

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

In re:)	
)	Chapter 7
GRETAG IMAGING, INC.)	Case No. 03-40225-MSH
)	
Debtor)	
)	

ORDER ON TRUSTEE’S MOTION TO ALTER OR AMEND JUDGMENT

On January 9, 2013, I entered an order granting Supervalu’s motion for summary judgment on the trustee’s objection to its proof of claim and allowed Supervalu’s¹ proof of claim in the full amount asserted. In his motion to alter or amend, the trustee seeks an amended judgment reducing Supervalu’s claim by present-valuing, as of January 13, 2003, the date the debtor filed its bankruptcy petition, all post-petition payments due on the rebate agreement upon which its claim is based. The trustee maintains that in rejecting his argument that Bankruptcy Code § 502(b) requires discounting all proofs of claim to present value as of the petition date, I relied on a faulty premise in the form of the following hypothetical:

Had Supervalu sued Gretag prior to its bankruptcy filing for breach of the rebate agreement, Supervalu would have been entitled to seek judgment for the entire stream of payments contemplated under the agreement, not just the payments missed up to the date of suit. Had Supervalu obtained final judgment for all amounts, both overdue and to be due, under the contract it would have been entitled to file a claim in Gretag’s ensuing bankruptcy and have that claim allowed in full because that would have been the amount of its claim on the bankruptcy petition date. The fact that Supervalu did not sue Gretag for breach of contract and obtain

¹ All shorthand expressions or abbreviations used in this order are defined as in the memorandum of decision dated January 9, 2013.

judgment pre-petition should not alter the treatment of Supervalu's claim.

In re Gretag Imaging, Inc., 485 B.R. 39, 46 (Bankr. D. Mass. 2013)

Upon further reflection and consideration of the parties' positions, I agree with the trustee that my hypothetical overstated the applicable legal principle and should have been qualified with the proviso that it applies only when the contract in question contains an acceleration clause, which the rebate agreement did not. Without an acceleration clause, the breach of an installment contract generally does not entitle the non-breaching party to recover future damages. *See Clark v. Trumble*, 44 Mass. App. Ct. 438, 445 (1998); *see also Greguhn v. Mut. Of Omaha Ins. Co.*, 23 Utah 2d 214, 218 (1969).

The acknowledgement of my overbroad hypothetical, however, does not warrant altering the January 7, 2013 judgment. It is true that the rebate agreement contains no acceleration clause but it is one of the fundamental principles of bankruptcy that the filing of a petition operates to accelerate all debts. *See In re Texaco Inc.*, 73 B.R. 960, 965-66 (S.D.N.Y. 1987); *see also In re Trace Int'l Holdings, Inc.*, 284 B.R. 32, 37 (S.D.N.Y. 2002).

The legislative history of Bankruptcy Code § 502(b) is instructive:

Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, bankruptcy operates as the acceleration of the principal amount of all claims against the debtor. One unarticulated reason for this is that the discounting factor for claims after the commencement of the case is equivalent to contractual interest rate on the claim. Thus, this paragraph does not cause disallowance of claims that have not been discounted to a present value because of the irrebutable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.

Sen. Rep. No. 989, 95th Cong., 2nd Sess. 63 (1978); H.R. Rep. No. 595, 9th Cong. 1st Sess. 353 (1977).

Not only did Congress intend that bankruptcy serve as an automatic acceleration of debts, its explanation as to why is especially relevant to the issue here. Acceleration is a trade-off for § 502(b)(2)'s disallowance of post-petition interest in order to obviate the need for present value discounting of claims. The legislative history of § 502(b) validates the conclusion that the section does not mandate the present valuing to the petition date of claims in bankruptcy.

It is true as the trustee points out that Supervalu's claim was non-interest bearing and thus lacks a key characteristic undergirding the logic of non-discounting (although Congress's comment about a "zero interest rate" suggests it was unconcerned about that). Indeed, cases such as *In re Trace Int'l Holdings, Inc.*, in which courts have discounted bankruptcy claims appear to rely on this distinction. But these cases too are predicated on the assumption that under § 502(b) present value discounting is not mandatory but rather may be imposed on a case by case basis.

Present value discounting Supervalu's claim to the bankruptcy petition date in this case would be inappropriate and inequitable. Not only was the claim accelerated upon Gretag's filing its bankruptcy petition, but by the time the trustee filed his objection to Gretag's claim some six and a half years later, the rebate agreement's maturity date had long since come and gone. Outside of bankruptcy in breach of contract suits involving contracts without acceleration clauses, the non-breaching party's ability to collect post-breach damages is limited. *See Consumers United Ins. Co. v. Smith*, 644 A.2d 1328 (1994). Courts, however, routinely allow the non-breaching party to supplement a damage claim with actual damages incurred up to the time of trial.

Conceptually, all damages as of the date of breach are prospective, and yet the trial on damages will typically take place several months (or even years) later. This means there will be pretrial period for which actual damages can be ascertained, as well as post-trial period for future damages. Accordingly, in a variety of situations, courts have commonly recognized two separate calculations of damages beginning,

as the case maybe, from the date of injury or breach: (1) The damages actually realized before trial, and (2) the damages for the period after trial calculated on the basis of estimates discounted to the date of trial.

Id at 1341. (internal citations omitted).

Here, Supervalu's actual damages through the maturity date of the rebate agreement were accurately calculable by the time the trustee objected to its claim. It is now more than ten years since the petition date and that claim remains unpaid.

The trustee's motion to alter or amend judgment is DENIED.

Dated: July 18, 2013

By the Court,

A handwritten signature in black ink, appearing to read "Melvin S. Hoffman", written over a horizontal line.

Melvin S. Hoffman
U.S. Bankruptcy Judge