

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED

DEC 11 1984

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

CHARLES DAVID SELLEVOLD
KATHLEEN JEAN SELLEVOLD

EF7-83-01779

Debtors.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDERS DETERMINING INTEREST RATE AND ALLOWING CLAIM

Attorney Peter F. Herrell, Trustee of the above captioned estate, having filed an Objection to Claim; and a hearing having been held; and the Trustee appearing on his own behalf; and Weatherly Enterprises of Eau Claire, Inc., appearing by Attorney Kevin C. O'Keefe; and the matter of the allowable interest rate on the Weatherly claim having been briefed; the Court, being fully advised in the premises, FINDS THAT:

1. Weatherly Enterprises of Eau Claire, Inc., filed an amended claim against the above captioned estate for \$13,727.26.
2. Weatherly's claim arose from the sale of \$10,206.14 in building materials used in the Debtors' residence.
3. Exhibit A to Weatherly's Memorandum in Support of Claim is an undated "Statement" which provides, in part: "TERMS: Payment due 15th of the month following date of purchase. A late payment charge of 1½% per month (annual percentage rate of 18%)

will be added to the account for any amount carried longer than stated above."

4. Under Wis. Stats. sec. 138.04 the legal rate of interest upon the forbearance of money is 5%; "but parties may contract for the payment and receipt of a rate of interest not exceeding the rate allowed in s. 138.05, in which case such rate shall be clearly expressed in writing" (emphasis added).

5. There being no contractual agreement between the parties regarding interest charges, the appropriate interest rate on the Weatherly claim is 5% per annum. Kilgust Heating Div. v. Kemp, 70 Wis.2d 544, 235 N.W.2d 292 (Sup. 1975).

6. There being no contractual agreement between the parties regarding collection charges, Weatherly's citation to 59 Op. Att'y. Gen. 76 (Wis. 1970) (contract may provide for collection fee) is inapposite.

CONCLUSION OF LAW

The Weatherly claim accrued interest at 5% per annum.

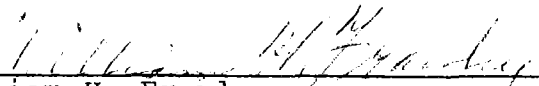
ORDER

IT IS ORDERED THAT the claim filed against the above captioned estate by Weatherly Enterprises of Eau Claire, Inc., be, and the same hereby is, ALLOWED in the amount of \$10,206.14,

with 5% interest from the date it first came due to the date of filing of the Debtors' petition for relief under the Bankruptcy Code.

Dated: December 11, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Peter F. Herrell
Attorney Kevin C. O'Keefe
Attorney Mart W. Swenson *ca*