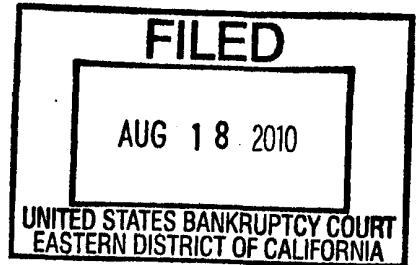


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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
MODESTO DIVISION

In re) Case No. 08-90273-E-7
KEVIN P. JOHNSON and)
SHEILA G. JOHNSON,)
Debtor(s).)
_____))
GARY FARRAR,) Adv. Pro. No. 08-9060
Chapter 7 Trustee,)
Plaintiff(s),)
v.)
KEVIN P. JOHNSON, SHEILA G.)
JOHNSON and SASHA COOK,)
Defendant(s).)
_____)

FINDINGS OF FACT AND CONCLUSION OF LAW
RE COSTS BILL AND INTEREST

Prevailing Plaintiff seeks to recover interest at the rate of
three and seven-eighths percent (3 7/8%), compounded on the
\$60,000.00 judgment amount for failure to turn over property of the
Estate. Plaintiff asserts that interest may be recovered from the
following date:

July 1, 2008, the date Defendants refused to turn over
possession of the IAR-823 aircraft.

Awards of pre-judgment interest are governed by considerations

1 of fairness and are awarded when it is necessary to make the
2 wronged party whole. United States v. California State Bd. of
3 Equalization, 650 F. Ed 1127 (9th Cir. 1981), aff'd, 456 U.S. 901
4 (1982). In federal question cases, absent of an applicable statute
5 the awarding of prejudgment interest is left to the discretion of
6 the court. City of Milwaukee v. Cement Div. Nat'l Gypsum Co., 515
7 US 189 (1995).

8 In this case, the court accepts the Plaintiff's contention
9 that prejudgment interest is computed from the date the Defendants
10 failed to deliver possession of the aircraft, which is property of
11 the Estate to the Trustee. The Defendants, and each of them failed
12 to present any colorable defense to the action or made an effort to
13 prosecute the defense other than to file answers. The answers were
14 ultimately stricken by the court because of the Defendants repeated
15 failure to comply with discovery orders of this court. The
16 Defendants cannot obtain "free financing" for their obligations to
17 the Trustee relating to property of the Estate through the improper
18 use, and abuse, of the litigation process in federal court.

19 The policy underlying awarding prejudgment interest was
20 stated in United States ex rel. Bernard v. Casino Magic Corp., 384
21 F.3d 510, 516 (8th Cir. 2004), to be,

22 The purpose of awarding prejudgment interest is to
23 compensate the prevailing party for its true money
24 damages, to encourage settlements, and to deter parties
25 from benefitting from unfairly delaying litigation. Val-U
26 Constr. Co. v. Rosebud Sioux Tribe, 146 F.3d 573, 582
27 (8th Cir. 1998). To that end, generally prejudgment
28 interest should be awarded, absent exceptional
circumstances. See, Turn Key Gaming, Inc. v. Oglala
Sioux Tribe, 313 F.3d 1087, 1093 (8th Cir. 2002). Often
cited examples of such circumstances include the
claimant's bad faith, the claimant's assertion of
frivolous claims, and the claimant's repeated delay
tactics. See e.g. City of Milwaukee v. Cement Div., Nat'l

1 Gypsum Co., 515 U.S. 189, 196, 132 L. Ed. 2d 148, 115 S.
2 Ct. 2091 (1995); Stroh Container Co. v. Delphi Indus.,
3 Inc., 783 F.2d 743, 752 (8th Cir. 1986).

4 In the present case, there was no reason asserted by the
5 Defendants, individually or jointly, for failing to turn over this
6 asset to the Trustee or the value of the asset. From the file in
7 this adversary proceeding, it appears that each of the Defendants
8 engaged in conduct to unfairly delay the Trustee in obtaining
9 possession of this asset of the Estate or the value of the asset
10 from the Defendants.

11 Local Rule 292, Eastern District Court Local Rules,
12 incorporated in the Local Bankruptcy Rules of Eastern District
13 Bankruptcy Court, requires that a costs bill be filed within
14 14 days of entry of the judgment. The cost bill shall itemize the
15 costs and shall be supported by a memorandum of costs and affidavit
16 of counsel. Cost bill forms are available from the clerk of the
17 court and the court website. The Trustee filed a timely costs
18 bill, and then supplemented it, without objection, to include an
19 attachment which appears to have been inadvertently omitted.

20 No opposition to the Bill of Costs was filed by the Defendant.
21 The court allows the following costs:

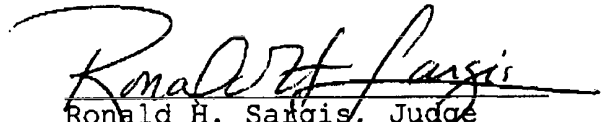
22	Interest	\$4,430.20	
23	Postage	\$ 126.38	
24	Filing Fee	\$ 250.00	
25	Printing	\$ 0.00	(Court Could Not Identify Basis for Computing Requested Cost)
26	Docket Fees	<u>\$ 20.00</u>	
27		\$4,826.58	

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1 The clerk shall issue a costs bill taxing costs in the amount
2 of \$4,826.58, which may be enforced as part of the judgment in
3 this case.

4 Dated: August 17, 2010

By the Court

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7 Ronald H. Sargis, Judge
8 United States Bankruptcy Court
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