

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

MAY 03 1988

William L. Oison, Clerk

IN RE:

DELL CORPORATION,

Debtor-Appellant,

v.

COMMERCE SAVINGS COLUMBUS, INC.,
et al.,

Appellees.

CV. 87-0544
BK. 86-1566

CLERK
DISTRICT OF NEBRASKA
OMAHA

MEMORANDUM OPINION
AND ORDER

This matter is before the Court upon Dell Corporation's (hereinafter debtor) objections (Filing No. 7) to the magistrate's findings and recommendations (Filing No. 6). Pursuant to 28 U.S.C. § 636(a), this Court has conducted a de novo review of those portions of the findings and recommendations to which debtor has objected.

Debtor is currently appealing the decision of the Bankruptcy Court to reject debtor's Chapter 11 plan of reorganization. The Bankruptcy Court rejected the plan because it failed to satisfy the conditions of 11 U.S.C. § 1124(2). Section 1124(2) sets forth the manner in which a claim or interest of a third party may be left "unimpaired" as required by 11 U.S.C. § 1129(a)(8).

The dispute over whether the plan satisfies § 1124(2) is centered around the claims of Commerce Savings Columbus, Inc., Equitable Savings & Loan, and Columbus Federal Savings Bank (hereinafter creditors). Prior to debtor's filing bankruptcy,

the creditors each foreclosed real estate liens they held on properties then owned by debtors. Creditors subsequently obtained foreclosure decrees and, pursuant to Neb.Rev.Stat. § 45-103 (Reissue 1984), were awarded interest on the decrees at fourteen per cent (14%) per annum. Debtor's plan, as submitted, called for the interest to be reduced to the rates set forth in the original contracts that debtor and creditors had executed. Debtor argues that this is proper due to the fact that § 45-103 was repealed by the Nebraska legislature and replaced with a new § 45-103. See Neb.Rev.Stat. § 45-103 (Cum.Supp. 1986). The new § 45-103 is applicable to all causes of action accruing on or after January 1, 1987. Since the old § 45-103 has been repealed, debtor argues further that creditors are no longer entitled to interest on the decrees. In debtor's eyes, the right to interest on the decrees is a matter of "legislative grace" since the right did not exist at common law, and that with the repeal of the statute, "there ain't no grace no more." Debtor's reply brief, p. 2. This Court disagrees.

There is no support for the position which debtor has taken. The repeal of the old § 45-103 did not take away any rights that the creditors gained while the statute was in effect. Also § 45-103 has been revised a number of times over the years and while the revisions may have changed the interest rate which was accruing, the right to the interest has never been affected. See *Colburn v. Ley*, 91 Neb. 427, 433, 215 N.W.2d 869, 873 (1974). It has long been the rule in Nebraska that post-judgment interest may be collected as long as the debt remains unsatisfied. See

Hall v. Citizens State Bank, 122 Neb. 636, 642-43, 241 N.W. 123, 126 (1932). Further, such interest is considered as distinctly a substantive part of the debt as if it was a portion of the original obligation. *Id.* at 643, 241 N.W. at 126.

Finally, it should be remembered that "legislative intent is the cardinal rule in the construction of statutes." **Rutigrew v. Home Insurance co.**, 191 Neb. 312, 214 N.W.2d 920." **Brown v. Sullivan**, 195 Neb. 729, 730, 240 N.W.2d 51, 52 (1976). "Statutory language should be given its plain and ordinary meaning . . . and where the words of a statute are plain, direct and unambiguous, no interpretation is necessary to ascertain their meaning." **State v. Carlson**, 223 Neb. 874, 876, 394 N.W.2d 669, 671 (1986), quoting **Sorensen v. Meyer**, 220 Neb. 457, 467, 370 N.W.2d 173, 177 (1985); see also **Kellogg Co. v. Herrington**, 216 Neb. 138, 144, 343 N.W.2d 326, 330 (1984). Therefore, since new § 45-103 does not affect any causes of action which accrued before January 1, 1987, it is inapplicable to this case. Therefore, the new section does not change the fourteen per cent (14%) interest rate which is currently accruing.

Having made the above review of this matter, the Court finds that creditors are entitled to the post judgment interest at the rate of fourteen per cent (14%), and that debtors must provide for this in their plan of reorganization. Accordingly,

IT IS ORDERED:

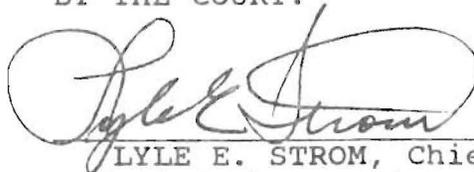
1) The findings and recommendations of the magistrate are adopted and confirmed in all respects;

2) The decision of the Bankruptcy Court to reject debtor's Chapter 11 plan is affirmed;

3) This action is remanded to the Bankruptcy court for further proceedings consistent with this opinion.

DATED this 3rd day of May, 1988.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lyle E. Strom", written over a horizontal line.

LYLE E. STROM, Chief Judge
United States District Court