UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

TERRANCE SMITH and MILDRED SMITH,	Case No. 01-12713 Chapter 7
Debtors.	

APPEARANCES:

O'CONNOR, O'CONNOR, BRESEE & FIRST, PC Attorneys for the Debtors 20 Corporate Woods Blvd. Albany, New York 12211	Michael J. O'Connor, Esq.
MATTHEW J. SGAMBETTERA, ESQ. Attorney for USR Group, Inc. 258 Ushers Road, Suite 205 Clifton Park, New York 12065	
CHRISTIAN H. DRIBUSCH, ESQ. The Patroon Building Five Clinton Square Albany, New York 12207	Chapter 7 Trustee
EHRLICH, HANFT, BAIRD & ARCODIA *Amicus* Chapter 7 Trustee 64 Second Street Troy, New York 12180	Marc S. Ehrlich, Esq.
CUTLER, TRAINOR & CUTLER, LLP *Amicus* Attorney for Jeffrey E. Labanowski, Debtor 2 Hemphill Place, Suite 153 Malta, New York 12020	Rachel A. Rappazzo, Esq.

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

Before the court is a motion filed by USR Group, Inc. ("USR") to delay the closing of the above-captioned chapter 7 case. Michael J. O'Connor, Esq. has filed opposition to the motion on behalf of Terrance and Mildred Smith (the "Debtors"), as has Christian H. Dribusch, Esq., the Chapter 7 Trustee appointed to the case (the "Trustee"). The Trustee has also filed a memorandum of law in support of his position. In response to the parties' objections, USR has filed a supplemental reply. Additionally, Ehrlich, Hanft, Baird

& Arcodia (Marc S. Ehrlich, Esq., a member of the Chapter 7 Trustee Panel for the Northern District of New York), and Cutler, Trainor & Cutler, LLP (Rachel A. Rappazzo, Esq., counsel to a chapter 7 debtor) have filed *amicus* briefs in support of the Trustee.

JURISDICTION

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and the court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), and 1334(b).

FACTS

The material facts in this case are undisputed. The Debtors filed a petition for chapter 13 relief on April 25, 2001. On Schedule A, the Debtors listed a one family residence located in Clifton Park, New York (the "Residence"), which they valued at $119,000. They indicated that the Residence was subject to the secured claims of Citimortgage (first mortgagee) and Homecoming Financial (second mortgagee) totaling $155,000. The Debtors did not claim a homestead exemption. Within the chapter 13 case, the Debtors filed a *Pond* adversary proceeding, *see In re Pond,* 252 F.3d 122 (2d Cir. 2001) (holding that a wholly unsecured mortgage lien may be stripped off in a Chapter 13 proceeding notwithstanding the antimodification exception of § 1322(b)(2)), which was settled by order dated August 19, 2002. (Adversary Proceeding No. 01-90284, Dkt. No. 10.) On February 13, 2004, the Debtors voluntarily converted from chapter 13 to chapter 7, and the Trustee was appointed on February 19, 2004. The Trustee examined the Debtors at the § 341 meeting of creditors on May 3, 2004. On May 10, 2004, the Trustee filed a Report of No Distribution, which he does not seek to withdraw. The Debtors received their discharge on June 10, 2004. Less than one month later, on July 8, 2004, USR filed the underlying motion to prevent the clerk's office from closing the case. As a basis for the motion, USR contends that it "is interested in and made an offer to purchase the Trustee's interest in . . . real property, subject to liens, encumbrances and the applicable homestead exemption," Mot. to Delay Closing of Case ¶ 2, "but the Trustee has not yet marked this matter up for sale." *Id.* ¶ 3. Therefore, USR seeks to delay closing until such time as the Trustee has an opportunity to accept or reject its offer.

Oral arguments were conducted on the court's regular motion calendar on August 19, 2004, and USR was directed to file any additional pleadings and memoranda on or before August 25, 2004; the Debtors' attorney and the Trustee were directed to reply on or before August 31, 2004. USR did not supplement its pleadings. As previously stated, the Debtors' attorney, the Trustee, and *amicus* parties have however filed additional pleadings and memoranda of law.

ARGUMENTS

The Debtors present three arguments in support of their opposition to the motion: (1) because their case has been pending for approximately 40 months, laches prevents the Trustee from pursuing USR's offer; (2) since a *Pond* determination was made in the context of the chapter 13 proceeding, the Trustee is bound by the valuation and equity that existed as of the filing of the petition pursuant to 11 U.S.C. § 348; and (3) any appreciation, whether due to principal reduction, payment of taxes and interest, or an increase in the market value of the Property, accrues to the benefit of the Debtors and does constitute property of the estate pursuant to 11 U.S.C. § 541. The Debtors therefore contend that there is no basis for delaying the Trustee's administration of the estate.

Separately, the Trustee argues that USR lacks standing to bring the motion on substantive grounds. Because USR is not listed as a creditor in the Debtors' case and because it does not otherwise have statutorily granted authority to appear and be heard, the Trustee contends that it is not a "party in interest," which is required for USR to invoke the court's jurisdiction. In support of his argument, the Trustee relies upon the Second Circuit decision in the case of *In re Comcoach Corp.*, 698 F.2d 571 (2d Cir. 1983) (mortgagee is not a party in interest and cannot seek stay relief under 11 U.S.C. § 362). Additionally, the Trustee contends that if Congress had intended to extend party in interest status to a prospective purchaser, it would have expressly required that a prospective purchaser receive notice of a trustee's request to use, sell, or lease property of the estate. Pointing to Federal Rules of Bankruptcy Procedure 2002, 6004, and 9014, the Trustee highlights that Congress did not do so, but extended party in interest status only to the chapter 7 trustee and the United States

Trustee. Mirroring the Trustee's arguments, Attorney Rappazzo asserts that USR does not have standing to delay the closing of debtors' cases in order to compel the case trustees to act upon USR's respective bids because USR cannot establish either a case or controversy under Article III of the United States Constitution or that it is a "party in interest" within the meaning of the United States Bankruptcy Code. The Trustee is also joined by Attorney Ehrlich, who adds that the court must be mindful of the objectives of the Bankruptcy Code, which provides for the resolution of disputes between debtors and creditors, not unrelated third parties. On purely procedural grounds, Attorney Ehrlich suggests that USR's motion should be denied because it is untimely pursuant to Federal Rule of Bankruptcy Procedure 5009.

USR has not addressed the present issue of whether it has standing to delay the closing of a bankruptcy case. Instead, USR focuses upon standing within the context of a proposed sale of estate assets. Acting as if the Trustee has submitted a sale motion, USR argues that the Debtors are not "parties in interest" to contest the same because they have no pecuniary interest in the estate since any proposed sale will not result in a surplus distribution. While there is not a pending sale motion before the court, USR's arguments are nonetheless relevant to the issue of standing since USR acknowledges that a pecuniary interest is required for an individual or entity to constitute a "party in interest." Moreover, at oral argument, Attorney Sgambettera argued that the Second Circuit's holding in *Comcoach* applies only to conflicts under 11 U.S.C. § 362; thus, it cannot be extended to the facts of this case.

DISCUSSION

Before turning to the arguments raised by the Debtors' counsel, the court must first answer the jurisdictional question posed by the Trustee of whether USR has standing to delay the administration and closing of the case. "Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475-76 (1982) (footnote omitted).

"The concept of standing subsumes a blend of constitutional requirements and prudential

considerations." *In re Village Rathskeller, Inc.,* 147 B.R. 665, 668 (Bankr. S.D.N.Y. 1992) (citing *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Article III of the United States Constitution requires the party who invokes the court's authority to show that he personally has suffered some actual or threatened injury as a result of the defendant's conduct, that the injury can be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *See Valley Forge*, 454 U.S. at 472. The court is not a vehicle for the vindication of the interests of concerned bystanders. *Id.* at 473. "The exercise of judicial power . . . is therefore restricted to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate." *Id*. Such injury exists when a party's pecuniary interest may be affected by the outcome of the determination. *In re Village Rathskeller, Inc.,* 147 B.R. at 668 (citation omitted). "Beyond the constitutional requirements, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing." *Valley Forge*, 454 U.S. at 760. These include: (1) a party must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties, *Id*. at 474, and (2) the plaintiff's complaint must fall within "the zone of interests to be protected or regulated by the statute or constitution guarantee in question." *Id.* (citing *Ass'n of Data Processing Service Orgs. v. Camp*, 379 U.S. 150, 153 (1970)).

The court must therefore ask whether USR is an entity intended to be protected or regulated under the United States Bankruptcy Code. Although 11 U.S.C. § 363(b) is not yet triggered because the Trustee has not submitted a sale motion, the court is nonetheless guided by the reasoning of *In re Nepsco, Inc.*, 36 B.R. 25 (Bankr. D. Me. 1983). In that case, the bankruptcy court addressed whether a competing bidder had standing to object to a proposed compromise and settlement. In so doing, the court stated:

> The statutes and rules governing sales by trustees appear to be designated to protect the estate, not potential purchasers. . . . Clearly, the thrust of this statutory scheme is to provide maximum flexibility to the trustee, subject to the oversight of those for whose benefit he acts, *i.e.*, the creditors of the estate. . . . The Court finds nothing to indicate that prospective purchasers are within the zone of interests intended to be protected through this statutory scheme. The purposes of [11 U.S.C. § 363(b), and Federal Rules of Bankruptcy Procedure 6004 and 2002] would be hindered, not furthered, by permitting a stranger to the estate to object to a sale to which no party in interest objected.

Id. at 26-27. Accordingly, the court found "that the relevant bankruptcy statutes and rules were not enacted to protect prospective purchasers." *Id.* at 27. This court agrees. Therefore, the court need resolve the parties' dispute about whether *Comcoach* applies to the case at hand.

USR concedes that to have standing, an individual or entity must be a "party in interest" and that this status is limited to "one with a pecuniary interest in the estate to be distributed," Reply to Debtor's Opp'n to Proposed Sale of Estate Assets at 1, but it fails to address what, if any, pecuniary interest it may have in the Debtors' estate. Because USR does not claim any pecuniary interest here, USR's argument falls of its own weight. USR is not a creditor of the estate. Its only interest in this proceeding is that it wishes to purchase the Residence. This alone is insufficient to render USR a "party in interest" as that term is widely used in the bankruptcy arena. *See, e.g.,* 11 U.S.C. § 1109(b) (a "party in interest" includes "the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or an indenture trustee"); *In re Comcoach Corp.*, 698 F.2d at 573 ("Generally, the 'real party in interest' is the one who, under the applicable substantive law, has the legal right which is sought to be enforced or is the party entitled to bring suit.").

Because USR does not have standing to invoke the court's jurisdiction under the circumstances of this case, the court need not address the arguments raised by the Debtors' counsel.

CONCLUSION

For the foregoing reasons, USR's motion is hereby denied with prejudice.

It is SO ORDERED.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge