UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP Nos. MW 00-070
MW 00-071

IN RE: SANDRA RODHOUSE KRAVITZ,
Debtor.

CADLE COMPANY OF OHIO, INC.,
Appellant,

v.

SANDRA RODHOUSE KRAVITZ and
STEPHAN M. RODOLAKIS, CHAPTER 7 TRUSTEE,
Appellees.

Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. James F. Queenan, Jr., U.S. Bankruptcy Judge)

Before
GOODMAN, DE JESÚS, VAUGHN, U.S. Bankruptcy Appellate Panel Judges

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Steven A. Kressler and Lisa M. Read of Kressler & Kressler, P.C., on brief for the Appellant.

Herbert Weinberg, on brief for the Appellees.

February 16, 2001

Per Curiam. This appeal is from two separate orders of the United States Bankruptcy Court for the District of Massachusetts entered on May 15, 2000. One granting the debtor's motion for summary judgment, the other denying the corresponding motion for summary judgment filed by the debtor's largest unsecured creditor. The parties dispute which rate of interest should apply post-judgment; federal, state or the contract rate of interest. The lower court determined that the federal judgment rate of interest applies. We affirm.

JURISDICTION

Pursuant to 28 USC §158(a) and (b), a bankruptcy appellate panel may hear appeals from final judgments, orders and decrees, and in appropriate circumstances, the panel has discretion to hear appeals from interlocutory orders. See also 1st Cir. BAP R. 8003-1. A final decision or order "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945); see also Fleet Data Processing Corp. v. Branch (In re Bank of New England), 218 B.R. 643, 646-647 (BAP 1st Cir. 1998) (discussing final orders in the context of bankruptcy matters.)

In the instant case, the bankruptcy court's May 15, 2000 orders granting the Debtor's motion for summary judgment and denying the creditor's motion for summary judgment are final appealable orders. Ordinarily, denial of a motion for summary judgment is not a final order. However, an appellate court does have jurisdiction to review an order denying a motion for summary judgment where that order is coupled with an order granting the opponent's motion for summary judgment. See In re CGE Shattuck, LLC, 255 B.R. 334 (B.A.P. 1st Cir. 2000)(quoting Parella v. Retirement Board of the Rhode Island Employees' Retirement System, 173 F.3d 46, 64 (1st Cir. 1999), and Miller & Kane Federal Practice and Procedure §2715, at 268 (3d ed. 1998)).

STANDARD OF REVIEW

A bankruptcy court's findings of fact are reviewed under the "clearly erroneous" standard while its conclusions of law are reviewed de novo. See Brandt v. REPCO Printers & Lithographics, Inc., (In re Healthco International Inc.), 132 F.3d 104, 107-108 (1st Cir. 1997); Grella v. Salem Five Cents Savings Bank, 42 F.3d 26, 30 (1st Cir. 1994); In re SPM Corp., 984 F.2d 1305, 1310-1311 (1st Cir. 1993). Here, the bankruptcy court's determination that the federal judgment rate of interest shall apply is a question of law and should be reviewed de novo, while its application of the law to the facts is reviewed under the abuse of discretion standard. In re Fracasso, 222 B.R. 400 (BAP 1st Cir. 1998), *aff'd*, 187 F.3d 621 (1st Cir. 1999).

DISCUSSION

Sandra Rodhouse Kravitz (the "Debtor") was involuntarily petitioned into a Chapter 7 bankruptcy by her largest unsecured creditor, Cadle Company Inc., of Ohio ("Cadle") on March 25, 1997. The Debtor's obligation to Cadle arose from a personal guaranty executed by the Debtor and her spouse. To recover on the guaranty, Cadle filed suit in the Massachusetts Superior Court for Suffolk County. As a result, on February 25, 1997, Cadle obtained a judgment against the Debtor in the amount of $290,335.00, plus interest, costs and attorney's fees.[1]

The entitlement of interest is not disputed. In fact, this is a solvent estate, and pursuant to Section 726(a)(5) of the United States Bankruptcy Code (the "Code"), where the bankruptcy estate is solvent and all allowed claims are paid in full, creditors are entitled to interest on their claims, *at*

[1] The briefs and appendix indicate that the bankruptcy court allowed Cadle's claim in the amount of $306,979.80. We have no information from which we can determine the bankruptcy court's basis for allowing the claim in this amount and neither party has raised this issue on appeal. Therefore, we make no finding as to whether the amount of Cadle's claim as allowed is consistent with this opinion.

the legal rate, from the date of the filing of the petition. See 11 USC §726 (a)(5)(*emphasis added*). Herein lies the problem. The Code does not define the term "legal rate".

Cadle contends that the bankruptcy court was incorrect in determining that the "legal rate" of interest applicable to this case is the federal judgment rate of interest. Cadle invites us to overturn the bankruptcy judge's ruling and award Cadle the more attractive rate of interest bargained for by the parties in the underlying contract. Relying on the common law doctrine of merger, as well as case law from various jurisdictions supporting our decision, we decline the invitation.

A. The Doctrine of Merger.

What is really at issue here is the merger of an obligation under a contract into a judgment, what hornbook law refers to as the "doctrine of merger." Under this long standing well founded legal doctrine, once a cause of action is reduced to a judgment, no action can afterwards be brought upon the original cause of action because it has merged into the judgment. See Empire Funding Corp. v. Armor, 232 F.3d 887 (4th Cir. 2000)(other citations omitted); see also Stendardo v. Federal National Mortgage Association, 991 F.2d 1089, 1099 (3rd Cir. 1993); Hermes Automation Technology, Inc. v. Hyundai Electronics Industries Co., Ltd., 915 F.2d 739, 750 (1st Cir. 1990); Moore v. Justices of Municipal Court of City of Boston, 197 N.E. 487, 488 (Mass. 1935).

Moreover, the Restatement (Second) of Judgments states:

> When the plaintiff recovers a valid and final personal judgment, his original claim is extinguished and rights upon the judgment are substituted for it. The plaintiffs original claim is said to be merged in the judgment.

See Restatement (Second) of Judgments, §18 comment a (1982).

The actual promissory notes guaranteed by the Debtor and her spouse required payment of

interest (at the contract rate of prime + 3%) and attorney's fees and costs. However, this contractual obligation merged into the judgment entered on February 25, 1997, and all entitlements thereunder, including the interest rate, were extinguished. Moreover, the promissory notes were executed in Massachusetts, where the courts have since held that the contract rate of interest shall continue after maturity until the money is paid, or *until the debt is merged into a judgment.* See Thompson v. Getz (In re Plymold Corp.), 178 F.2d 325, 327 (1st Cir. 1949)(quoting Bowers v. Hammond, 31 N.E. 729 (Mass. 1885))(other citations omitted)(*emphasis added*).

Our result supports the principles behind the doctrine of merger. "The principle behind the doctrine of merger is 'a collateral aspect of res judicata' which determines the scope of claims precluded from relitigation by an existing judgment." Empire Funding Corp. v. Armor, 232 F.3d 887 (4th Cir. 2000) (quoting Edwards v. Edwards, 456 S.E.2d 126, 129 (N.C. App. 1995)). See also Moore, 197 N.E. at 488 (holding the underlying principle on which the doctrine of merger rests is that a judgment is an obligation of higher quality than the original cause of action from which it stems.) We conclude that the doctrine of merger causes Cadle's argument for the contract rate of interest to fail.

B. The Statutory Rate of Interest: Federal or State.

Cadle argues that the post judgment rate of interest should be determined by the terms of the contract. As more fully explained above, the doctrine of merger causes that argument to fail. The matter before us then, is whether or not Code §726(a)(5) refers to an interest rate fixed by state or federal statute. The bankruptcy court below held that the federal judgment rate of interest applies and we agree.

The number of courts that have examined the meaning of "interest at the legal rate" are

divided. Some courts choose to apply the state law approach to the post-judgment rate of interest. See In re Carter, 220 B.R. 411 (Bankr.D.N.M. 1998); In re Schoeneberg, 156 B.R. 963 (Bankr.W.D.Tex. 1993).While other courts apply the federal judgment rate of interest approach. See In re Dow Corning Corp., 237 B.R. 380 (Bankr. E.D.Mich. 1999); Wasserman v. City of Cambridge, 151 B.R. 4 (D.Mass.1993); In re Beguelin, 220 B.R. 94 (B.A.P. 9th Cir. 1998); In re Gaines, 178 B.R. 101 (Bankr.W.D.Va. 1995); In re David Green Property Management, 164 B.R. 92 (Bankr.W.D.Mo. 1994); In re Melenyzer, 143 B.R. 829 (Bankr.W.D.Tex. 1992); and In re Chiapetta, 159 B.R. 152 (Bankr. E.D.Pa. 1993).

We are in accord with the line of cases holding that Section 726(a)(5) of the Code requires post-judgment interest to be paid at the federal judgment rate.[2] Like many other courts that follow the federal judgment rate of interest approach, we believe that this approach best serves the purposes and policy considerations behind the Code. Namely, equitable distribution of a debtors assets among its creditors, prompt and efficient administration of the bankruptcy estate, and allowance for the debtor's fresh start.

Moreover, we agree that Congress' silence speaks volumes. If Congress intended for "interest at the legal rate" to mean interest "at the rate provided for under state law", they would have expressly stated that position in Section 726(a)(5), as they did in so many other sections.[3]

Cadle's argument also implies that its successful objection to the Debtor's homestead

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[2] The federal judgment rate of interest is calculated as follows."The interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent...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).

[3] The Code expressly incorporates state law in several sections; 109(c)(2); 362(b)(12); 522(b)(1); 523(a)(5); 544(b); 546(b); 546(c); 903(1); and 1145(b).

exemption, which is the direct cause of the estate's solvency, justifies its claim to a higher rate of interest. We do not find that the facts of this case warrant such a windfall. In recognizing that debtors should be held to their obligations but at the same time, not denied a fresh start, the Wasserman court found the Massachusetts statutory rate failed to provide an equitable balance between creditors and debtors. Wasserman v. City of Cambridge, 151 B.R. 4, 6 (D.Mass. 1993). "It should be possible to tailor the rate of post-petition interest in bankruptcy so that creditors are protected but not enriched by an undeserved windfall." Id. at 5. Allowing Cadle the contract rate of interest would not provide for an equitable balance between the parties.

C. Attorney's Fees.

Unlike Code Section 506(b), Code Section 726(a)(5) does not provide attorneys fees for over secured creditors. Accordingly, for the same reasons stated in the latter section of Paragraph B above, we decline to award such fees in the instant case.

CONCLUSION

The May 15, 2000 orders of the bankruptcy court which effectively (i) deny Cadle's motion for summary judgment (ii) grant Debtors motion for summary judgment (iii) allow Cadle post-judgment interest at the federal judgment rate, and (iv) deny Cadle's claim for attorney's fees, are hereby **AFFIRMED**.