

ORDERED in the Southern District of Florida on 8-18-09



*A. Jay Cristol*

A. Jay Cristol, Chief Judge Emeritus  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE:

CASE NO. 05-15867-BKC-AJC

WYNWOOD COMMUNITY  
ECONOMIC DEVELOPMENT  
CORPORATION, INC.

Debtor.

**ORDER AMENDING MEMORANDUM ORDER DENYING MOTION TO PROSECUTE  
AND DENYING REHEARING**

THIS CAUSE came before the Court for hearing on May 26, 2009 upon the Motion [CP 400] of certain tax certificate holders [Mooring Financial, Inc., Properties Galore, Inc., 7<sup>th</sup> Cavalry Corp., Justin Israel, Charles Israel and Joel Israel], ("Tax Creditors") joined by the 90% beneficial equity owner [Shawn Lustigman] in Certificate Investment Partner, LLC, to reconsider this Court's Order of April 23, 2009 [CP 391] which denied the Tax Creditors standing to seek dismissal of this case or relief from the stay. The Court has reviewed the post-hearing submissions of the parties, heard

argument of counsel, and considered the representation of counsel for the Miami-Dade Tax Collector clarifying that the Tax Collector does not act as an agent for the certificate holders. Based upon the record before the Court, it is ordered herein that the *Memorandum Order Denying Motion to Prosecute* entered April 23, 2009 determining Tax Creditors do not have standing to seek the afore-described relief in this Chapter 11 Case (the "Order") is amended in part to omit certain paragraphs not critical to the Court's decision. The Court's conclusion remains the same and therefore rehearing is denied.

The Tax Creditors assert the Court's April 23, 2009 Order is inaccurate for three (3) reasons and urges the Court to vacate the Order. While the Court will amend and modify certain portions of the Order which the Tax Creditors find objectionable, the Court finds no basis to vacate its Order *in toto* as the Court's conclusions remain unchanged.

The Tax Creditors first argue that the Court improperly and prematurely considered the merits of the motion to dismiss, when it previously indicated it would preliminarily only be considering the standing issue. The Court has reviewed the Order and while the Court believes that, to some extent, commenting on the validity of the motion to dismiss was warranted, it will nonetheless amend the Order to omit those portions of the Order addressing the motion to dismiss on the merits, as such comments do not otherwise affect the Court's conclusions. Indeed, the Court instructed the parties to limit their submissions to the standing issue. Therefore, comments relative to the merits of the motion to dismiss are excised from the Order.

Second, the Tax Creditors believe this Court was misled into believing that a tax certificate holder named "Certificate Investment Partners, LLC" supported the Debtor's position both as to standing and as to the merits of the motion to dismiss. The Tax Creditors allege that the majority

equity owner in Certificate Investment Partners, LLC does not in fact agree with the Debtor's position; and, to the extent the Court relied on this fact in reaching its decision, the Order should be vacated. The Court does not believe the Order need be vacated as it is based on other solid grounds critical to the issue of standing. The Court did not rely on this representation of agreement with Debtor in reaching its conclusion. Because the Court placed little, if no weight on this fact, reference to Certificate Investment Partners, LLC's agreement with Debtor's position is stricken and omitted from the Order as distracting and not relevant.

Third, the Tax Collectors suggest generally that the Order should be vacated as it was wrongly decided. The Court disagrees. The Order does not deprive the Tax Creditors of their claims in this case. *See, e.g., In re Lago*, 301 B.R. 365 (Bankr. S.D. Fla. 2003) (finding tax certificate holders are creditors and parties in interest with respect to amounts owed). The Order only restricts the Tax Creditors' ability to seek dismissal of the case by virtue of their ownership of tax certificates. Although the Tax Creditors complain that their efforts to redeem their tax certificates are being frustrated by the bankruptcy proceedings, they fail to identify any direct recourse which they have against the Debtor.

The Tax Creditors' claims are governed by Florida Statute §197 *et seq.* which sets forth the rights and remedies with respect to the investment in tax certificates. None of those rights and remedies allow the Tax Creditors to pursue any direct recourse against the Debtor. As stated in the conclusion of the Order, under Florida state law, the Tax Creditors have no right to demand payment of any sum either from the Debtor or its property. Thus, the Tax Creditors lack standing to seek dismissal of this bankruptcy case. *See In re Wells Properties, Inc.*, 102 B.R. 685 (N.D. Ill. 1989).

The Tax Creditors's claims are insufficient to establish standing to pursue dismissal of a bankruptcy case. To prove standing in a bankruptcy case, a movant must demonstrate a direct, adverse effect if the relief sought is not granted. *In re Westwood Community Two Ass'n, Inc.*, 293 F.3d 1332, 1335 (11<sup>th</sup> Cir. 2002). Because of the restrictions upon the Tax Creditors' ability to seek any relief from the Debtor or its property, no correlation can be established by the Tax Creditors. The Tax Creditors have no right to seek payment of their tax certificates from the Debtor. As such they simply lack standing to pursue dismissal of the Debtor's bankruptcy case. *See In re Abijoe Realty Corp.*, 943 F.2d. 121, 126 (1st Cir. 1991).

The Tax Creditors believe the Order needs clarification as only part of section 197.432 (14), Fla. Stat., was cited by the Court. The Tax Creditors believe the Court misinterpreted the statute and the Court's reliance on a portion of the statute, without considering the statute as a whole, is cause to vacate the Order. The Court has reviewed the statute in its entirety and concludes that, while the contact referenced in Order was notable – even if not a violation of any statute, the citation to subsection (14) of the statute does not change the Court's conclusion that the Tax Creditors lack standing to pursue dismissal of this Chapter 11 case.

Conferring standing upon the Tax Creditors would defeat an important principle of bankruptcy jurisprudence, namely that “equality of distribution of the proceeds of the estate is one of the most fundamental tenants of the United States bankruptcy system.” *In re Petition of Board of Directors of Hopewell International Insurance, Ltd.*, 238 B.R. 25, 55 (Bankr. S.D.N.Y. 1999). Because the relief requested by the Tax Creditors could unfairly impair the rights of other tax certificate holders of equal standing, as previously noted in the Order, granting the Tax Creditors relief would defeat “the prime bankruptcy policy of equality of distribution among creditors of the

Debtor.” See *In re M & L Business Machine Company, Inc.*, 184 B.R. 136 (Bankr. D.Col. 1995); *In re Barney & Carey Company*, 170 B.R. 17, 25 (Bankr. D.Mass. 1994).

Based upon the foregoing, the Court’s conclusion remains unchanged. The Tax Creditors lack standing to pursue dismissal of the Debtor’s bankruptcy case. It is accordingly

**ORDERED AND ADJUDGED** that

1. This Court’s *Memorandum Order Denying Motion to Prosecute* entered April 23, 2009 is amended and modified in conformity with this order.
2. There being no basis either in law or fact to reconsider the *Memorandum Order Denying Motion to Prosecute*, as amended, the *Tax Certificate Holders and Special Assessment Lien Holders Joined by Shawn Lustigman Joint Motion for Re-hearing of Order on Standing* is DENIED.

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Copies furnished to:

Allison R. Day, Esq.  
Scott Orth, Esquire

(Attorney Day is directed to serve a conformed copy of this Order upon all interested parties and to file a Certificate of Service)