IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	BK 84-792
	)	
MARGUERITE M. GRIFFIN,	)	
	)	
Debtor.	)	
MARGUERITE M. GRIFFIN,	)	CV 84-0-685
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM AND ORDER
	)	
ALLIANCE NATIONAL BANK & TRUST COMPANY,	)	
	)	
Defendant.	)	
ALLIANCE NATIONAL BANK & TRUST COMPANY,	)	CV 84-0-704
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MARGUERITE M. GRIFFIN,	)	
	)	
Defendant.	)	

These matters are before the Court on appeal by debtor Marguerite Griffin from an order entered by the United States Bankruptcy Court for the District of Nebraska denying confirmation of the appellant's proposed plan of reorganization, and on cross-appeal by the Alliance National Bank & Trust Company. After a review of all material submitted, this Court finds that the decision of the Bankruptcy Court must be reversed and the case remanded for further consideration of issues with respect to confirmation of the debtor's proposed plan of reorganization.

The debtor has three creditors. Alliance National Bank (Bank) is a secured creditor holding a claim in excess of $600,000.00. Majel Moore, the debtor's daughter-in-law, is an unsecured creditor holding a claim of $8,070.00. Dorothy Oberg, a friend of the debtor, is an unsecured creditor holding a claim of $500.00.

The debtor's proposed plan of reorganization placed the secured claim of the Bank into one class of secured creditors, and the two unsecured claims of Majel Moore and Dorothy Oberg into one class of unsecured creditors. All creditors returned ballots, with the Bank voting against confirmation of the proposed plan of reorganization, and both Majel Moore and Dorothy Oberg voting in favor of debtor's proposed plan. The Bank filed an objection to the plan based on nine separate grounds.

The Bankruptcy Court denied confirmation upon the determination of the single legal issue that one class of claims has not accepted the plan pursuant to 11 U.S.C. § 1129(a)(10). The Bankruptcy Court did not address any of the other grounds for the Bank's objection to confirmation and no evidence was received at the hearing.

The Bankruptcy Court stated in its Memorandum Opinion entered August 16, 1984:

> 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 suggest 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 included 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.

This Court does not agree that is the proper interpretation of Section 1126(c). As the United States Supreme Court has stated:

> In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. . . .
>
> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature under took to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purposes of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed the purpose rather than the literal words.

United States v. American Trucking Ass'n, 310 U.S. 534, 542-43 (1940).

The legislative history provides that section 1126(c) "requires that at least one class must accept the plan, but any claims or interests held by insiders are not to be included for purposes of determining the number and amount of acceptance." (S. Rep. No. 989, 95th Cong., 2d Sess. 128, 1978). This Court holds that the claims of insiders do not remain in the class under section 1126(c) for determining the requisite amount of acceptances. In this case the claim of Majel Moore should be disregarded for purposes of both 11 U.S.C. § 1126(c) and § 1129(a)(10).

Such holding is consistent with the intent of Congress. The determination of acceptance is then based upon the votes of non-insiders. Neither are non-insiders then penalized by per chance being placed in a class with insiders. None of the cases cited by

ne Bank address this specific issue. See, e.g., In re Barrington Oaks General Partnership, 15 B.R. 952 (Bankr. Utah 1981) (legislative history explained, however, thrust of case concerns acceptance by an impaired class). In re S & W Enterprise, 37 B.R. 153, 160 (Bankr. Ill. 1984) (creation of contrived separate classes of creditors not condoned to circumvent sections of the Bankruptcy Code).

With regard to the cross-appeal, since the Bankruptcy Court did not address any of the Bank's other objections to confirmation, this Court finds these proceedings should be remanded to the Bankruptcy Court for further consideration of those remaining objections rather than dealing with them on appeal. This is necessary and proper wherein certain of the issues require an evidentiary hearing. The issue concerning whether or not the Bankruptcy Court abused its discretion in not dismissing the debtor's Chapter 11 case is not properly before this court on appeal. No notice of appeal was filed from the Bankruptcy Court's relevant orders.

IT IS ORDERED that the decisions of the Bankruptcy Court appealed in CV 84-0-685 with regard to 11 U.S.C. § 1129(a)(10) and 1126(c) are reversed and the proceedings are remanded to the Bankruptcy Court for further consideration of the remaining objections of the Bank consistence with this Memorandum and Order.

IT IS FURTHER ORDERED that the proceedings are remanded for further consideration of the issues raised in the cross appeal (CV 84-0-704) with regard to confirmation of debtor's proposed plan.

DATED this 1st day of May, 1985.

BY THE COURT:

C. ARLEN BEAM
UNITED STATES DISTRICT JUDGE