UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: THE VAUGHAN COMPANY, REALTORS, 11-10-10759 JA

Debtor.

ORDER GRANTING CHAPTER 11 TRUSTEE'S MOTION TO STRIKE DAVID AND LEE ANN LANKFORDS' OBJECTION TO CONFIRMATION OF TRUSTEE'S PLAN

THIS MATTER is before the Court on the Chapter 11 Trustee's Motion to Strike David and Lee Ann Lankford's [sic.] Objection to Confirmation of Trustee's Plan of Liquidation for Lack of Standing or, Alternatively, on Grounds of Issue Preclusion, Law of the Case, or as Moot ("Motion to Strike"). *See* Docket No. 2549. Because the Lankfords' claim against the bankruptcy estate of The Vaughan Company, Realtors ("VCR") was disallowed, the Lankfords do not have a direct, pecuniary interest in the outcome of the Chapter 11 Trustee's Second Amended Plan of Liquidation Dated July 21, 2015 (the "Plan") and cannot show that they will suffer an injury in fact resulting from any of the Plan's provisions. Consequently, the Lankfords lack standing to object to the Plan. The Court will, therefore, grant the Motion to Strike.

BACKGROUND AND PROCEDURAL HISTORY

VCR filed a voluntary petition under Chapter11 of the Bankruptcy Code on February 2, 2010. On September 20, 2010, David Lankford filed a proof of claim asserting an unsecured, nonpriority claim against VCR's bankruptcy estate in the amount of $126,004.21 based on a "personally guaranteed promissory note." *See* Claim No. 461-1. On the same date, Lee Ann Lankford filed a proof of claim asserting an unsecured, nonpriority claim against the VCR bankruptcy estate in the amount of $12,036.60 based on a "personally guaranteed note." *See* Claim No. 462-1. The Chapter 11 Trustee filed an objection to Mr. Lankford's claim on July 21, 2015. *See* Docket No. 2459. On September 4, 2015, the Court entered a Default Order Granting

Chapter 11 Trustee's Objection to Claim No. 461-1 by David Lankford. *See* Docket No. 2521. The Default Order disallowed Claim No. 461-1 by David Lankford in its entirety. *Id*. The Chapter 11 Trustee filed an objection to Ms. Lankford's claim on July 21, 2015. *See* Docket No. 2457. On August 25, 2015, the Court entered Default Order Granting Chapter 11 Trustee's Objection to Claim No. 462-1 by Lee Ann Lankford. *See* Docket No. 2510. The Default Order disallowed Claim No. 461-1 by Lee Ann Lankford in its entirety. *Id*. Thus, all of the Lankfords' claims against VCR's bankruptcy estate have been disallowed in their entirety. *See* Docket Nos. 2510 and 2521.

On February 21, 2012, the Chapter 11 Trustee filed a complaint against the Lankfords as Adversary Proceeding No. 12-1139 J (the "Adversary Proceeding") seeking to recover certain transfers of property for the benefit of the bankruptcy estate. *See* Adversary Proceeding – Docket No. 1. The Court entered a judgment in favor of the Chapter 11 Trustee and against the Lankfords in the Adversary Proceeding on May 27, 2014. *See* Final Judgment in Favor of Plaintiff on Counts 4, 8, and 9 of Plaintiff's Complaint (the "Judgment"); Adversary Proceeding – Docket No. 100. The Lankfords did not appeal the Judgment. Instead, they sought to set aside the Judgment. *See* Motion to Vacate Final Summary Judgments Against David Lankford and Lee Ann Lankford and go to Trial ("Rule 60 Motion"); Adversary Proceeding – Docket No. 114. The Court denied the Rule 60 Motion. *See* Memorandum Opinion and Order Denying Motion to Vacate Summary Judgment ("Memorandum Opinion and Order Denying Rule 60 Motion"); Adversary Proceeding – Docket No. 116.

The Lankfords filed an appeal of the Memorandum Opinion and Order Denying Rule 60 Motion to United States District Court for the District of New Mexico (the "District Court"), initiating Case No. 1:14-cv—1153 (the "Appeal"). *See* Adversary Proceeding – Docket Nos.

114 and 118. By an order entered August 15, 2015, the District Court affirmed the Bankruptcy Court's ruling and rejected the Lankfords' arguments in the Appeal. *See* Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition; Adversary Proceeding – Docket No. 147. The Lankfords did not file an appeal from the District Court's ruling, and the deadline for filing an appeal has passed.[1]

On July 21, 2015, the Chapter 11 Trustee filed the Plan. *See* Docket No. 2469. The deadline to object to the Plan was September 8, 2015. *See* Order Approving Disclosure Statement and Setting Deadlines – Docket No. 2473. David and Lee Ann Lankford objected to confirmation of the Plan on August 27, 2015. *See* Docket No. 2511. The Chapter 11 Trustee filed the Motion to Strike on October 5, 2015. *See* Docket No. 2549. The Lankfords did not file a response to the Motion to Strike.

DISCUSSION

The Bankruptcy Code confers statutory standing on all parties in interest in Chapter 11 bankruptcy cases. *See* 11 U.S.C. § 1128(b) and 11 U.S.C. § 1109(b). Section 1109(b) provides:

> A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, and equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.
>
> 11 U.S.C. § 1109(b).

Similarly, § 1128(b) provides that "[a] party in interest may object to confirmation of a plan." 11 U.S.C. § 1128(b). Standing under § 1109 is not limited to those parties expressly identified in the statute. *See In re Kaiser Steel Corp.*, 998 F.2d 783, 788 (10th Cir. 1993) ("the word

[1] The District Court entered its Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition on August 25, 2015. *See* Appeal –Docket No. 38. A party seeking to appeal from an order or judgment of the District Court must file a notice of appeal within 30 days after entry of the order or judgment. Fed.R. App. P. 4(a)(1)(A) ("In a civil case . . . the notice of appeal . . . must be filed . . . within 30 days after entry of the judgment or order appealed from"); Fed.R.App.P. (6)(b) (Appeal from a Judgment, Order, or Decree of a District Court . . . Exercising Appellate Jurisdiction in a Bankruptcy Case). No request for rehearing or notice of appeal has been filed in the Appeal.

'including' is not a limiting term, and therefore, 'party in interest' is not confined to the list of examples provided in section 1109(b)."); *In re Global Indus. Technologies, Inc.*, 645 F.3d 201, 210 (3d Cir. 2011) ("The list of potential parties in interest in § 1109(b) is not exclusive."). Rather, "§ 1109 must be construed broadly to permit parties affected by a chapter 11 proceeding to appear and be heard." *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985) (quoting 5 Collier on bankruptcy ¶ 1109(b), at 1109-22.1 to 1109-23) (remaining citation omitted). *See also, In re James Wilson Assocs.*, 965 F.2d 160, 169 (7th Cir. 1992) (stating that § 1109(b) was meant to give standing to "anyone who has a legally protected interest that could be affected by a bankruptcy proceeding"). "Party in interest" under the Bankruptcy Code "'is generally understood to include all persons whose pecuniary interests are, directly affected by the bankruptcy proceedings.'" *In re Alpex Computer Corp.*, 71 F.3d 353, 356 (10th Cir. 1995) (quoting *Yadkin Valley Bank & Trust Co. v. McGee (In re Hutchinson)*, 5 F.3d 750, 756 (4th Cir. 1993) (citations omitted)).

A party seeking to object to confirmation of a chapter 11 plan must also satisfy the requirements for standing under Article III of the Constitution that all federal litigants must meet in order to bring a matter before the court. *See Global Indus.* 645 F.3d at 210 ("To object to the confirmation of a reorganization plan in bankruptcy court, a party must, in the first instance, meet the requirements for standing that litigants in all federal cases face under Article III of the Constitution.") (citation omitted); *In re Thorpe Insulation Co.*, 677 F.3d 869, 884 (9th Cir. 2012) (stating that standing in bankruptcy court requires satisfaction of three requirements: the "statutory 'party in interest' requirements under § 1109 of the bankruptcy code;" the "Article III constitutional requirements;" and the "federal court prudential standing requirements"); *In re A.P.I., Inc.*, 331 B.R. 828, 856 (Bankr. D.Minn. 2005) (a party seeking to object to confirmation

"must establish its standing to be heard under the bedrock principles that apply to *all* federal courts, as well as its statutory right to participate in the case under §1109(b)."') (citations omitted).[2] Constitutional standing under Article III requires, at a minimum: 1) an injury in fact that is, a) concrete and particularized, and b) actual or imminent; 2) a causal connection between the injury and the challenged action; and 3) the likelihood that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (citations omitted).

The Lankfords do not satisfy the Bankruptcy Code's party in interest requirement to object to confirmation of VCR's plan, nor do they satisfy Article III's constitutional standing requirements. "[E]veryone with a claim to the *res* has a right to be heard before the *res* is disposed of since that disposition will extinguish all such claims." *James Wilson*, 965 F.2d at 169 (citations omitted). But the Lankfords have no claims against the bankruptcy estate. Both of their unsecured, nonpriority claims have been disallowed in their entirety. As a result, the Lankfords are not entitled to any distributions from the VCR bankruptcy estate regardless of whether the Plan is confirmed and have no pecuniary interest in whether the Plan is confirmed. The Lankfords therefore lack statutory standing afforded to parties in interest to object to plan confirmation. Further, none of the Plan's provisions otherwise directly affect the Lankfords' interests.[3] The Lankfords have not suffered an injury in fact that is concrete and particularized or

[2] The Court is not deciding whether prudential limitations on standing may be imposed where a party has statutory standing.

[3] The Lankfords' objection to confirmation asserts that the Chapter 11 Trustee fraudulently overstated the amounts the Lankfords received on their investments with VCR that resulted in the Judgment, and complains further that the Bankruptcy Court was complicit in perpetuating this alleged fraud. The Lankfords have not linked these allegations to any specific provision in the proposed plan. *Cf. A.P.I.*, 331 B.R. at 857 (stating that "standing to object must be determined on a particularized basis as to each theory they have raised in opposition to confirmation.") (citation omitted). In addition, the Lankfords' objections to confirmation are the same arguments raised in their appeal to the District Court. Even if the Lankfords could assert a generalized objection to confirmation based on alleged corruption by the Chapter 11 Trustee or the Court in connection with the Adversary Proceeding, the District Court's final disposition of those arguments on appeal renders such arguments moot.

actual or imminent, that is causally connected to the Plan, and that may be redressed if their objection to confirmation were sustained and the Plan is not confirmed. The Lankfords therefore also lack constitutional standing to object to the Plan. In sum, because confirmation of the Plan will not directly implicate the Lankfords' rights or interests, the Lankfords lack standing to object to confirmation of the Plan. *Cf. In re Cypresswood Land Partners, I,* 409 B.R. 396, 418 (Bankr. S.D.Tex. 2009) (stating that "parties-in-interest may only object to plan provisions that 'directly implicate [their] own rights and interests.'") (quoting *In re Quigley Co., Inc.*, 391 B.R 695, 705 (Bankr. S.D.N.Y. 2008)).

Based on the foregoing, IT IS HEREBY ORDERED, that the Motion to Strike is GRANTED based on the Lankfords' lack of standing. The Lankfords objection to confirmation of the Plan is stricken.

Robert H. Jacobvitz

ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: November 18, 2015

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