

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

ROBERT A. DAVIS,  
VICTORIA L. DAVIS,

Debtor.

Case No. 86-2414-C

Chapter 13

DECISION AND ORDER

On December 19, 1986 a hearing on debtors' objection to proof of claim filed by Axtell Sales, Inc. was held before this court in Des Moines, Iowa. Patricia M. Hulting appeared on behalf of the debtors. Larry G. Wilson appeared on behalf of Axtell Sales, Inc.

On September 3, 1986 the debtors filed their Chapter 13 petition. On September 16, 1986 Axtell Sales, Inc. filed a proof of claim seeking payment for repairs performed on debtors' motorcycle. The claimant seeks the principal sum of \$833.69, plus \$2.00 per day storage from August 1, 1986, and 1.5 percent interest per month.

In their response filed September 30, 1986 the debtors claim no objection to the principal sum owing. The debtors do object, however, to the storage charge of \$2.00 per day and the interest charge of 1.5 percent interest per month. The debtors argue that the creditor has possession of the motorcycle and incurs no cost for its storage and that the interest rate requested is excessive.

Faced with the objection to the claim filed by Axtell Sales, Inc., the court must determine the amount of the claim as of the filing of the petition pursuant to 11 U.S.-C. section 502(b). The grounds for objecting to a claim are set forth in section 502(b)(1)-(8), (d) and (e).

The debtors do not dispute the enforceability of the claim under section 502(b)(1). The claim of Axtell Sales, Inc. is clearly grounded in state law. Section 577.1 of the Iowa Code provides that any person who renders service in the repairing of any inanimate personal property shall have a lien thereon and may retain possession of the property until the agreed or reasonable compensation is paid. The debtors' objection goes only to the allowance of interest and storage charges.

Language contained in the Repair Order supplied by Axtell Sales, Inc. in support of its claim provides:

I hereby authorize the above repair work to be done along with necessary materials. You and your employees may operate above vehicle for purposes of testing, inspection or delivery at my risk. An express mechanics lien is acknowledged on above vehicle to secure the amount of repairs thereto.

It is understood that the company assumes the responsibility for loss or damage by theft or fire to vehicles placed with them for storage, sale, repair or while road testing.

- 1 1/2% ADDED AFTER 30 DAYS

The record contains no evidence that would support a

conclusion that the debtors were not aware of the above language and did not otherwise understand that 1.5 percent interest would be added to their bill if the repair charges were not paid within 30 days. However, section 502(b)(2) bars the allowance of interest not yet earned or matured as of the date of the filing of the petition in bankruptcy. This section acknowledges the well accepted proposition that there is a suspension of the accrual of interest on claims as of the date of filing. See 3 Collier on Bankruptcy, § 502.02[2] at 502-30 (15th ed. 1986). Therefore, this court determines that the 1.5 percent interest charge should be allowed from the date of the repairs through September 3, 1986, the date the bankruptcy petition was filed.<sup>1</sup>

Although one court has found that a \$2.00 per day storage fee is allowable, see In re Bill Ridgway, Inc., 4 B.R. 351, 352 (Bankr. N.J. 1980), Axtell Sales is not entitled to the requested charge based on the above quoted repair order and on the record before the court. Axtell Sales, Inc. maintains a repair shop in Des Moines, Iowa. The motorcycle in question is presently in the possession of the repair shop pursuant to the artisan's lien under section 577.1 of the Iowa Code. The work order directly addresses repair, not storage. A \$2.00 per day storage charge is not mentioned in the repair order. No evidence was presented at the December 19, 1986 hearing to

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<sup>1</sup> It should be noted that Axtel Sales, Inc. did not seek recovery of post-petition interest, fees, costs or charges by filing a motion to determine secured status pursuant to 11 U.S.C. section 506(a). Only a claim determined secured to the extent permitted by sections 506 (a) and (b) comes within the protective provisions of 11 U.S.C. section 1325(a)(5) relating to the treatment of "allowed secured claims". 5 Collier on Bankruptcy, § 1325.06[a] at 1325-30 (15<sup>th</sup> ed. 1986); In re Blair, 21 B.R. 316, 317 (Bankr. S.D. Cal. 1982).

suggest that the repair shop incurs costs in storing the motorcycle nor that it would otherwise be entitled to a lien for storage under section 579 of the Iowa Code. Accordingly, the portion of Axtell's claim regarding the \$2.00 per day storage charge from August 1, 1986 is disallowed pursuant to 11 U.S.C. section 502(b)(1).

THEREFORE, based on the foregoing analysis, the court determines that the claim of Axtell Sales, Inc. is allowed in the amount of \$883.69 plus interest at 1.5 percent per month from the date of repair through September 3, 1986, the date of the bankruptcy filing.

Signed and filed this 21st day of April, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE