

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
DESA HOLDINGS CORPORATION,)	Bankruptcy No. 02-11672 (PJW)
et al.,)	
)	
Debtors.)	
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)	
BANK OF AMERICA, N.A.,)	
AS AGENT,)	
)	
Appellant,)	
)	
v.)	Civ. No. 03-1089-SLR
)	
OFFICIAL COMMITTEE OF)	
UNSECURED CREDITORS, et al.,)	

MEMORANDUM OPINION

At Wilmington, this 9th day of February, 2004, having reviewed the appeal of the bankruptcy court's November 3, 2003 order in the above captioned case, and the memoranda submitted therewith;

IT IS ORDERED that the appeal is denied and the order affirmed for the reasons that follow:

1. On June 8, 2002, debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On December 18, 2002, appellant filed its proof of a secured claim in the amount of \$168,123,039, plus accrued and accruing interest, fees, costs and charges on and after the petition date to the date of confirmation of any plan of reorganization. As of June 6, 2003,

a total of \$168,123,039 had been paid to appellants in satisfaction of the prepetition claim, prepetition interest, postpetition interest, fees and additional costs and charges.

(D.I. 3) On October 17, 2003, the bankruptcy court denied appellant's approximate \$2 million claim for postpetition default interest. The October 17 decision was entered as an order on November 3, 2003.

2. In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercises 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court opinions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002).

Bankruptcy court decisions involving the exercise of discretion are reviewed for an abuse of discretion. See In re Vertientes, Ltd., 845 F.2d 57, 59 (3d Cir. 1988). As the bankruptcy court's decision in the present case was based upon a balancing of equitable considerations, the court will review that decision under the abuse of discretion standard. In re Continental Airlines, 91 F.3d 553, 560 (3d 1996).

3. In considering the allowance of an oversecured creditor's claim for default rate interest, the majority of courts recognize a presumption in favor of the contract terms subject to rebuttal based upon equitable considerations. See In re Terry Ltd. Partnership, 27 F.3d 241, 243 (7th Cir.)

("Bankruptcy courts have construed Ron Pair to require analyzing default rates based on the facts and equities specific to each case.") (construing United States v. Ron Pair Enterprises, 489 U.S. 235 (1989)); In re Johnson, 184 B.R. 570, 573 (Bankr. D. Minn. 1995); Fischer Enters., Inc. v. Geremia, 178 B.R. 308, 314 (Bankr. D.R.I. 1995); Foss v. Boardwalk Partners, 171 B.R. 87, 91 (Bankr. D. Ariz. 1994); In re Consolidated Properties Ltd. Partnership, 152 B.R. 452, 454 (Bankr. D. Md. 1993); In re Hollstrom, 133 B.R. 535, 539 (Bankr. D. Colo. 1991); In re DWS Invs., Inc., 121 B.R. 845, 849 (Bankr. C.D. Cal. 1990); In re W.S. Sheppley & Co., 62 B.R. 271, 278 (Bankr. N.D. Iowa 1986).

4. In the present case, the bankruptcy court considered

several factors in reaching the conclusion that appellant's postpetition default interest claim should be disallowed, including the reasonableness of the default interest rate and the prejudice to other creditors. Appellant contends that the bankruptcy court's consideration of equitable factors should have been limited solely to the equities of the default interest rate itself. Third Circuit precedent instructs, however, that a "bankruptcy court in passing on claims 'sits as a court of equity', and 'In the exercise of its equitable jurisdiction the bankruptcy court has the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in the administration of the bankrupt estate.'" In re Laskin, 316 F.2d 70, 73 (3d Cir. 1963) (quoting Pepper v. Litton 308 U.S. 295, 305 (1939)). As a consequence, the court concludes that the bankruptcy court's consideration of the equities was not an abuse of discretion.

Sue L. Robinson
United States District Judge