

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
GEORGE GERINGER,) CASE NO. BK98-80692
) CH. 13
DEBTOR(S).) Filing No. 65, 69

MEMORANDUM

Hearing was held on March 2, 1999, on Debtor's Amended Objection to the claims of SouthTrust Asset Management. Appearances: George Geringer, pro se, and Steven C. Kohl for SouthTrust Asset Management. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

The debtor has objected to claims filed by SouthTrust Asset Management (SouthTrust). Prepetition, SouthTrust purchased an interest in real estate owned by the debtor by being the purchaser at a real property tax sale held by the Douglas County Treasurer. Basically, such a purchaser pays the real estate taxes and interest owed to the Douglas County Treasurer by the debtor. Under Nebraska Revised Statute § 77-1818 (Reissue 1996), SouthTrust is, thereafter, subrogated to the interest of the Douglas County Treasurer. When the debtor filed this Chapter 13 bankruptcy, SouthTrust, as subrogee, filed claims for the actual amount it had paid the Treasurer plus interest accruing at the statutory rate of 14% from the purchase date to the petition date.

The debtor objects to the rate of interest included in the claims and suggests that SouthTrust should get only the amount that SouthTrust actually paid and interest, if any, at some rate much lower than the statutory rate allowed to the County.

The amounts in dispute are \$945.21 on Claim No. 021 and \$691.04 on Claim No. 022. Those claims are supported by Tax Certificate numbers 95-00255 and 95-00271. Under Nebraska law, interest accrues at the rate of 14% per year assessed on delinquent taxes owed to a Nebraska political subdivision. Neb. Rev. Stat. § 45-104.01 (Reissue 1998). If SouthTrust had not paid the taxes, interest and costs, the Treasurer of Douglas County, Nebraska, would have a claim in this

bankruptcy case, pursuant to Section 45-104.01, for those taxes and all accrued interest at the rate of 14% per year.

Had the debtor attempted to redeem the real property from the tax sale, the debtor would have been required to pay the total amount shown on the Tax Sale Certificate, plus interest at the rate of 14% from the tax sale date to the date of redemption, together with all other taxes subsequently paid, and interest thereon at 14%. Neb. Rev. Stat. § 77-1824 (Reissue 1996).

The debtor did not, however, attempt to redeem the taxes prior to the bankruptcy petition being filed and the property was sold at the tax sale to SouthTrust. The debtor now argues that, although a political subdivision gets the benefit of the statutory interest rate of 14%, there is no authority in the statute which would permit the purchaser at a tax sale to continue to receive the benefit of the statutory rate of 14% from and after the date of the tax sale. The debtor suggests such a rate is not a market rate, is onerous, and should not be allowed. The debtor provides no statutory or case law authority for his position, but simply argues that SouthTrust is not the equivalent of a political subdivision and is not covered by the statutory sections in question.

The Supreme Court of the State of Nebraska, as early as 1894, in Adams v. Osgood, 42 Neb. 450, 60 N.W. 869, when construing a predecessor to the current statutory provisions, determined:

Osgood, then, by virtue of the purchase he made of these lots in 1888, and by virtue of the taxes paid thereon, both prior and subsequent to that date, to protect the lien he acquired by his purchase, became subrogated to the rights which the public had against these lots by virtue of these tax liens, and consequently became entitled to receive on the payments he made the same rate of interest, and no greater, which the taxes were drawing when he paid them.

Adams, 60 N.W. at 873.

The law remains the same in 1999 as it was in 1894 with regard to the subrogation rights of a purchaser at a tax sale. Therefore, the objection of Mr. Geringer to the interest

portion of the claims held by SouthTrust Asset Management is overruled. Interest accrues from the date of the petition to the confirmation date at the state statutory rate. Thereafter, interest accrues at a rate provided for in the confirmed plan.

Separate journal entry to be filed.

DATED: March 4, 1999

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

KOHL, STEVEN C. 712-258-0103

Copies mailed by the Court to:

George Geringer, 5508 North 63rd Street, Omaha, Ne
68104
Kathleen Laughlin, Trustee
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
GEORGE GERINGER,)	CASE NO. BK98-80692
)	A
<u>DEBTOR(S).</u>)	CH. 13
)	Filing No. 65, 69
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	DATE: March 4, 1999
<u>Defendant(s)</u>)	HEARING DATE: January
)	21, 1999

Before a United States Bankruptcy Judge for the District of Nebraska regarding Amended Motion Debtor's objection to Claims; Resistance of SouthTrust Asset Management to Debtor's Amended Motion-Debtor's Objections to Claims.

APPEARANCES

George Geringer, pro se
Steven C. Kohl, Attorney for SouthTrust Asset Management

IT IS ORDERED:

The objection of Mr. Geringer to the interest portion of the claims held by SouthTrust Asset Management is overruled. Interest accrues from the date of the petition to the confirmation date at the state statutory rate. Thereafter, interest accrues at a rate provided for in the confirmed plan. See memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

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