

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

DANIEL J. CONLON and)
DIXIE L. CONLON,)

DEBTORS)

CASE NO. BK80-1751

MEMORANDUM AND ORDER

In this Chapter 13 proceeding, Commercial Federal Savings and Loan Association objects to confirmation of the plan on the basis that the plan does not propose curing of the default on Commercial's real estate mortgage within a reasonable period of time under §1322b(5) and, in any event, within the statutory three-year period under §1322c.

The debtors' petition was filed on August 11, 1980. I find as fact that the debtors were on that date three months in arrears on their payments to Commercial, those payments being due on June 1, July 1, and August 1. Each of those payments should have been \$511.04 plus \$14.07 late charges a month. The debtors' plan proposes curing the defaults at the rate of \$50.00 per month plus 12% interest. As can be seen, even if the \$50.00 per month plus interest were paid, it would not cure the default in the three-year period.

Apparently after the filing of the petition, Mr. Conlon went to Commercial and attempted to make a payment but Commercial declined as it apparently had the right to do under its loan documents since a three-month delinquency existed. I conclude as law that Commercial did not waive the right to delinquent payments by refusing to accept a payment when the three-month delinquency existed since it also has the right to apply any payment received to the first delinquent payment.

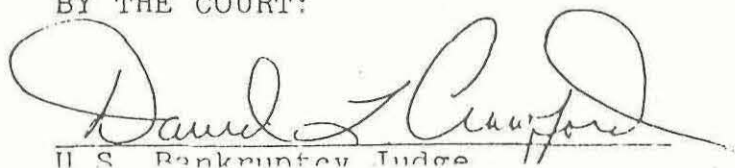
Lastly, the facts before me are unpersuasive to show that Commercial waived the right to any late payment charges since it had the right to apply the payment offered to the first delinquent payment. Accordingly, it is

ORDERED that the objection to confirmation filed by Commercial Federal Savings and Loan Association is hereby sustained; and it is further

ORDERED that the debtors are given fourteen days from the date of this order in which to file an amended plan.

DATED: December 2, 1980.

BY THE COURT:


U. S. Bankruptcy Judge