

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

	)	CASE NO. 03-64924
	)	
IN RE:	)	CHAPTER 13
	)	
DENNIS L. COOPER,	)	JUDGE RUSS KENDIG
	)	
Debtor.	)	
	)	<b>MEMORANDUM OPINION</b>
	)	
	)	

This matter is before the court upon the objection to the confirmation of debtor Dennis L. Cooper's ("Debtor") fourth amended plan filed by Farmers State Bank ("Farmers"). A hearing on this matter was held on July 28, 2004 and a status conference was held on November 16, 2004.<sup>1</sup> Prior to the status conference, both Debtor and Farmers submitted briefs on the issue.

**I. Facts**

Debtor filed for bankruptcy relief on September 15, 2003. In the next months, Debtor filed several plans of reorganization, all of which drew objections. Debtor's latest plan, his fourth, was filed on June 29, 2004. Farmers objected to confirmation because the plan did not provide for interest on the arrearage listed in its proof of claim.<sup>2</sup> The amount owed on the mortgage to Farmers at the time of filing was \$37,135.18, of which \$12,490.00 is a claim for pre-petition arrears. The current plan provides that Farmers will have both the mortgage payment and arrearage paid inside the plan. The mortgage will be paid at the contract rate of 7.25% while the arrearage will be paid at 0.00%.

---

<sup>1</sup> Julia Cooper also filed an objection to confirmation which was heard on these dates. This has since been resolved by an agreed order.

<sup>2</sup> In Farmers objection to confirmation filed on July 14, 2004, an objection was also made that the plan was not feasible. At the hearing on this matter, Farmers stated that it would defer to the Chapter 13 Trustee on the issue of feasibility. As the Trustee has indicated that she has no longer has any objection to the plan, Farmers' feasibility objection is withdrawn.

## II. Arguments

Farmers claims that this issue is controlled by Rake v. Wade, 508 U.S. 464 (1993) which requires an oversecured creditor to be paid interest on arrears. Farmers argues that Rake is applicable in this case because the mortgage in its favor was executed prior to the Bankruptcy Reform Act of 1994. Farmers states that it is oversecured and is entitled to the contract rate of 7.25% on its arrearage claim.

Debtor responds that the underlying mortgage does not provide for interest on arrears and that Farmers is undersecured so the Rake case does not apply. Debtor further responds that the Chapter 13 trustee is already paying for interest on the arrears. Therefore, Farmers' objection is moot.

## III. Discussion

Farmers states that Rake v. Wade, 508 U.S. 464 (1993) controls the resolution of this issue. In this case, the Supreme Court held that both pre and post petition arrears were entitled to receive interest under the plan regardless of whether the underlying mortgage provided for such interest. By allowing interest on all arrears, this ruling entitles the creditor to interest on interest and interest on fees as well. Id. at 475.

Congress overruled the ruling in the Rake case with the enactment of 11 U.S.C. § 1322(e) as part of the Bankruptcy Reform Act of 1994. This section specified that the amount necessary to cure a default "shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." This amendment effectively prohibited the allowance of interest on interest unless such interest was provided for in the underlying agreement and permitted by state law. The mortgage at issue in this case was executed on December 4, 1993. Section 102(b)(2)(D) of the Act directs that 11 U.S.C. § 1322(e) shall only apply to agreements entered into after the enactment of the Act. Pub. L. No. 103-394, § 702(b)(2)(D). As the Bankruptcy Reform Act was enacted on October 22, 1994, over ten months after the mortgage was executed, section 1322(e) does not apply and the rule in Rake controls.

Debtor argues that Rake does not apply because Farmers is an undersecured creditor. This argument has no merit as this court has determined that Farmers is oversecured.

Debtor's argument that Farmers is already being paid interest on its arrearage claim since its mortgage is being paid through the plan at the contract rate of interest must fail as well. This argument is belied by the language of the plan. Paragraph four of Debtor's fourth amended plan indicates that Debtor will pay Farmers' arrearage claim of \$12,490.00 over the life of the plan at 0.00% interest. Therefore, although Debtor is providing the trustee with

enough money to pay Farmers' mortgage at the contract rate of interest, trustee would not pay interest on the arrears as the plan does not provide for such payment.

Debtor's plan cannot be confirmed. Under Rake, the plan must pay interest on arrears within the plan to cure a default. Debtor's plan does not and, thus, does not comply with 11 U.S.C. § 1325(a)(5) as interpreted by the Supreme Court in Rake v. Wade.

Farmers objection to confirmation is sustained and an Order shall be issued contemporaneously herewith.

**/s/ Russ Kendig**

---

RUSS KENDIG

U.S. BANKRUPTCY JUDGE

NOV 24 2004

**SERVICE LIST**

R Joshua Brown  
32 Lutz Ave  
Lexington, OH 44904

Toby L Rosen  
400 W Tuscarawas St  
Charter One Bank Bldg  
4th Floor  
Canton, OH 44702

Thomas J. Budd, II  
128 Church St.  
Ashland, OH 44805

E. Jane Taylor  
Guy, Lammert & Towne  
2210 First National Tower  
Akron, Ohio 44308-1449