

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

BECKY MANSFIELD

Debtor(s).

In Proceedings  
Under Chapter 13

Case No. 04-42825

OPINION

This matter comes before the Court on the objection of Consumer Portfolio Services, Inc. (“Consumer”) to confirmation of the debtor’s plan. Consumer is an over-secured creditor with a lien on the debtor’s vehicle. Because its claim is over-secured, Consumer asserts that the debtor’s plan should provide interest on its claim at the contract rate, rather than at the reduced rate the debtor proposes to pay.

The facts are not in dispute. The debtor purchased a 2000 Dodge Ram vehicle for \$10,000.00 in November 2004, less than 30 days before filing for Chapter 13 relief in December 2004. The amount presently due and owing on the vehicle is \$9,009.43. The parties agree that the vehicle is worth more than the amount owed and must be paid as fully secured in the debtor’s plan. The debtor’s plan proposes to pay Consumer’s claim at an interest rate of 7 %. Consumer argues that it is entitled to receive its contract rate of interest of 24.95 %.

Neither this Court nor the Seventh Circuit Court of Appeals has addressed the issue of the appropriate rate of interest to be paid on over-secured claims in a Chapter 13 plan. The Second Circuit Court of Appeals, however, has examined this issue and ruled that a Chapter 13 debtor is not obligated to pay the contract rate of interest on over-secured claims in a Chapter 13 plan, but is required only to pay interest that would afford the creditor the “present value” of its claim. See Key Bank Nat’l Assn. v. Milham (In re Milham), 141 F.3d 420, 425 (2d Cir. 1998), cert. denied, 525 U.S. 872 (1998). This Court finds the reasoning of Milham to be persuasive and, accordingly, concludes

that Consumer, as an over-secured creditor in this case, is not entitled to receive interest at the contract rate under the debtor's plan.

As set forth in Milham, the treatment of secured claims under Chapter 13 is governed by § 1325(a)(5)(B), which requires a Chapter 13 debtor to pay interest on property distributed under the plan at a rate that will afford the creditor the "present value" of its "allowed secured claim." The amount of the "allowed secured claim" is determined in accordance with 11 U.S.C. § 506 (a) and (b) and, with regard to an over-secured claim, includes "interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose." 11 U.S.C. § 506(b). However, interest allowed under § 506(b) accrues only until the effective date of the plan, and, accordingly, does not continue to run post-confirmation. See Milham, at 423; see also 7 Collier on Bankruptcy, ¶ 1325.06[3][b], at 1325-39 (15th ed. Rev. 2004) (hereinafter "Collier"). Rather, post-confirmation interest, or interest under the plan, is a function of the "present value" requirement of § 1325(a)(5)(B)(ii). Thus, an over-secured creditor is entitled to receive § 506(b) interest only until the confirmation date of the Chapter 13 plan. At that time, the accumulated interest becomes a part of the allowed secured claim, and the plan must provide for payment of the present value of such allowed claim as of the effective date of the plan. Milham, at 425.

In the present case, Consumer is entitled to interest on its claim pursuant to § 506(b) from the date of the debtor's bankruptcy filing to the date of confirmation.<sup>1</sup> However, at confirmation, Consumer is not entitled to the contract rate of interest on its claim under the debtor's plan but is

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<sup>1</sup> Interest under § 506(b) is generally allowed at the contract rate, although contractual interest is not guaranteed under § 506(b) and is a matter within the limited discretion of the court. See Milham, 141 F.3d at 423 (quoting Rake v. Wade, 508 U.S. 464, 468 (1993)); Collier, at 1325-39.

only entitled to interest that will assure it the present value of its claim. Accordingly, for the reasons stated, the Court finds that Consumer's objection to confirmation of the debtor's plan is without merit and should be overruled.

SEE WRITTEN ORDER.

ENTERED: March 21, 2005

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE

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**ORDER**

For the reasons set forth in the Court's opinion entered even date, IT IS ORDERED that the objection of creditor, Consumer Portfolio Services, Inc. ("Consumer"), to confirmation of the debtor's Chapter 13 plan is OVERRULED.

IT IS FURTHER ORDERED that the parties shall confer regarding the appropriate rate of interest that will assure Consumer the present value of its claim under the debtor's plan and report to the Court within seven days. If the parties are unable to agree on the appropriate interest rate, the Court will set the matter for an evidentiary hearing.

ENTERED: March 21, 2005

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE