IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

COUNTER COPY - DO NOT REMOVE - [redacted]

89

In re	)	Bankruptcy Case No. 82C-01201
J. EDWARD STEVENS,	)	
Debtor.	)	Civil Proceeding No. 82PC-0828
GILBERT K. KOJIMA and MARTHA KOJIMA,	)	
Plaintiffs.	)	
-vs-	)	MEMORANDUM DECISION ON PRE-JUDGMENT AND POST-JUDGMENT INTEREST AND ON PUNITIVE DAMAGES IN DISCHARGEABILITY ACTIONS
J. EDWARD STEVENS,	)	
Defendant.	)	

INTRODUCTION

This is an action to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523(a). By failing to respond to plaintiffs' requests for admission, debtor has admitted that he told plaintiffs he owned fee title to certain real estate, that he told plaintiffs the real estate was subject only to a single lien, that he is the trustee of a trust and purchase agreement with plaintiffs dated April 3, 1979, that plaintiffs contributed $20,000 to the trust agreement, that under the trust agreement plaintiffs have been entitled to $350 per month from April 3, 1979, that defendant was in a fiduciary capacity with regard to plaintiffs, that he fraudulently induced the investment of

plaintiffs in the trust agreement and purchase option, that by fraud and other inappropriate action he defaulted in his duty as a fiduciary with regard to the trust agreement and purchase option, that plaintiffs' investment was converted to his own use, not in compliance with debtor's representations to plaintiffs, and that debtor never notified plaintiffs that he had lost his interest in the real estate. After receiving a properly noticed motion for summary judgment based on these admissions, the Court held a hearing on December 2, 1982 and determined that plaintiffs were entitled to a summary judgment. The Court took under advisement the question of plaintiffs' entitlement to interest and punitive damages.

On April 30, 1982, before debtor filed his bankruptcy case, plaintiffs obtained a judgment by default on their claim against debtor in the Superior Court of California, Santa Clara County. That judgment provides that plaintiffs shall recover from debtor "$26,717.00 principal which includes the original moneys paid . . . and interest on the Plaintiffs Crocker Bank Loan to March 26, 1982, $12,470 Interest and $20,000 punitive damages together with costs of $83.25."

INTEREST

Plaintiffs claim they are entitled to pre-judgment interest at the rate of 10 percent per annum and post-judgment interest at

the rate of 12 percent per annum because of the provisions of 28 U.S.C. § 1961, which formerly provided that interest on money judgments in civil cases in federal district courts would be calculated from the date of the entry of the judgment at the rate allowed by state law. As a matter of statutory construction of former 28 U.S.C. § 1961, plaintiffs' argument is partly right and partly wrong. It is partly right in that post-judgment interest would have been calculated as provided by state law but it is partly wrong because former 28 U.S.C. § 1961 did not provide for pre-judgment interest. Interest was to be calculated "from the date of the entry of the judgment." Moreover, because plaintiffs previously obtained a default judgment on their claim against debtor in a California state court, it appears that California not Utah law governs the state law aspects of this action.

In any event, a new federal statute has amended 28 U.S.C. § 1961, effective October 1, 1982. On April 1, 1982, the Federal Courts Improvements Act of 1982 was enacted. That Act is found beginning at 96 Statutes at Large page 25. Section 302(a) of that Act strikes from 28 U.S.C. § 1961 the provision that interest is to be calculated at the rate allowed by state law. Instead, interest is to 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." Thus, if the judgment of this Court is governed by 28 U.S.C. § 1961, post-judgment interest is to be awarded at the prevailing rate described in the statute.

Section 1961 applies to "any money judgment in a civil case recovered in a district court." Whether judgments rendered by United States Bankruptcy Judges serving in the court of bankruptcy continued between October 1, 1979 and April 1, 1984, see Pub. L. No. 95-598, Sec. 404, 92 Stat. 2683 (Bankruptcy Reform Act of 1978), and in the exercise of jurisdiction granted by Section 405(b) of Pub. L. No. 95-598, 92 Stat. 2685, may be judgments covered by Section 1961 is not at the present time an issue in the District of Utah. Under the decision of the United States District Court for the District of Utah in In re Color Craft Press, Ltd. and In re Richardson, 27 B.R. 962 (D. Utah 1983), judgments entered by the bankruptcy judges in this district are entered "for and on behalf of the United States District Courts," id. at 966. Thus, this civil proceeding, like others which have been referred to the bankruptcy judges in this district, is a "district court civil proceeding." Id. at 965. Therefore, in the District of Utah, 28 U.S.C. § 1961 applies to money judgments rendered by the bankruptcy judges pursuant to the District Court's Interim Rule. Plaintiffs are entitled to

post-judgment interest at the prevailing rate fixed by amended Section 1961.[1]

Pre-judgment interest, however, is not governed by Section 1961. Pre-judgment interest was proposed to be covered in the Senate amendments to Section 1961 but that proposal failed. Compare S. 1700, 97th Cong., 1st Sess. § 302 (Sept. 9, 1981) and S Rep. No. 97-275, 97th Cong. 2d Sess. 11-12 (1981) reprinted in U.S. CODE CONGRESSIONAL & ADMINISTRATIVE NEWS, April 1982, at 21-22 with 96 Stat. 55 § 302(a).

Pre-judgment interest in dischargeability actions is awardable because "interest on a non-dischargeable debt takes on the character of the debt itself and is therefore not discharged." Nichols v. Hensler, 528 F. 2d 304, 309 (7th Cir. 1976). If there is a contract interest rate, that rate applies. In re Wilson, 12 B.R. 363, 370 (Bkrtcy. M.D. Tenn. 1981). Cited favorably in In re Spector, 22 B.R. 226, 234 (Bkrtcy. S.D. N.Y.

1

Even if this court were still operating with its own jurisdiction under 28 U.S.C. § 1471, an argument could be made that judgments in bankruptcy courts should bear interest at the rate fixed by Section 1961. Although neither the statute nor its legislative history mentions bankruptcy courts, it is clear that Congress intended to set a post-judgment interest rate for "the federal courts." S. Rep. No. 97-275, supra at 21. The policy reasons for a uniform interest rate given in the legislative history appear to apply equally to all federal courts.

This conclusion, however, does not mean that since Color Craft, supra, holds that proceedings like this one are district court civil proceedings, the federal rules of civil procedure now apply instead of the bankruptcy rules of procedure. Interest rates and rules of procedure are separate provisions of law with separate policies.

1982). If there is no contract rate, the legal rate applies. Wilson, supra. Here, plaintiffs request the legal rate. That rate must be supplied by California law because California was the situs of the transaction between plaintiffs and debtor.

PUNITIVE DAMAGES

It may be argued that in actions under Section 523(a)(2), where a creditor seeks a determination of the dischargeability of a debt of obtaining money by fraud, an award of punitive damages is not permitted because damages granted on nondischargeability complaints for obtaining money by fraud are, as a matter of statutory construction, limited to money obtained. See In re The Record Company, Inc, 7 B.C.D. 483 (Bkrtcy. S.D. Ind. 1981). On the other hand, it may be argued that since the term "debt" used in Section 523(a) is defined by Section 101(11) to mean "liability on a claim" and since the term "claim" is defined by Section 101(4) to mean any right to payment, whether or not it is reduced to judgment, unliquidated, unmatured, or disputed, that a creditor with a pre-petition right to payment of punitive damages may obtain a determination that the debt reflecting that right to payment is not dischargeable if incurred by fraud. It may also be argued that a debtor owing a nondischargeable debt should not be better off in bankruptcy than outside bankruptcy. See In re Wilson, 12 B.R. 363 (Bkrtcy. M.D. Tenn. 1981).

In In re Cowart, Civ. No. C81-0929J (slip op. Sept. 20, 1982), however, the United States District Court for this district ruled that it found "no legal basis authorizing the Bankruptcy Court to make awards of punitive damages in proceedings under 11 U.S.C. § 523(a)." slip op. at 5. Although Cowart did not discuss conflicting authority on the question of the award of punitive damages in suits under Section 523, see In re Carey, 7 B.C.D. 6 (Bkrtcy. S.D. Ohio 1980) (permitting an award of punitive damages), the Cowart rule binds this Court.

Plaintiffs argue that Cowart does not control here because in Cowart "punitive damages were only added to the creditor's claim as a part of the Section 523 adversary proceeding. That portion of the creditor's claim, therefore, arose only as part of the Section 523 proceedings. In the matter now before the Court, the claim of creditors . . . already included a principal judgment in the amount of $26,717 together with $12,470 of interest and $20,000 of punitive damages." Therefore, plaintiffs argue, they are not attempting to expand their claim but instead are trying to establish that the full amount of their previously established claim is not subject to discharge.

To the extent that plaintiffs may be relying on the res judicata impact of their state court default judgment, that reliance is misplaced. Brown v. Felsen, 442 U.S. 127 (1979), held that judgments acquired prior to the filing of a bankruptcy are not res judicata in the bankruptcy court on the question of

dischargeability. While collateral estoppel is still a viable doctrine in nondischargeability actions, see Brown v. Felsen, supra, note 10, collateral estoppel effect is not given to default judgments. Spilman v. Harley, 656 F. 2d 224, 228 (6th Cir. 1981). To the extent that plaintiffs seek to avoid the Cowart rule on the basis of the argument that their pre-petition claim included a right to payment of punitive damages, that argument contradicts the plain language of Cowart.

For these reasons, plaintiffs are not entitled to punitive damages.

IT IS THEREFORE ORDERED that plaintiffs are entitled to a judgment against defendant for the principal amount of $20,000, for pre-judgment interest from April 3, 1979 at the legal rate, as provided by California law, and for post-judgment interest at the rate of 9.59 percent. Plaintiffs are not entitled to an award of punitive damages. Plaintiffs shall submit a conforming judgment.

DATED this 30th day of June, 1983.

BY THE COURT:

Glen E. Clark

GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE