

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. MB 04-038

**Bankruptcy Case No. 02-18494-CJK
Adversary No. 04-1180**

**TREMONT TOWER CONDOMINIUM LLC,
Debtor.**

**WILLIAM T. MATT, WT MATT DEVELOPMENT CORP.,
and WT MATT HOLDING, LLC,
Appellants,**

v.

**LEHMAN BROTHERS HOLDINGS, INC., TREMONT TOWER RESIDENCES, LLC,
RADCO MANAGEMENT, LLC, NORMAN J. RADOW,
UNION LABOR LIFE INSURANCE COMPANY, CHRISTOPHER WESTFHAL,
and HERBERT KOLBEN,
Appellees.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Carol J. Kenner, U.S. Bankruptcy Judge)**

**Before
de Jesús, Vaughn, and Carlo, United States Bankruptcy Appellate Panel Judges.**

William T. Matt, pro se, on brief for Appellants.

**Christopher R. Mirick, Esq., on brief for Appellees
Lehman Brothers Holding Inc. and Tremont Tower Residences LLC.**

February 10, 2005

Vaughn, U.S. Bankruptcy Appellate Panel Judge.

Before the United States Bankruptcy Appellate Panel for the First Circuit (the “Panel”) is an appeal of the July 19 bankruptcy court Order denying the Appellants’ motion for remand or abstention and granting the Appellees’ motion to dismiss the Appellants’ complaint with prejudice. For the reasons discussed below, William T. Matt is dismissed for lack of standing, and WT Matt Development Corp. and WT Matt Holding, LLC, are dismissed for lack of representation.

BACKGROUND

William T. Matt (“Matt”) is the sole equity holder of WT Matt Development Corp. (“Development”) and WT Matt Holding, LLC (“Holding”). Prior to confirmation of the Chapter 11 plan in the above-captioned bankruptcy case, Development and Holding held 100% of the equity in Tremont Tower Condominium LLC (the “Debtor”). The Debtor’s principal asset was a nearly-completed luxury condominium tower on Tremont Street in Boston (the “Property”), which the Debtor had developed with the help of a construction loan from creditor Lehman Brothers Holdings, Inc. (“Lehman”).

In November 2002, the Debtor filed a petition under Chapter 11. Thereafter, the bankruptcy court confirmed the third-party reorganization plan proposed by Lehman, and approved the sale of substantially all of the Debtor’s assets. By operation of the confirmed plan, (1) the Debtor’s principal asset was conveyed to Tremont Tower Residences, LLC (“TTR”), (2) the equity interests of Development and Holding in the Debtor were canceled, and Development and Holding were given nothing on account of their interests, and (3) Lehman was

released from the Debtor's claims arising from alleged improper conduct in connection with Lehman's construction loan to the Debtor.

Thereafter, the Appellants filed in the Massachusetts Superior Court a complaint against Lehman, TTR, and others,¹ seeking an order restoring title to the property to the Debtor on fraudulent transfer and constructive trust theories; in the alternative, they seek damages in excess of \$110,000,000 on the same theories. The complaint alleges: (1) fraudulent conveyance in violation of Chapter 109A, § 4; and (2) constructive trust.²

The Appellees removed the case to bankruptcy court, and filed a motion seeking dismissal of the complaint as to all defendants and an injunction prohibiting the Appellants from interfering with TTR's ownership, use, or sale of the property, and an injunction prohibiting the Appellants from asserting or prosecuting any claim against any defendant without first obtaining permission from the bankruptcy court. The Appellants opposed the motion, and moved to remand the complaint back to the Superior Court and for the bankruptcy court to abstain from adjudicating the matter. The Appellees opposed the Appellants' motion to remand or abstain.

The bankruptcy court (1) denied the Appellants' motion for remand or abstention, (2) dismissed the complaint with prejudice, and (3) denied the Appellees' motion for further injunctive relief. This appeal followed.

¹Radco Management LLC (the manager of TTR), Norman Radow (the manager of Radco Management), Union Labor Life Insurance Company (the equity lender for the Debtor's development of the property), Herbert Kolben (vice-president of ULLICO and the loan officer principally responsible for the loan to the Debtor), and Christopher Westfahl (a vice-president of Lehman and the Lehman loan officer principally responsible for Lehman's loan to the Debtor).

²The Plaintiffs withdrew the third count listed on the complaint, which alleged violation of the federal Racketeer Influenced and Corrupt Organizations Act.

DISCUSSION

A. Standing

Matt lacks standing to bring this appeal. A “person aggrieved” by a bankruptcy court order has standing to appeal the order. In re San Juan Hotel, 809 F.2d 151, 154 (1st Cir. 1987) (adopting standard for appellate standing derived from the former Bankruptcy Act of 1898).

Whether an appellant is a “person aggrieved” is generally a question of fact to be determined by the reviewing court. Id. at 154 n.3 (explaining that where an appeal was taken from bankruptcy court to district court, district court determines appellate standing).

A “person aggrieved” is a person or entity whose rights or interests are “directly and adversely affected pecuniarily” by the order. Id. In San Juan Hotel, the First Circuit explained that this rule of appellate standing prevents the unreasonable delay of bankruptcy proceedings “by protracted litigation that does not serve the interests of either the bankrupt’s estate or its creditors.” Id. An order directly and adversely affects a litigant’s pecuniary interests if the order diminishes his property, increases his burdens, or impairs his rights. Id. For instance, an insolvent debtor generally does not have standing to appeal a bankruptcy court order affecting the assets of the estate, unless a successful appeal would result in an estate surplus, or the appeal involves the terms, conditions or extent of the debtor’s discharge. Id. at 155 n.6. It is the litigant’s burden to prove standing. Spenlinhauer v. O’Donnell (In re Spenlinhauer), 261 F.3d 113, 118 (1st Cir. 2001).

Here, the Order dismissed a complaint that sought money damages and/or restoration of title to real property on behalf of the Debtor for alleged fraud against the Debtor. The Order, therefore, diminished the Debtor’s property and impaired its rights. See In re San Juan Hotel,

809 F.2d at 154. The Order did not, however, diminish Matt's property or impair Matt's rights. See id. Matt never had a direct interest in the Debtor. Instead, he merely had an indirect interest as the beneficial owner of Development and Holding, and even that indirect interest was extinguished by entry of the confirmation order terminating Development's and Holding's interests in the Debtor. Because Matt does not have a direct and adverse pecuniary interest in the Order, he is dismissed from this appeal for lack of standing. See id.

B. Corporate Representation

At oral argument, Mr. Matt argued on behalf of himself and moved to allow a licensed attorney to appear on behalf of Holding and Development. We denied the oral motion as it would not have been proper to allow the commencement of legal representation at this stage of the proceedings.

All pleadings and motions filed by the Appellants in connection with this appeal were signed by Matt on behalf of himself as an individual and on behalf of Development and Holding. Matt is not a licensed attorney, and therefore the first issue we review is whether Matt may represent Development and Holding. The bankruptcy court decided this issue when it made a specific finding that Matt may not represent Holding and Development in the bankruptcy proceeding, and struck the motion for remand or abstention and the response to Lehman's motion to dismiss insofar as they were filed by Matt on behalf of Development and Holding. The bankruptcy court's decision was proper,³ and in any event is beyond the scope of this appeal as

³A corporation cannot appear in a bankruptcy proceeding except by a licensed attorney. In re Las Colinas Development Corp., 585 F.2d 7, 11 (1st Cir. 1978). The rule is very well established, supported by a long history of case law across the circuits and in the Supreme Court. In re Victor Publishers, Inc., 545 F.2d 285, 285 (1st Cir. 1976) (citing cases from the Supreme Court and the Second, Sixth and Tenth Circuits). The rule prohibiting a non-lawyer from representing a corporation in a legal proceeding is not

the Appellants failed to identify Matt's representation of Development and Holding as an issue on appeal. Accordingly, Development and Holding are dismissed for lack of representation.

CONCLUSION

As Matt lacks standing and Development and Holding lack representation, there are no remaining appellants, and this appeal is **DISMISSED**.

only based on tradition, but also on the practical consideration that attorneys at law, who have been admitted to practice, are officers of the court and subject to its control. Id.

In Victor, the First Circuit explained that In re Las Colinas, Inc., 453 F.2d 911 (1st Cir. 1971), was “an instance where we permitted a non-lawyer to represent a corporation. Special considerations, including the extraordinary legal ability that had been demonstrated by the corporate officer in that case, caused us to make an exception from the traditional rule that ‘(a) corporation . . . can appear only by an attorney.’” Victor, 545 F.2d at 286 n.* (citing Osborn v. Bank of United States, 22 U.S. 738, 830 (1824)).

However, in the subsequent Colinas case discussed above, the First Circuit reiterated the “well-established” rule prohibiting representation of a corporation by a non-lawyer, and explained that the court’s occasional departure from this rule “does not mean that any other court is required to make a similar exception on another occasion.” In re Colinas, 585 F.2d at 9, 11. The court described the Victor footnote as “unfortunate” and specifically stated that it did not hold precedential value. Id.