

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
INACOM CORP., et al.,	)	Case No. 00-2426 (PJW)
	)	
	)	Jointly Administered
	)	
Debtors.	)	

**MEMORANDUM OPINION**

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Date: May 2, 2003

**WALSH, J.**

Before the Court is the Motion Of Dell Computer Corporation, et al. To Compel The Debtors To Comply With Mutual Settlement Agreement And Release Of Preference Cause Of Action And Seek Court Authority To Approve The Settlement Under Bankruptcy Rule 9019 (Doc. # 4244) (the "Motion"). For the reasons set forth below, the Motion will be denied.

**BACKGROUND**

On June 16, 2000, InaCom Corp. and various related entities ("Debtors") filed voluntary Chapter 11 petitions. On April 23, 2002, the Court entered the "Agreed Amended Order Authorizing and Approving Omnibus Procedure for Settling Certain Claims and Causes of Action Brought by Debtors in a Judicial, Administrative, Arbitral, or Other Action or Proceeding" (Doc. No. 2957) (the "Order"). The Order permits Debtors to settle preference claims under certain conditions. Under the terms of the Order, Debtors are authorized to settle claims of \$50,000 or less without Court approval or notice to any party. For claims between \$50,000 and \$100,000, and where 60% or more of the claimed amount is to be recovered, Debtors are authorized to settle upon giving the Official Committee of Unsecured Creditors (the "Committee") a five-day period in which to object. If the Committee objects, Debtors "may thereafter obtain authority" to enter into the

settlement either (a) by written agreement of the Committee, or (b) by an order of the Court, upon fifteen days prior notice to the Committee. If the claim is in excess of \$100,000 and the amount to be recovered is 75% or more of the total claimed amount, or the 90 day payments exceed \$500,000, Debtors are authorized to settle upon giving the Committee a fifteen-day period in which to object. Again, if the Committee objects, Debtors "may thereafter obtain authority" to settle either (a) by written agreement of the Committee, or (b) by an order of the Court, upon fifteen days prior notice to the Committee.

On May 16, 2002, Debtors filed a preference complaint against Dell Computer Corporation ("Dell"), seeking to recover \$7,621,014.83 in allegedly-preferential transfers (the "Dell Adversary"). Around the beginning of July 2002, Debtors and Dell entered into settlement negotiations. On July 17, 2002, Dell offered to pay \$350,000 to settle the Dell Adversary. Negotiations continued and Dell and Debtors ultimately reached an agreement to settle the Dell Adversary for \$400,000. On July 30, 2002, as required under the Order, the Committee was notified of the proposed settlement, giving it until August 14, 2002 to object.

On August 9, 2002, the Committee objected to the proposed settlement in an email to Debtors' counsel. Despite the objection, a representative of Debtors signed the proposed settlement agreement (the "Agreement") on August 13, 2002 and it was then

forwarded to Dell. On August 19, 2002, a Dell representative signed the Agreement. On or before that date, Debtors' counsel informed counsel for Dell that the Committee had objected. Dell's counsel requested an opportunity to discuss the proposed settlement with the Committee and conversations on that subject among Dell, the Committee, and the Debtors were held on August 20 and 21, 2002. On August 22, 2002, Dell's counsel returned the executed Agreement to Debtors' counsel. The cover letter sent along with the executed Agreement stated:

Please find the enclosed original, fully executed Mutual Settlement Agreement and Release in the above referenced matter. We hope that you can return this to Inacom for its files once the Committee gets comfortable with the Settlement reached. If not, here is Exhibit "A" for the Motion for Authority to Seek Approval for the Settlement under 9019.

Discussions continued over the next few months in an attempt to resolve the Committee's objection. In December 2002, Dell asked that it be informed by the end of the month whether the Committee would withdraw its objection. Dell was informed on or about December 20, 2002 that the Committee would not withdraw its objection and that Debtors did not intend to seek court approval of the proposed settlement. The Debtors assert that at no time did they offer, promise, or otherwise commit to seeking court approval of the proposed settlement if the Committee's objection could not be resolved. On or about December 24, 2002, Dell informed Debtors

that it intended to file a motion to compel Debtors to seek approval of the proposed settlement.

### **DISCUSSION**

By its terms, the Agreement requires specific performance. Dell asserts that the Agreement, also by its terms, became effective as of the date it was executed by the parties. Dell argues that this Court should conclude that, notwithstanding the Committee's objection, Debtors intended to be bound by the Agreement they signed. Dell also asserts that this Court should compel the Debtors to seek approval of the Agreement as Dell has devoted substantial time and effort to convince the Committee that it should withdraw its objection. Dell further asserts that when a settlement agreement is entered into voluntarily, it is binding on the parties. Dell cites several cases which it alleges stand for the proposition that debtors-in-possession are bound by agreements they enter into compromising litigation pending court approval.

In response, Debtors assert that Dell's interpretation of the facts surrounding the settlement negotiations and the requisite approval of the Agreement is implausible. Debtors also note that the discussions among the parties, including the retention of financial consultants, did not involve issues or result in the incurring of costs that would not otherwise be incurred in litigation. Thus, Debtors assert that Dell has not been harmed.

I begin my discussion by noting that the language of the Order merely permits Debtors to seek Court approval if the Committee objects to a proposed settlement. It does not require Debtors to take any action to save a proposed settlement that has been objected to by the Committee. Additionally, it is also clear from the communications between the parties that Dell was aware of the Committee's objection to the proposed settlement at the time it returned the signed Agreement to the Debtors. Based on that, Dell knew that the agreement could not be binding under the Order until either the Committee withdrew its objection or Court approval was obtained. Dell's conclusion is that Debtors intended to be bound immediately by the terms of the Agreement that they signed, despite the Committee having timely registered its objection. As Debtors would violate the Order by intending the Agreement to be binding immediately upon signing, despite the Committee's objection, in order for Dell's conclusion to be correct, I would be required to conclude that Debtors intentionally disregarded the Order. I do not believe that to be the case.

Dell cites several cases it asserts support the proposition that absent fraud, settlement agreements are binding as between the negotiating parties pending required bankruptcy court approval. See e.g. In re Turner, 274 B.R. 675, 680-81 (Bankr.W.D.Pa. 2002); In re Lyons Transportation Lines, Inc., 163 B.R. 474, 476 (Bankr.W.D.Pa. 1994); In re Cotton, 136 B.R. 888, 890

(M.D.Ga. 1992); In re Tidewater Group, Inc., 8 B.R. 930, 933 (Bankr.N.D.Ga. 1981). The cases cited by Dell are all fundamentally distinguishable from the instant case. All of the above cases fit the same pattern. In each of those cases, the parties entered into a settlement agreement with respect to a cause of action, which settlement agreement required bankruptcy court approval. However, during the period between the parties reaching agreement and the requisite approval being obtained, some intervening factor caused one of the parties to no longer believe the settlement to be in its best interest. In each case, the court held that the agreements bound the parties and that, absent fraud, the parties were not entitled to revoke their acceptances of the agreements while court approval was pending.

In this case, however, I have *ex ante* approved proposed settlement agreements, subject to the conditions in the Order. Thus, but for the Committee's objection, the proposed settlement agreement between Dell and Debtors would have become effective immediately upon the expiration of the notice period; the approval of this Court would never have been sought. The cases cited by Dell differ in that they did not require the approval of proposed settlement agreements by any entity other than the court. Those cases are therefore inapposite. Unlike in those cases, Debtors here have no obligation to seek Court approval of the proposed settlement.

Essentially, the Order vests the Committee with what would otherwise be the Court's authority to approve proposed settlements, though it does permit Debtors to seek this Court's approval if the Committee objects. Thus, to the extent that a settlement agreement is binding as of the time it is signed and while pending approval, in this case the necessary approval has been denied, albeit by the Committee. Debtors could have appealed that denial to this Court, as permitted in the Order. However, they declined to do so. As such, there is no enforceable agreement between Debtors and Dell.

#### **CONCLUSION**

For the foregoing reasons, Dell's Motion (Docket #4244) is denied.