

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

MARGUERITE M. GRIFFIN,)

DEBTOR)

CASE NO. BK84-792

MEMORANDUM OPINION

At issue is whether the debtor's proposed plan of reorganization under Chapter 11 may be confirmed. Alliance National Bank & Trust Company has objected to confirmation on a number of grounds the issue of which needs to be addressed here is whether "one class of claims has accepted the plan" pursuant to 11 U.S.C. §1129(a)(10).

The debtor points to the unsecured class of creditors as the accepting class. In that class there are only two claims. One claim is held by Majel Moore in the amount of \$8,070. The other is a claim by Dorothy Oberg in the amount of \$500. The bank disputes both claims as valid claims. However, for the purpose of this memorandum opinion, I assume without deciding that they are valid claims in this proceeding. Both parties agree that Majel Moore is an "insider" as that term is defined in §101(25) of the Bankruptcy Code. Sub-part (10) of §1129(a) provides:

"at least one class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim of such class."

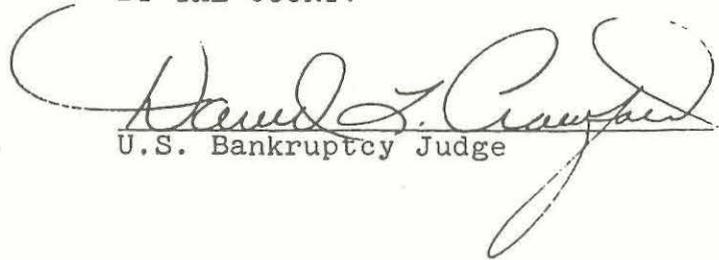
The debtor suggests that since Majel Moore's claim is that of an insider, her claim should be taken out of the class for voting purposes and, thus, there is only one unsecured creditor left in the class and that creditor has accepted the plan. Accordingly, the debtor takes the position that the requisite acceptance by a class is present under §1126(c). The bank argues that since Majel Moore's claim is that of an insider, her acceptance is not counted in determining whether acceptance is present under §1129(10) but that her claim remains within the class for the purpose of determining whether the requisite two-thirds in amount and more than one-half in number of the allowed claims of the class have accepted under §1126(c).

Section 1126(c) does not by its language exclude the claims of insiders and I conclude that although acceptance of Majel Moore is excluded in determining whether the class accepts under §1129, her claim remains in the class for determining the requisite amount of acceptances and, thus, the class cannot be said to have accepted by two-thirds in amount and more than one-half in number.

A separate order is entered in accordance with the foregoing.

DATED: August 16, 1984.

BY THE COURT:


U.S. Bankruptcy Judge

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