

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

IN RE:

HOSEY DUKES *
RUBY DUKES *

Debtors

HOSEY DUKES *
RUBY DUKES *

Appellants,

vs.

CHEMICAL BANK, N.A.,
TRUSTEE FOR GOLDOME CREDIT
CORP. HOME EQUITY TRUST,

Appellee.

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Chapter 13 Case
No. 92-10303

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CIVIL ACTION
CV192-195

Filed
U.S. DIST. COURT
AUGUSTA DIV.
Feb. 9 4 39 PM '94

IN RE:

CHARLES McGRUDER
EMMA McGRUDER

Appellants,

vs.

CHARLES McGRUDER and
EMMA McGRUDER

Appellants,

vs.

RESOLUTION TRUST CORP. AS
CONSERVATOR FOR YORKWOOD
FEDERAL SAVINGS AND LOAN
ASSOCIATION *

Appellee.

Chapter 13 Case
No. 92-10029

CIVIL ACTION
CV192-196

ORDER ON APPEAL

The above debtors appeal an Order dated September 9, 1992, entered in their respective Chapter 13 cases by the Honorable John S. Dalis, United States Bankruptcy Judge for the Southern District of Georgia. Judge Dalis' Order consolidates these cases for the limited purpose of addressing the legal issue raised by the debtors' objections to the appellee-creditors' claims. In each Chapter 13 case, the subject claim objection is based on the debtors' contention that the underlying loan is usurious under Georgia's criminal usury statute, O.C.G.A. § 7-4-18, which proscribes charging interest "greater than 5 percent per month."¹

The debtors maintain that interest on their loans attributable to the first payment period, which they contend includes nonrefundable and nonrebateable front-end fees, exceeds the five percent ceiling in § 7-4-18. Appellees maintain that the debtors' method of calculating interest is

improper. Under § 7-4-18, Appellees argue, all interest paid over the life of the loan, including nonrefundable and nonrebateable front-end fees, must be amortized over the life of the loan. Using this method, Appellees' loans to these debtors comport with § 7-4-18. The proper method of calculating interest under § 7-4-18 is critical: the penalty under Georgia law for violating § 7-4-18 is forfeiture of all interest charged on the loan. Norris v. Sigler Daisy Corp., 260 Ga. 271, 273 (1990).

¹O.C.G.A. § 7-4-18(a) states in relevant part:

Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor. . . .

Relying on Johnson v. Fleet Finance, Inc., 785 F.Supp. 1003 (S.D. Ga. 1992) (Edenfield, C.J.), the bankruptcy judge overruled the debtors' objections. The judges of this District have disagreed on the proper method of computing interest under 7-4-18. Compare Moore v. Comfed Sav. Bank, 777 F.Supp. 960, 961 (S.D. Ga. 1991) (Bowen, J.) (lender violates 7-4-18 by charging interest during the first payment period of the loan in excess of five percent); In re Evans, 130 B.R. 357, 360 (Bankr. S.D. Ga. 1991) (Dalis, J.) (same); In re Dent, 130 B.R. 623, 626 (Bankr. S.D. Ga. 1991) (Dalis, J.) (same), with Johnson, 785 F.Supp. 1003 (interest is computed by amortizing all charges over the potential life of the loan); see also In re Wright, 144 B.R. 943, 948-49 (Bankr. S.D. Ga. 1992) (Dalis, J.) (following Johnson, the most recent expression of this District Court). The question presented by this appeal, however, was answered in favor of the Appellees by the Georgia Supreme Court's recent decision

in Fleet Finance Inc. of Georgia v. Jones, 263 Ga. 228 (1993). The debtors do not argue that the interest charged on their loans exceeds an average of five percent per month. Because the Bankruptcy Court's September 9, 1992, Order is consistent with Jones, which binds this Court, Erie R. Co. v. Tompkins, 304 U.S. 64, 78 (1938), the Order is **AFFIRMED**.

ORDER ENTERED at Augusta, Georgia, this 9th day of February, 1994.

DUDLEY H. BOWEN, JR.
UNITED STATES DISTRICT JUDGE