

Akerman Lens

Can a Secured Lender Collect Default Interest in Bankruptcy? ... Maybe

May 19, 2026

By [Michael D. Napoli](#)



Related People

[Michael D. Napoli](#)

Related Work

[Bankruptcy and Reorganization Chapter 11 Business Debtors](#)

A bankruptcy court in the Southern District of New York clarified the factors considered in determining whether an oversecured creditor can recover default interest under a loan agreement. In a recent decision (*In re Mako 33, LLC*), the court allowed a secured creditor to recover default interest even though the debtor was not insolvent. Up until now, SDNY bankruptcy courts have tended to treat the question of the debtor's solvency as a threshold question. If the debtor is solvent, then default interest will probably be allowed; if not, then likely not. For secured lenders, deemphasizing solvency is a welcome clarification, as solvent debtors are a vanishingly rare phenomenon.

If the *Mako 33* rule holds (this is just the opinion of one bankruptcy judge), the treatment of secured creditors in New York will be more consistent with their treatment in other parts of the country, such as Texas, for example. Both jurisdictions presume that an oversecured creditor can recover default interest unless to do so would be inequitable. The SDNY's emphasis on the debtor's solvency, however, has made this presumption a bit ephemeral. In contrast, bankruptcy courts in Texas generally do not consider the debtor's solvency in determining the equity of default interest. Instead, Texas courts take a more holistic approach, considering whether the default rate is commercially reasonable, whether allowing default interest would unduly affect the unsecured creditors, and whether the creditor acted inequitably.

Accordingly, commercially reasonable provisions for default interest have had a better chance of being enforced outside the SDNY. Whether *Mako 33* will ultimately increase creditors' odds remains to be seen.