

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>94-11959</u>
JAY W. MOSS	)	
	)	
Debtor	)	
_____	)	
JAY W. MOSS	)	FILED
	)	at 2 O'Clock & 12 min. P.M.
vs.	)	Date: 9-28-95
	)	
FORD CONSUMER FINANCE	)	
COMPANY, INC.	)	

**ORDER**

Debtor objects to the amount claimed due of \$29,333.99 under a proof of claim filed by Ford Consumer Finance Company, Inc. ("Ford") on a note secured by Debtor's mobile home. The face of the note attached to the proof of claim shows interest owing over the term of the loan as an addition to the amount financed, i.e. as an add-on, with the sum of these figures representing the total payout of the loan. The note provided a total payout of \$ 70,216.20, consisting of an amount financed of \$ 29,665.00 and total interest of \$ 40,551.20. From the payout total, the monthly payment was

calculated by dividing the payout total by the term of the loan (180 months) to arrive at a monthly payment of \$390.09.

At hearing I determined that Ford had properly accounted for all payments received from the Debtor and otherwise satisfied all contractual obligations with respect to other contractual additions to the debt (e.g. insurance). Remaining for resolution is whether Ford's use of the actuarial method of interest accrual, rather than the pro-rata method, in applying payments to interest and principal satisfied state law requirements under circumstances of acceleration of the debt in the filing of a proof of claim in a Chapter 13 bankruptcy case.

The figures presented in Ford's brief detailing the amount of the claim under the alternate methods were unopposed by Debtor, and demonstrate the following:

Original term of loan:	180 months
Period elapsed prior to filing bankruptcy:	54 months
Months remaining (unearned interest):	126 months
Gross balance of loan as of date of filing- including interest, insurance and late fees:	\$ 52,095.08
<u>Amount of claim under actuarial method:</u>	
Monthly payment	\$ 390.09

Actuarial factor <sup>1</sup>	X	<u>59.4970071</u>
Finance charge rebate		\$ 23,209.19

Gross balance of loan		\$ 52,095.08
Finance charge rebate	-	<u>23,209.19</u>
Net Payoff		\$ 28,885.89 <sup>2</sup>

Amount of claim under pro-rata method:

Total finance charge		\$ 40,551.20
Total months	÷	<u>180</u>
Monthly interest		\$ 225.28
Months unearned	X	<u>126</u>
Finance charge rebate		\$ 28,385.84

Gross balance of loan		\$ 52,095.08
Finance charge rebate	-	<u>28,385.84</u>
Net Payoff		\$ 23,709.24

A proof of claim properly filed is deemed allowed unless a party in interest objects. 11 U.S.C. §502(a). A party objecting to a claim has the burden to go forward with evidence sufficient to defeat the prima facie effect of the claim. Once the objecting party overcomes the prima facie effect of the filed claim, the ultimate burden of proof in substantiating the claim rests with the claimant. In re Fidelity Holding Co., Ltd., 837 F.2d 696, 698 (5th Cir. 1988); In re Rasbury, 130 B.R. 990, 1001 (Bankr. N.D.Ala. 1991); In re Whet, Inc., 33 B.R. 424 (Bankr. D.Mass. 1983). Debtor

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<sup>1</sup>Represented by Ford as provided by Georgia State Banking Board.

<sup>2</sup>Ford admits it overstated the balance due in its proof of claim even under the actuarial method.

has produced sufficient evidence of the existence of the financing agreement and the method used by Ford in computing the amount of the claim to meet the initial burden of going forward with evidence to dispute the claim. The ultimate burden of proof to substantiate the claim by a preponderance of the evidence remains with Ford. Ford has met this burden of proof as to the appropriateness of the actuarial method in calculating the interest rebate on a contract containing an interest "add-on" when determining the amount of the allowed claim in bankruptcy.

United States District Court for the Southern District of Georgia Bankruptcy Local Rule 408 states in pertinent part:

INTEREST ON CLAIMS IN CHAPTER 13 CASES

Without in any way limiting or amending any provision of the Code or Rules that govern the filing of proofs of claim, all claims filed in this Court shall be filed for the **net principal balance only** as of the date of the debtor's filing of his or her case. . . .

An examination of state law is necessary to determine the amount of the net principal balance owed for a claim in bankruptcy. Under 11 U.S.C. §502(b)(1), a debtor may utilize any defense to a claim available under applicable law, including state law, to the extent such a defense would be available absent the bankruptcy proceeding. See generally 3 Collier on Bankruptcy ¶502.02[1] (15th ed. 1994); see also United States v. Sanford (In re Sanford), 979 F.2d 1511,

1513 (11th Cir. 1992) (a claim against the bankruptcy estate will not be allowed in a bankruptcy proceeding if the same claim would not be enforceable against the debtor outside of bankruptcy).

Initially, an analysis is required of Official Code of Georgia Annotated (O.C.G.A.) §7-4-3,<sup>3</sup> Georgia's statute regulating

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<sup>3</sup>O.C.G.A. §7-4-3 states:

(a) Notwithstanding the provisions of subsections (a) through (c) of Code Section 10-1-33, any retail installment contract pertaining to:

(1) Any manufactured home with a cash sale price of more than \$3,000.00; or

(2) Any motor vehicle where the amount financed is \$5,000.00 or more

may provide for such finance charge as the parties may agree in writing.

(b)(1) Any retail installment contract pertaining to a manufactured home or any consumer loan secured by such a home shall contain the contract provisions required by subsection (c) of Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 (12 U.S.C. 1735f-7, notes).

(2) Any person violating this subsection shall be subject to the liability specified in Code Section 7-4-5; but the contract or loan shall still be entitled to the benefits of the other provisions of Code Section 7-4-2.

(c) As used in this Code section, the term:

(1) "Finance charge" means the amount agreed upon between the buyer and the seller to be

retail installment contracts for mobile homes. This statute removes installment contracts on mobile homes from the general statutory limitations on interest found elsewhere in the Georgia Code. O.C.G.A. §7-4-3(a). A condition for such special treatment for contracts relating to mobile homes is that the installment contracts must contain consumer protection provisions required by Section

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added to the cash sale price and, if a separate charge is made therefor, the amount, if any, included for insurance and other benefits and official fees, in determining the time sale price.

(2) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under The National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(3) "Retail installment contract" or "contract" means an instrument or instruments creating a purchase money security interest or any instrument evidencing an obligation secured by a purchase money security interest.

501(c) of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA").<sup>4</sup> O.C.G.A. §7-4-3(b)(1). By enacting O.C.G.A. §7-4-3 "the legislature obviously intended there to be a trade-off: in exchange for losing usury law protection, prospective borrowers would receive other consumer protections." Southern Guaranty Corp. v. Doyle, 353 S.E.2d 510, 513 (Ga. 1987) (quoting Doyle v. Southern Guaranty Corp., 795 F.2d 907, 915 (11th Cir. 1986)).

DIDMCA was enacted on March 31, 1980 by Pub. L. No. 96-221 and codified as 12 U.S.C.S. §1735f-7a (1993) (originally cited as 12 U.S.C.S. §1735f-7 note). Section 1735f-7a(c) (originally numbered §501(c) in Pub. L. No. 96-221) authorizes the issuance of regulations containing consumer protection provisions which must be included in installment contracts for the sale of residential manufactured homes. These regulations, found at 12 C.F.R. §590.4 (1995), set the consumer protection requirements under Georgia law for retail installment contracts for the sale of mobile homes. See O.C.G.A. §7-4-3(b)(1). The applicable provision in the regulations governing precalculated interest rebates is specific. In the event of prepayment, a precomputed finance charge must be refunded in an

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<sup>4</sup>DIDMCA, containing a federal standard for usury, is not otherwise controlling as Georgia utilized an "opt-out" provision effective March 31, 1983. O.C.G.A. §7-4-20(1) (under authorization of 12 U.S.C.S. §1735f-7a(b)(2)).

amount not less than that amount computed in accordance with the actuarial method. 12 C.F.R. §590.4(c) (1995). Use of the actuarial method is contemplated by the regulation, but only in the event of a prepayment. What is a prepayment under the terms of the regulation? The definition in the regulation provides:

- (1) Prepayment. A "prepayment" occurs upon--
  - (i) *Refinancing* or *consolidation* of the indebtedness;
  - (ii) *Actual prepayment* of the indebtedness by the debtor, whether voluntarily or following acceleration of the payment obligation by the creditor; or
  - (iii) *The entry of a judgement* for the indebtedness in favor of the creditor.

12 C.F.R. §590.4(a) (1995) (emphasis added). Thus, there are four conditions considered a prepayment under the regulation where the actuarial method is approved, a refinancing, consolidation, actual prepayment, or an entry of judgment. While this definition encompasses all possible prepayments under state law, it does not encompass an acceleration of the debt in the context of a Chapter 13 filing.

The "bankruptcy [filing] operates as the acceleration of the principal amount of all claims against the debtor . . . H.R. Rep. No. 595, 95th Cong. 1st Sess. 352-54 reprinted in 1978 U.S. Code Cong. & Ad. News. 5787, 5848-49." In re Bonner, No. 80-01342-MAC, 1984 WL 37542 at \*3 (Bankr. M.D.Ga. Hershner J., January 3, 1984). Although the bankruptcy filing is an acceleration of the

debt, it is not a prepayment, as that term is incorporated into Georgia law through the regulation, for the purpose of claim calculation.

The rebate of unearned interest is to be calculated 'without reference to any ipso facto or bankruptcy clause in the agreement creating the claim.' H.R. Rep. No. 595, 95th Cong., 1st Sess. 352-54, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6308; S.Rep. No. 989, 95th cong. 2nd Sess. 62-65, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5848. By reference to the ipso facto clause, Congress recognized that it did not intend to penalize the debtor for filing a bankruptcy petition. Id.

In order to determine the appropriate method of calculating the interest rebate upon the bankruptcy filing, a determination must be made as to the state law method of calculating the unearned interest rebate to ensure that the rebate method upon filing bankruptcy does not penalize the debtor for seeking bankruptcy protection.

Federal bankruptcy law acts upon defined legal interests and State law creates those interests. See Butner v. United States, 440 U.S. 48, 99 S.Ct. 914, 59 L.E.2d 136 (1979); In re Livingston, 804 F.2d 1219, 1221 (11th Cir. 1986); Wallace v. Meehan (In re Meehan), 162 B.R. 367, 373 (Bankr. S.D.Ga. 1993). The bankruptcy court determining the legal interests between the debtor and a creditor as set forth in the creditor's proof of claim must apply applicable state law. In the context of a mobile home, state law is

clear. Any early payout of or judgment on a retail installment sale contract is a prepayment under the regulation and state law provides for the actuarial method of unearned interest rebate. Applying the actuarial method to determine the net balance owed for a proof of claim filed in a bankruptcy case conforms with the state law scheme of unearned interest rebate and does not penalize the debtor for filing for bankruptcy protection.

Ford having conceded an overstatement of the amount of its allowable claim under the actuarial method of unearned interest

rebate, it is therefore ORDERED that the objection to claim is SUSTAINED and the claim of Ford Consumer Finance Company, Inc. is reduced to \$28,385.84.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 28th day of September, 1995.