

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: December 02 2005

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 05-30647
	)	
LeRoy A. Mesenburg,	)	Chapter 13
Charlet A. Mesenburg,	)	
	)	
Debtors.	)	JUDGE MARY ANN WHIPPLE

**MEMORANDUM OF DECISION AND ORDER**  
**OVERRULING OBJECTION TO CLAIM**

This case came before the court for hearing on Debtor’s Objection to Claim [of] James E. Fuller (“Objection”) [Doc. # 27], and Creditor James E. Fuller’s (“Fuller”)Response [Doc. # 32]. A hearing was held on November 15, 2005. Both counsel for Debtors and for Creditor attended in person. After reviewing the Objection, the Response, and the documents submitted in support thereof, and considering the arguments of counsel, the court will overrule Debtor’s Objection.

**FACTUAL BACKGROUND**

The following facts are not in dispute. On November 2, 1992, a judgment was entered against Debtors and in favor of Douglas W. Mold by the Maumee Municipal Court in the amount of \$2,400.51, plus costs and interest at 10 per cent per annum from the date of judgment. Fuller now

owns the judgment as assignee of Douglas W. Mold. On or about November 2, 1997, the judgment became dormant pursuant to Ohio Revised Code § 2329.07.<sup>1</sup> However, the judgment was revived on March 1, 2004.

On February 2, 2005, Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code. And on March 2, 2005, Fuller filed a proof of claim setting forth a debt owed to him by Debtors totaling \$5,512.63. The proof of claim is supported by a certified copy of the Certificate of Judgment from the Maumee Municipal Court, together with an itemized statement of interest and charges as follows:

Judgment Amount:	\$2,400.51	
Accrued Interest:	\$2,940.62	
Court Cost:	\$114.00	
Credit Report:		\$40.00
Lien Fee:	<u>\$17.50</u>	
<b>Total:</b>	<b>\$5,512.63</b>	

At the hearing on Debtor's Objection, Fuller indicated that the accrued interest included in the above calculation represents simple interest from the date judgment was entered until the date the proof of claim was filed. Debtors object only to the extent that interest is calculated for the period during which the judgment was dormant, that is, from approximately November 2, 1997, until March 1, 2004.

### **LAW AND ANALYSIS**

Debtors rely on Ohio Revised Code § 2325.18 in support of their argument that interest does not accrue on a dormant judgment. On March 1, 2004, the date Fuller revived the judgment against Debtors, § 2325.18 was silent as to interest, setting forth only the time within which an action to revive a judgment could be brought. Ohio Rev. Code § 2325.18 (West 2003). However, effective June 2, 2004, that statute was amended to include the following provision:

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<sup>1</sup> Section 2329.07 provides as follows:

If neither execution on a judgment rendered in a court of record or certified to the clerk of the court of common pleas in the county in which the judgment was rendered is issued, nor a certificate of judgment for obtaining a lien upon lands and tenements is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within five years from the date of the judgment or within five years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later, then, unless the judgment is in favor of the state, the judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor.

(B) For the purpose of calculating interest due on a revived judgment, interest shall not accrue and shall not be computed from the date the judgment became dormant to the date the judgment is revived.

Ohio Rev. Code § 2325.18 (West 2005).

In *Asset Acceptance LLC v. Mack*, 105 Ohio St. 3d 323 (2005), the Ohio Supreme Court was faced with a fact scenario similar to that presented in this case. The judgment at issue in *Mack* became dormant in 1996 and was not revived until September 18, 2003. On that date, the trial court revived the lapsed judgment to include interest from the date of the original judgment. *Id.* at 324. Notwithstanding the dormancy statute’s pre-amendment silence with respect to accrual of interest, the judgment debtor argued on appeal that the cessation of the accrual of interest should be inferred from the word “dormant” in the statute. *Id.* at 325. However, the court rejected that argument, finding that such an interpretation “would put the dormancy statutes in direct conflict with the statutes specifically governing accrual of judgment interest found in [Ohio Rev. Code] Chapter 1343.” *Id.* Those statutes provide that interest on a judgment shall be computed until payment has been made. *See* Ohio Rev. Code § 1343.02 (providing that “interest shall be computed until payment is made . . . .”) and § 1343.03(B) (providing that interest “shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is paid”). The court, therefore, held that “a judgment continues to accrue interest while it is dormant, if not subject to [Ohio Rev. Code] 2325.18(B), . . . effective June 2, 2004.” *Id.* at 326.

In this case, the judgment against Debtors was revived on March 1, 2004, before the effective date of amended § 2328.18. Thus, under *Mack*, interest is properly calculated from the date of entry of the judgment, including the period during which the judgment was dormant.

**THEREFORE**, for the foregoing reasons, good cause appearing,

**IT IS ORDERED** that Debtors’ Objection to Claim of James E. Fuller [Doc. # 27] be, and hereby is, **OVERRULED**.