformity of treatment in judgments).

The date on which prejudgment interest is to begin accruing is also left to the discretion of the Court. Bridge, 106 B.R. at 477. Prejudgment interest is typically awarded from the date turnover of the property was first demanded by the Trustee or from the date of the commencement of the proceeding seeking turnover of the property. Smith v. Mark Twain Nat'l Bank, 805 F.2d 278, 291 (8th Cir. 1986); In re Bostic, 171 B.R. 270, 274 (Bankr. N.D. Ohio 1994).

Based on the foregoing, the Court concludes that Plaintiff is entitled to prejudgment interest. Prejudgment interest shall accrue from the date Plaintiff filed the complaint in this adversary proceeding, September 27, 1990. Both prejudgment interest and postjudgment interest shall accrue at the Treasury Bill rate provided for in 28 U.S.C. § 1961(a) in effect on the date of the judgment, September 21, 1994.

WHEREFORE, Plaintiff is entitled to prejudgment interest from September 27, 1990 at the Treasury Bill rate provided for in 28 U.S.C. § 1961(a) in effect on September 21, 1994.

FURTHER, postjudgment interest is allowed at the same rate from the date of the judgment until said judgment is paid.

SO ORDERED this 28th day of November, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge