

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

JERRY E. WHEATCROFT and
CHARLENE D. WHEATCROFT,

Debtors.

CASE NUMBER 06-40492

HONORABLE KAY WOODS

ORDER OVERRULING OBJECTION TO CLAIM NO. 5
FILED BY U.S. BANK

This cause is before the Court on the Objection to Proof of Claim Filed by US Bank ("Objection to Claim") filed by Debtors Jerry E. Wheatcroft and Charlene D. Wheatcroft ("Debtors"). U.S. Bank, N.A. successor by merger to The Leader Mortgage Company c/o U.S. Bank Home Mortgage ("U.S. Bank") had filed Proof of Claim No. 5, which included interest at the rate of 7.635% on the mortgage arrearage of \$5,813.10. Debtors objected to paying any interest on the mortgage arrearage.

U.S. Bank responded ("Response") to the Objection to Claim and argued that it was entitled to receive interest on the unpaid portion of the arrearage based upon *Rake v. Wade*, 508 U.S. 464 (1993). The United States Supreme Court held in *Rake v. Wade* that an oversecured creditor is entitled to preconfirmation and postconfirmation interest on mortgage arrearages paid off under a debtor's plan. *Id.* at 475.

This Court held a hearing on the Objection and the Response on August 31, 2006, at which counsel for both Debtors and U.S. Bank

appeared and presented argument.

The Bankruptcy Code was amended in October 1994 to include § 1332(e) to overrule the holding in *Rake v. Wade*. Section 1322(e) of the Bankruptcy Code provides:

Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

11 U.S.C. § 1322(e).

Counsel for U.S. Bank stated that *Rake v. Wade* continued to be applicable to its claim because the underlying mortgage had been entered into by the parties prior to the October 22, 1994 amendments to the Bankruptcy Code, which added § 1322(e). The legislative history of § 1322(e) states: "Section 702(b)(2)(D) of such Act provided that the amendment adding subsection (e) of this section 'shall apply only to agreements entered into after the date of enactment of this Act.'" See *In re McGuier*, 346 B.R. 151 (Bankr. W.D. Pa. 2006); *In re Madison*, 337 B.R. 99 (Bankr. N.D. Miss. 2006); *In re Koster*, 294 B.R. 737 (Bankr. E.D. Mo. 2003); *In re Mendez*, 255 B.R. 143 (Bankr. D.N.J. 2000); *In re Winton*, 248 B.R. 225 (Bankr. D. Conn. 2000); *In re Wines*, 239 B.R. 703 (Bankr. D.N.J. 1999); *In re Johnson*, 203 B.R. 775 (Bankr. M.D. Fla 1996) and *In re Hardware*, 189 B.R. 273 (Bankr. E.D.N.Y. 1995).

U.S. Bank provided evidence that the mortgage upon which its claim is based was entered into as of August 27, 1992 - prior to the October 22, 1994 enactment of § 1322(e). Accordingly, *Rake v. Wade*

continues to apply to Debtors' mortgage. Debtors' Objection to Claim on the basis that U.S. Bank is "not entitled to an interest rate on the mortgage arrearage" is not well taken. Accordingly, the Objection to Claim is overruled and the claim of U.S. Bank shall be allowed as filed.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**