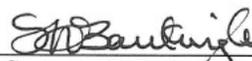




SO ORDERED.

SIGNED this 13th day of July, 2015

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 3:12-bk-33943-SHB

KAREN L. MILLER

Debtor

MEMORANDUM & ORDER

On May 14, 2015, Debtor filed the Motion of Debtor for Reconsideration or Clarification (Motion), asking the court to clarify a portion of its Memorandum on Third Amended Plan of Reorganization filed May 1, 2015, through which it denied confirmation of Debtor's Chapter 11 plan. Specifically, Debtor asks the court to modify its memorandum opinion to clarify that in the calculation of its unsecured claim, Tennessee State Bank, in fact, is not entitled to post-petition interest or attorneys' fees. In support of her motion, Debtor correctly relies on 11 U.S.C. § 506(b), which provides: "To the extent that an allowed secured claim [*in this case*] is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement . . . under which such claim arose."

Debtor acknowledges that this court has ruled in both Mr. Miller's case and in this case that the properties of Debtor and Mr. Miller are cross-collateralized such that all of the collateral stands for all of the indebtedness. As a result, in Mr. Miller's case, the court found that the Bank was undersecured because the amount of the Bank's claims *in Mr. Miller's case* were greater than the value of all of the cross-collateralized property. Here, however, application of § 506(b) looks only to the secured claims *in this case*, which aggregate to \$1,122,110.52, with a balance of \$958,220.18 due after sale of the Valley Mart Exxon. [Motion (Doc. 460) ¶ 5.] The value of all of the cross-collateralized property, according to the confirmed Chapter 11 Plan in Mr. Miller's case, totals \$4,872,000.00. [Doc. 502 at pp. 8-9.]

As explained in *In re Pan American General Hospital, LLC*, 385 B.R. 855, 866 n.17 (Bankr. W.D. Tex. 2008), "the section 506(b) claim made here can only be applied to the claim of the creditor as it stands in this current case." There, the creditor, U.S. Bank, had been undersecured in a prior Chapter 11 case filed by the same debtor. U.S. Bank sought attorneys' fees under § 506(b) in the second case, and other creditors objected, arguing that U.S. Bank could not be treated as oversecured in the second case because it had not been oversecured in the first case. The court explained that each case is considered on its own, with the § 506(b) determination to be made according to the Code's provisions applied to the pending case.

That U.S. Bank found itself under-secured in the First Case is legally irrelevant to whether it is entitled to a recovery under section 506(b) in this case. Section 506 rests in its entirety on the definition of "allowed claim." A claim is allowed as of the date of the filing of the petition that initiated this case, *see* 11 U.S.C. § 502(b), and claims are filed by creditors, *see* 11 U.S.C. § 501(a). A creditor is an entity that "has a claim against the debtor that arose *at the time of or before the order for relief concerning the debtor.*" *See* 11 U.S.C. § 101(10)(A) (emphasis added).

Thus, the allowed claim that we consider in section 506(b) is the claim as it exists in this case, not some previous case.

Id.

Application of § 506(b) to Mrs. Miller's case yields the following inescapable conclusion: because the Bank's aggregate claim in this case totaling \$1,122,110.52 is secured by collateral with a value that exceeds \$4,800,000.00, the Bank is oversecured and entitled to "any reasonable fees, costs, or charges provided for under the agreement under which such claim arose."

Accordingly, the Motion of Debtor for Reconsideration or Clarification is GRANTED in part and DENIED in part. The court denies reconsideration and clarifies that Tennessee State Bank is entitled to post-petition interest and attorneys' fees, which will be included within the calculation of Tennessee State Bank's unsecured claims against Debtor's estate.

###