

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FILED

MAR 25 2013
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In re:)	
)	
GORDON PROPERTIES, LLC,)	
CONDOMINIUM SERVICES, INC.,)	09-18086-RGM
)	(Jointly Administered)
Debtors.)	
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HOWARD SOBOL, <u>et al.</u> ,)	
)	
Appellants,)	
)	
v.)	1:13-cv-308 (LMB/IDD)
)	
BRYAN L. SELLS, <u>et al.</u> ,)	
)	
Appellees.)	

ORDER

The Court has considered appellants' Amended Transmittal of Motion for Leave to Appeal to District Court [Dkt. No. 1] and Emergency Motion for Expedited Hearing and Stay Pending Appeal [Dkt. No. 2], in which they seek to appeal a January 29, 2013 Order on a motion to disqualify counsel rendered by the U.S. Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, as well as appellants' request for a stay of further bankruptcy proceedings pending that appeal.

It is well-settled that an order disqualifying counsel in a civil case is not a final order under 28 U.S.C. § 1291, nor is it a collateral order subject to appeal as a final judgment.

See Richardson-Merrell, Inc. v. Koller, 472 U.S. 424 (1985). A party may seek to have the question certified for interlocutory appellate review under 28 U.S.C. § 1292(b), which provides that

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

But neither the facts nor the law of this case give rise to the "controlling question of law as to which there is a substantial ground for difference of opinion" that would justify departing from the usual requirement that parties await the final determination of their disputes before filing an appeal.

Appellants cite Conticommodity Services, Inc. v. Ragan, 826 F.2d 600, 601-02 (7th Cir. 1987), for the proposition that a nonparty's interlocutory appeal is proper where the nonparty would not be able to appeal a final judgment. That case is inapposite; not only was the question of appealability expressly reserved, but Ragan involved a potentially unlawful order commanding previously withdrawn counsel to represent a debtor in litigation, which the court suggested created "urgency about an immediate appeal" that may not otherwise exist. Id. No such urgency attends the instant request for appeal.

The Court also does not find that an immediate appeal from the bankruptcy court's order "may materially advance the ultimate termination of the litigation." Appellants' counsel have highlighted their pro bono status and suggested that appellants will have substantial difficulties affording replacement counsel, but this fear is not compelling in light of opposing counsel's undisputed representation that Virginia law would entitle prevailing counsel to recover reasonable attorneys' fees and costs. See Va. Code § 55-79.53(A).

For the foregoing reasons, it is hereby

ORDERED that appellants' Amended Transmittal of Motion for Leave to Appeal to District Court [Dkt. No. 1] and Emergency Motion for Expedited Hearing and Stay Pending Appeal [Dkt. No. 2] be and are DENIED; and it is further

ORDERED that the March 15, 2013 Order [Dkt. No. 6] staying the hearing in Case No. 09-18086-RGM on debtors' Joint Motion and Memorandum for Order Approving Settlement Agreement Between Debtors and First Owners' Association of Forty-Six Hundred Condominium, Inc., and for Related Relief be and is VACATED.

The Clerk is directed to forward copies of this Order to counsel of record and to United States Bankruptcy Judge Robert G. Mayer.

Entered this 25th day of March, 2013.

Alexandria, Virginia



Leonie M. Brinkema
United States District Judge