So Ordered.

Signed this 16 day of January, 2026.

Patrick G. Radel
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Pamela D MacKenzie and
Christopher C. Novak,

Case No. 24-60730-6-pgr
Chapter 12

Debtors.

DECISION AND ORDER GRANTING, IN PART, AND DENYING, IN PART, DEBTORS' OBJECTION TO CLAIM

1. Presently pending is consolidated Debtors' Objection to Claim Number 7 by Posson Farm, LLC. (ECF No. 48).

2. For the following reasons, this Court grants, in part, and denies, in part, the Objection and finds that questions of material fact exist that require a trial.

Background

3. The following facts are undisputed, except where noted.

4. In June of 2014, Pamela D. MacKenzie and Christopher Novak ("Debtors") purchased real property located in Fort Plain, New York from Harvey and Katie Byler for $232,000. (Docket No. 48, Ex. 1) (note and mortgage).
5. Because the property contained a dwelling with no electrical service or indoor plumbing, the Debtors could not obtain traditional financing, and the Bylers agreed to hold a mortgage until the Debtors could bring the dwelling up to lending standards for conventional financing. (Docket No. 17 at 4) (Chapter 12 Trustee's field report).
6. The Note and Mortgage ("Note") signed by the Debtors provided for 12 monthly payments of $1,000 beginning on July 1, 2014, with the indebtedness maturing at the end of the term. (Note, Claim 7-2).
7. The Note matured on July 1, 2015.
8. The Debtors did not pay off the debt when the loan matured, but began making monthly payments in the amount of $1,200. (Docket Nos. 67).
9. Debtors last made a payment on October 1, 2019. (Docket No. 67).
10. The Bylers assigned the Note to Posson Farm, LLC on May 20, 2021. (Docket No. 52, Ex. C) (assignment agreement).
11. Posson commenced a foreclosure action in New York State Supreme Court. (Docket No. 59, Ex. 4).
12. On June 29, 2023, the Honorable Felix J. Catena, Justice of the New York State Supreme Court in and for the County of Montgomery, entered a

Decision and Order granting summary judgment in favor of Posson and against the Debtors. (Docket No. 57, Ex. B).

13. Justice Catena concluded that Posson demonstrated a default under the Note and directed that a Referee be appointed to compute amounts due under the Note, including "any" interest. (*Id.* at 16).

14. On June 21, 2024, the Honorable Rebecca Slezak, Justice of the New York State Supreme Court, County of Montgomery, reviewed the Referee's Report and the Note and found that the "record presents material issues of fact that cannot be determined by the Court as a matter of law, *i.e.*, the existence of interest and the amount of monthly payments." (Docket No. 59, Ex. 4)

Procedural History

15. The Debtors, by and through counsel, filed Petitions for Relief under Chapter 12 of the Bankruptcy Code on September 17, 2024. (Docket No. 1, in Case Numbers 24-60730-6; 24-60731-6).

16. The cases were consolidated by this Court on October 30, 2024. (Docket No. 27).

17. Posson filed an Amended Proof of Claim in the amount of $327,319.70 on November 5, 2024. (Claim No. 7-2).

18. Debtors filed an Objection to Posson's Claim on April 4, 2025. (Docket No. 48).

19. Posson filed a Response in Opposition to the Objection on April 11, 2025. (Docket No. 52).

20. With leave of the Court, Posson (Docket Nos. 57, 58, 63, 67) and the Debtors (Docket Nos. 59, 68) filed supplemental submissions, including memoranda of law and accompanying exhibits, in further support of their respective positions.

21. This Court heard oral argument on April 15, 2025; May 20, 2025; June 12, 2025; July 25, 2025; August 12, 2025; September 23, 2025; November 18, 2025; and December 16, 2025, made findings of fact and conclusions of law, and determined that a trial was necessary.

22. A trial is scheduled for April 20, 2026. (Docket No. 83).

23. This Memorandum-Decision and Order sets forth this Court's findings of fact and conclusions of law, including its reasons therefore, and identifies the issues to be determined at trial.

Findings of Fact and Conclusions of Law

24. Debtors' Objection presents the following questions: (a) whether interest accrued under the Note during its initial term; (b) what the terms of the parties' post-maturity modification to the Note were; and (c) whether Posson is entitled to statutory interest under New York law.

No Interest Accrued During the Initial Term of the Note

25. The Note states that the Debtors were to repay the amount of $232,000 "with no interest." (Docket 48, Ex. 1)

26. The Note provides for monthly payments of $1000, states that $500 of each payment "shall be credited towards the balance of the mortgage," but

provides no explanation as to what the remaining $500 would be applied to. (*Id.*)

27. Whether a contract is ambiguous is a question of law for the court. *Meehancombs Glob. Credit Opportunities Master Fund, LP v. Caesars Ent. Corp.*, 162 F. Supp. 3d 200, 208 (S.D.N.Y. 2015).

28. Ambiguous language is language that is "capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Revson v. Cinque & Cinque, P.C.*, 221 F.3d 59, 66 (2d Cir. 2000).

29. "General canons of contract construction require that where two seemingly conflicting contract provisions reasonably can be reconciled, a court is required to do so and to give both effect." *Seabury Const. Corp. v. Jeffrey Chain Corp.*, 289 F.3d 63, 69 (2d Cir. 2002) (quotation marks omitted); *see also Israel v. Chabra*, 601 F.3d 57, 62 (2d Cir. 2010) ("[W]hen a ... clause purportedly conflicts with another clause in a contract, every attempt should be made to harmonize the two provisions using common-law tools of contract interpretation.") (quoting *Israel v. Chabra*, 12 N.Y.3d 158, 167, 906 N.E.2d 374, 878 N.Y.S.2d 646 (2009)); *Spinelli v. Nat'l Football League*, 903 F.3d 185, 200 (2d Cir. 2018) (same); *Adstra, LLC v. Kinesso, LLC*, No. 24-CV-2639, 2025 WL 552050, at *12 (S.D.N.Y. Feb. 19, 2025) ("The court must also avoid

an interpretation that 'sets up two clauses in conflict with one another.'" (quoting *CITGO Asphalt Ref. Co. v. Frescati Shipping Co., Ltd.*, 589 U.S. 348, 362 (2020)) (ellipsis omitted)).

30. "Where a contractual term is clear and unambiguous, a court may [not] rewrite the term under the guise of interpretation." *Flack v. Friends of Queen Catherine Inc.*, 139 F. Supp. 2d 526, 536 (S.D.N.Y. 2001); *see also Div. 5, LLC v. Fora Fin. Advance LLC*, No. 24-CV-6870 (JPO), 2025 WL 1548807, at *3 (S.D.N.Y. May 30, 2025).

31. Here, the Note stated that interest would not accrue during its term.

32. To wit, the Note states: "Mortgagor promises to pay Mortgagee or order the sum of TWO HUNDRED THIRTY-TWO THOUSAND and 00/100 ($232,000.00) **with no interest**." (Docket 48, Ex. 1) (emphasis added).

33. The potential ambiguity arises in determining how to apply the $1000 payments called for under the Note.

34. As noted above, the Note states that $500 of each payment is applied to reduce the debt, but is silent as to application of the remaining $500.

35. Although the lack of express explanation is perhaps not a paradigm example of careful craftsmanship by the Note's author, review of the Note provides an answer and resolves any arguable ambiguity.

36. According to the Note, the lender was permitted, but not required, to pay taxes and/or insurance if Debtors failed to do so. (*See* Docket 48, Ex. 1, ¶¶ 9, 4, & 8).

37. Thus, the Note appears to allow the lender to use up to $500 from each monthly payment if necessary to reimburse those protective advances.

38. However, there is no assertion that the Debtors failed to pay taxes or insurance.

39. This Court concludes that $500 is the minimum amount that the lender was required to credit towards the balance of the mortgage, not the maximum.

40. This Court need not decide what other charges the $500 may have been allocated to pay where, as here, there was no showing that the lender made protective advances during the Note's term.

41. Posson, in its Proof of Claim, allocated the additional $500 payments to "interest." This cannot be proper, as the Note provided for no accrual of interest.

42. In the alternative, even if these provisions are considered ambiguous, "[i]n cases of ambiguity, a contract must be construed most strongly against the party that prepared it, and favorably to a party that had no voice in the selection of its language." *Thomas v. Jordan*, 66 Misc. 3d 54, 56, 116 N.Y.S.3d 486, 487 (N.Y. App. Term. 2020).

43. There appears to be no dispute that the Note was drafted by, or on behalf of, the Bylers and that ambiguity, if any, would therefore be construed against Posson as successor to the Bylers.

44. As such, the Court finds that all payments made during the initial term of the Note must be credited to principal.

Questions of Fact Exist Concerning Interest After Maturity and Before Default

45. The Note states that the entire principal sum was due after 12 months – *i.e.*, July 1, 2015. (Docket 48, Ex. 1).

46. However, Bylers and the Debtors orally modified the repayment terms after the Note matured.

47. According to an accounting provided by Posson, Debtors began making payments of $1200/month on July 1, 2015. (Docket No. 67).

48. The Bylers applied $700 of this $1200 payment to "interest" and $500 to principal. (*Id.*)

49. After July 2018, the payments and accounting become irregular. (*Id.*)

50. Debtors stopped making payments on October 1, 2019. (*Id.*)

51. On May 20, 2021, the Bylers assigned the Note to Posson. (Docket No. 52, Ex. C).

52. Applicable non-bankruptcy law, *i.e.*, New York's Statute of Frauds, generally bars oral modifications of land contracts. *Vogel v. Vogel*, 128 A.D.3d 681, 683, 9 N.Y.S.3d 97, 100 (2d Dep't 2015).

53. "However, an alleged oral modification is enforceable if there is part performance that is unequivocally referable to the oral modification." *Id.*

54. Performance is "unequivocally referable" if the conduct is "inconsistent with any other explanation." *Id.*

55. The doctrine of part performance removes the protection of the Statute of Frauds when one party to a written agreement "induces or permits without

remonstrance another party to the agreement to do acts, pursuant to and in reliance upon the agreement, to such an extent and so substantial in quality as to irremediably alter the situation and make the interposition of the statute against performance a fraud' " *Aldrich v. LNG Enters., Inc.*, 220 A.D.3d 1178, 1180, 197 N.Y.S.3d 634, 637 (4th Dep't 2023) (internal quotations omitted).

56. Similarly, when a contract expressly states that it cannot be modified orally, as the Note here does, an oral modification may be enforced "when there has been partial performance of the agreement to modify" or "when one party has induced the other party to rely on an oral modification, the first party may be equitably estopped from invoking the requirement that any modification be in writing." *Towers Charter & Marine Corp. v. Cadillac Ins. Co.*, 894 F.2d 516, 522 (2d Cir. 1990); *see also Rose v. Spa Realty Assocs.*, 42 N.Y.2d 338, 344, 366 N.E.2d 1279, 1283 (1977).

57. "[W]here the terms of an oral agreement between disputing parties are at issue, a trial is the only remedy." *Singh v. Benzina, Inc.*, 189 A.D.3d 1494, 1497, 139 N.Y.S.3d 247, 251 (2d Dep't 2020).

58. In the present case, the doctrine of part performance is satisfied.

59. There is no dispute that Debtors continued to make payments in the amount of $1200 per month for several years after the terms of the written Note ended.

60. This behavior is only explainable by an oral modification.

61. However, there are material questions of fact regarding the terms of the parties' oral agreement, including whether and at what rate(s) interest was to accrue. These questions will need to be determined after trial.

62. There is also a material question of fact as to the date of default. That date can be no later than October 1, 2019, when Debtors made their last payment, but could be earlier depending on the terms of the oral modification. Thus, to ascertain the date of default, this Court must determine the terms of the oral modification.

Posson is Entitled to Interest at 9% from the Date of Default

63. Under NYCPLR § 5001(a), "a successful plaintiff is entitled to prejudgment interest as of right" from the date the cause of action accrued, which would be the date of default here. *See Lewis v. S.L. & E., Inc.*, 831 F.2d 37, 39 (2d Cir. 1987); *see also Julien J. Studley, Inc. v. Gulf Oil Corp.*, 425 F.2d 947, 950 (2d Cir. 1969).

64. Posson was awarded a judgment by the State Court and is entitled to prejudgment interest. *See In re Alves*, No. 05-22840, 2007 Bankr. LEXIS 1843, at *11-12 (Bankr. W.D.N.Y. May 25, 2007) ("[P]rejudgment interest, determined but not formally awarded prepetition by a signed order or judgment because of the filing of the Debtor's petition, is not unmatured interest for purposes of Section 502(b)(2). This Court believes that unmatured interest is interest that has not been earned, such as accelerated interest, not

prejudgment interest that was determined by a state court prepetition but not included in a signed order or judgment because a petition was filed.").

65. The statutory rate of 9% applies because the Note does not establish a default rate of interest and the parties did not expressly agree to waive statutory prejudgment interest. *See Centi v. McGillin*, 155 A.D.3d 1493, 1495-96, 66 N.Y.S.3d 337, 339 (3d Dep't 2017), *aff'd,* 34 N.Y.3d 1072, 139 N.E.3d 390 (2019)("[W]here, as here, 'the parties failed to include a provision in the contract addressing the interest rate that governs after principal is due or in the event of a breach, New York's statutory rate will be applied as the default rate.'")(quoting *NML Capital v. Republic of Argentina*, 17 N.Y.3d 250, 258, 928 N.Y.S.2d 666, 952 N.E.2d 482 (2011)); *see also IHG Harlem I LLC v. 406 Manhattan LLC,* 224 A.D.3d 22, 27, 203 N.Y.S.3d 543, 548 (1st Dep't 2024), *leave to appeal denied*, 41 N.Y.3d 910, 236 N.E.3d 1278 (2024) (not applying statutory rate where "the parties had designated in their agreement (1) a sole remedy of (2) a liquidated sum, that (3) included compensation for the lost use of that money over time, and (4) explicitly waived all further rights and obligations.").

66. Debtors contends that the Note should be considered a "consumer debt," with interest accruing at only 2% pursuant to NY CPLR § 5004.

67. NYCPLR §5004(b) provides: "(b) For the purpose of this section 'consumer debt' means any obligation or alleged obligation of any natural person to pay money arising out of a transaction in which the money, property, insurance

or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment . . . ."

68. Justice Catena determined that Note was not a "home loan" and found that "the property . . . is not [Debtors'] primary residence and is used for occupational purposes." (Docket No. 57).

69. Although it appears Debtors may have intended to occupy a portion of the property as their residence, there is no genuine dispute regarding the fact that the primary purpose of the transaction with the Bylers was for the Debtors to obtain a farm for business purposes.

70. Accordingly, this Court finds that Posson is entitled to statutory interest at the statutory rate of 9% from the date of default, with that date to be determined based on further fact-finding as identified above.

Conclusion

71. For the reasons set forth above, this Court sustains Debtors' Objection to Posson's claim to the extent the claim contains interest accrued during the initial term of the Note; denies Debtors' Objection to the extent it challenges Posson's entitlement to interest at the rate of 9% from the date of default; and finds material questions of fact regarding the terms of the parties' post-maturity oral modification of the Note and, in turn, regarding the date of default.

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