

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

BESS EATON DONUT FLOUR COMPANY, INC. BK No. 04-10630
Debtor Chapter 11

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In re: :

LOUIS A. GENCARELLI, SR. : BK No. 04-10682
Debtor Chapter 11

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ORDER

Heard on October 7, 2004, on the Debtor's objection to the Claim of UPS Capital Business Credit ("UPS"). At issue is the declining prepayment penalty contained in two secured notes payable to UPS. The penalty for the year in question amounts to 3% or a total of \$202,822 under both notes. The Debtor argues that the pre-payment penalty is akin to liquidated damages and UPS must establish that it is a reasonable cost under 11 U.S.C. § 506(b). UPS argues that we should only look to state law where there is no reasonableness requirement and enforce the penalty as bargained for between the parties.

Upon consideration of the arguments, I find that Section 506(b) preempts state law with respect to the addition of reasonable fees, costs or charges to an over-secured claim in a bankruptcy proceeding and that a single federal standard should apply to their allowance. See *In re Center*, 282 B.R. 561 (Bankr. D. N.H. 2002); *Fischer Enters., Inc. v. Geremia (In re*

Kalian), 178 B.R. 308, 317 (Bankr. D.R.I. 1995); *In re A.J. Lane & Co., Inc.*, 113 B.R. 821, 825 (Bankr. D. Mass. 1990). Because UPS did not put on any evidence regarding the reasonableness of the penalty and they have asked the Court for an opportunity to do so, I will continue the matter for an evidentiary hearing on November 17, 2004, at 9:30 a.m. The parties shall file a Joint Pre-Trial Order in accordance with R.I. LBR 9014-1 on or before November 12, 2004.

Dated at Providence, Rhode Island, this 8th day of October, 2004.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 10/8/2004