

Computation of arrearage

Gary McDonald , Case No. 09-65482

8/11/2010 FRA

Unpublished

Creditor objected to Debtor's proposed chapter 13 plan in that the arrearage on Creditor's secured claim was understated. The court determined that the arrearage should include, pursuant to the promissory note and deed of trust, out-of-pocket amounts advanced by Creditor to protect his lien rights, including payments made by Creditor to the senior lienholder.

E10-8(3)

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case  
GARY L. MCDONALD, ) No. 09-65482-fra13  
 )  
 ) MEMORANDUM OPINION  
 )  
\_\_\_\_\_  
Debtor. )

Creditor Herschel Wright has objected to the Debtor's plan of reorganization, pursuant to a provision in the order confirming the plan allowing him time to object post-confirmation.

Mr. Wright has a secured claim against the Debtor based on his sale to the Debtor of a workshop. The Court understands that the property in question is not the Debtor's residence.

The original plan provided, at paragraph 2(b)(1), that the Debtor would cure an arrearage of \$35,000 over the lifetime of the plan. The \$35,000 would be paid in monthly installments of \$600, bearing a post-confirmation interest of 1% per annum.

Mr. Wright objected, alleging that the correct amount of the arrearage is \$46,723. He further seeks 3.5% interest on the arrearage, and 14% on \$4,000 of the total amount, constituting out-of-pocket costs reimbursable under the parties' original agreement at the rate of 14%.

1           The Creditor's Second Trust Deed provides, at Par. 1.13(1):

2           If Grantor [Debtor] shall fail to pay, perform or observe any  
3 of its covenants hereunder, Beneficiary [Creditor] may, but shall not be  
4 required to, take such actions as it deems appropriate to remedy such  
5 failure. All sums, including reasonable attorney fees, so expended, or  
6 expended to maintain the lien or estate of this Security Instrument or  
7 its priority, to protect or enforce any of Beneficiary's rights  
8 hereunder, shall be a lien on the Trust Property, shall be secured by  
9 this Security Instrument, and shall be paid by the Grantor on demand,  
10 together with interest thereon at the rate provided in the note [i.e.,  
11 14% per annum]...

12           The amounts advanced are added to the principal balance of the  
13 note, and are secured by the trust deed, and bear interest at the Note  
14 rate of 14%. Based on the documents presented to the Court, those "out-  
15 of-pocket" expenses are:

16	Publication costs	\$2,592.72
17	Trustee's fees	\$2,186.68
18	Title report	\$ 293.00
19	Attorney's fees	\$3,900.00
20	Recording fees	\$ 225.00
21	Service fees	\$ 40.00
22		<u>          </u>
23	Total	\$9,237.40

24           These amounts, plus the money advanced by the creditor to the  
25 first lienholder, are part of the "arrears" which will bear the contract  
26 rate, plus the 1% post-confirmation interest rate. The Debtor, in order  
to cure his default, must pay the arrears in payments, and the monies  
advanced, over the lifetime of the plan. The payments bear interest at  
the Plan rate of 1% per annum; however, payments received are applied  
toward accrued interest at the contract rate of 14%, and then to  
principal.

          The order confirming plan should be modified to provide for  
plan payments totaling \$46,723.93, bearing post-confirmation interest at  
the rate of 1% per annum.

1           The foregoing constitutes the Court's findings of fact and  
2 conclusions of law. I leave it to counsel for the Debtor to compute the  
3 resulting monthly payments and submit a modified order confirming the  
4 Debtor's plan.



6 FRANK R. ALLEY, III  
7 Bankruptcy Judge