

**UNITED STATES BANKRUPTCY COURT  
FOR THE  
WESTERN DISTRICT OF KENTUCKY**

IN RE:	)	
	)	
W. J. SMITH	)	CASE NO.: 03-10666(1)11
BETTY B. SMITH	)	
	)	
_____ Debtor(s)	)	

**MEMORANDUM-OPINION**

This matter is before the Court for a determination of the appropriate rate of interest on the claim of Hart County Bank (“the Bank”) in the Second Amended Plan of Reorganization (“the Plan”) of Debtors W. J. Smith and Betty B. Smith (“the Debtors”). In the Plan, Debtors proposed to pay interest at the rate of 1.32% per annum on the unsecured claim of \$232,207.05 as of February 6, 2004. In other words, Debtors proposed to pay the claim at the federal legal rate in effect on the date of the filing of the Petition. The Bank, however, contends it is entitled to receive interest at the rate of 7%. The 7% rate was awarded to the Bank by the Warren Circuit Court in its Judgment determining the amount of the deficiency, attorney’s fees and costs on its claim against the Debtors. The 7% figure is the contract rate of interest provided in the debt instruments entered into between the Debtors and the Bank.

This Court addressed the issue of post-petition interest in In re Best, 365 B.R. 725 (Bankr. W.D. Ky. 2007). In that case, this Court determined that the “legal rate of interest” for post-petition interest under 11 U.S.C. §726(a)(5) was limited to the federal rate of interest under 28 U.S.C. §1961(a) as of the date of the filing of the petition. The holding in Best was limited to the facts of that case, a Chapter 7 case with funds in excess of allowable claims. In Best, this Court specifically

acknowledged that a mechanical application of the federal rate could result in a windfall for solvent debtors and therefore limited the ruling to the facts specific to that case.

This case presents a different factual scenario than was present in Best. Here, there is but one creditor. Therefore, there is no need to balance the equities between competing creditors. Next, application of the federal interest rate would indeed create a windfall for the Debtors.

The Warren Circuit Court awarded the Bank 7% interest in accordance with the terms of the loan documents between the parties. The Sixth Circuit acknowledged in In re Dow Corning Corp., 456 F.3d 668, 679 (6<sup>th</sup> Cir. 2006), that in most cases where a debtor is solvent, courts generally confine themselves to determining and enforcing whatever pre-petition rights a creditor has against the debtor. Solvent debtors should not receive a windfall simply because they sought bankruptcy protection.

The reasoning of the Best case is not applicable to the matter at bar. The Court finds no basis for disturbing the Warren Circuit Court Judgment. Accordingly, the appropriate rate of interest on the Bank's post-petition claim is 7%.

### **CONCLUSION**

For all of the above reasons, the Court awards Hart County Bank 7% interest on its post-petition claim.

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**ORDER**

Pursuant to the Memorandum-Opinion entered this date and incorporated herein by reference,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Hart County Bank is awarded post-petition interest at the rate of 7% on its unsecured claim.