

estate. Its claim is also guaranteed by the Debtor's father who is therefore a co-debtor protected by the co-debtor stay of 11 U.S.C. § 1301. The Bank seeks a determination of the appropriate interest rate which it should be paid under a plan wherein the Debtor proposes to pay the co-debtor obligation in full to protect the co-debtor from direct action by the Bank.

Co-Signed Debts: Post-Petition Interest Rate

Pursuant to the rationale of my decisions in In re Campbell, 242 B.R. 547 (Bankr. S.D.Ga. 1999), and In re Butler, 242 B.R. 553 (Bankr. S.D. Ga. 1999),¹ I hold that the Bank is entitled to receive the contract rate of interest on a co-debtor obligation which the Debtor's plan proposes to pay "in full." As I concluded in Campbell and Butler, a Debtor's plan may provide for the payment of post-petition interest in order to protect the co-debtor and to avoid the lifting of the co-debtor stay. To limit the payment of interest to any amount less than the contract rate would be logically inconsistent with that holding. If the interest rate were reduced from the contract rate then the plan filed by the Debtor would not pay the claim "in full" and the creditor would be entitled to co-debtor relief. Accordingly, in order to reaffirm and uphold the debtor and co-debtor's rights under the

¹ Affirmed by implication, *see* Southeastern Bank v. Brown, Trustee, CV400-285, S.D. Ga. June 17, 2001(Moore, J.).

Campbell and Butler cases, I direct the Trustee to pay interest at the contract rate on a co-debtor claim where the debtor's plan proposes payment "in full."

Over-secured, Non-Cosigned Debts: Post-Petition Interest Accrual

The Plaintiff also seeks a declaratory judgment that it is entitled to receipt of interest on its over-secured claim from the date of the filing of the case, not merely after the date of confirmation even if the claim is not co-signed. The Trustee objected contending that the requirement of 11 U.S.C. § 1325(a)(5) is only that the plan provide for payment of the present day value of the secured claim, from the effective date of the plan, which has been held to be the confirmation date.

I hold that the Trustee is correct in proposing payment of interest on over-secured, but not cosigned, debts only after the date of confirmation. However, a creditor holding an over-secured claim may, in fact, be entitled to collect post-petition, pre-confirmation interest under the provisions of 11 U.S.C. § 506.² That right is not abridged by Section 1325. See Rake v. Wade, 508 U.S. 464, 469, 113 S.Ct. 2187, 2190, 124 L.Ed.

²11 U.S.C. §506(b) states:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

424 (1993). In Rake, the Supreme Court stated that Section 1325(a)(5)(B) requires all holders of allowed secured claims to be paid the present value of such claims, which implies the payment of interest. Id. The Court further stated that “under 506(b) the holder of an oversecured claim is allowed interest on his claim to the extent of the value of the collateral” and “such interest accrues as part of the allowed claim from the petition date until the confirmation or effective date of the plan.” Id. at 471. The Court used these code provisions, along with Section 1322(b), to find that oversecured mortgagees were entitled to pre-confirmation and post-confirmation interest on arrearages paid off under the debtor’s plans, as the claims were split into two distinct and separate claims, the underlying debt and the arrearages, and as such the arrearages were “provided for” under the plan entitling the mortgagees to both post-confirmation and pre-confirmation interest. Id. at 473.

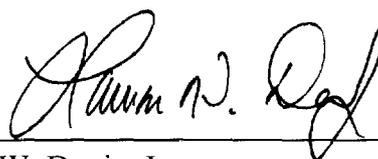
What Section 1325 does not require, however, is for the Trustee to make this determination in a vacuum. In other words, if a debtor’s plan proposes to pay post-petition, pre-confirmation interest pursuant to the provisions of Section 506 and that plan is not objected to, an allowed claim for that element of interest would be allowed at confirmation and paid separately. Post-confirmation interest would, as in all cases, be paid under the requirements of Section 1325. If the debtor’s plan is silent on the question of post-filing, pre-confirmation interest then a creditor has the right to file a motion seeking

the allowance of such a claim. If the claim is, in fact, over-secured the creditor is entitled under Section 506 to allowance of the post-petition, pre-confirmation interest claim.

The point is that the Trustee cannot and should not be required to make the determination of whether a claim is actually over-secured unilaterally. Instead, it is a matter for the debtor to propose, or for the creditor to seek by way of filing of an appropriate motion, on which the Court may rule after notice to all creditors.

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that the Trustee shall pay post-petition interest on this co-debtor claim at the contract interest rate. The alternative request for payment of post-petition, pre-confirmation interest on this claim is denied, absent a motion filed under Section 506.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 31st day of July, 2001.