

1/15/04

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	:	CASE NO. 00-71667
	:	
COASTAL CARE RESOURCES, LLC,	:	CHAPTER 11
	:	
Debtor.	:	JUDGE MASSEY
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STEVEN L. DYE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY NO. 03-9288
	:	
U.S. BANK & TRUST, N.A.,	:	
	:	
Defendant.	:	
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**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

Steven L. Dye brings this adversary proceeding against Defendant U.S. Bank & Trust, N.A., which acted as the indenture trustee for bonds issued by the Savannah Economic Development Authority in a financing transaction that provided funds for the construction of a personal care facility in Chatham County, Georgia owned by the Debtor Coastal Care Resources, LLC. In an order entered in the above main case of Coastal Care Resources, LLC on April 7, 2003, the Court confirmed the plan of reorganization filed by GMS Group, LLC (the "Confirmation Order"). Prior to confirmation, Dye was the Debtor's sole equity holder.

The complaint contains two counts. In Count I, Plaintiff alleges that Defendant breached its fiduciary obligations as indenture trustee by not opposing the confirmation of the plan of GMS

and by not determining the true owners of bonds. As to Count I, Dye seeks compensatory and punitive damages against Defendant.

In Count II of the complaint, Dye makes various allegations of fraud in the procurement of the Confirmation Order. With regard to this count he seeks revocation of the Confirmation Order.

Defendant moves to dismiss the adversary proceeding with prejudice on the ground that it is barred by the doctrine of claim preclusion.

Dye amended the complaint subsequent to the filing of the motion to dismiss in which he asserted a claim against Defendant under 11 U.S.C. § 523(a)(2)(A).

Dye raised all of the claims asserted in his original complaint in the confirmation proceedings, and the Court found his claims to be without merit and resolved those claims against him in the Confirmation Order, which is a final order and not subject to appeal. Dye moved for reconsideration of the Confirmation Order, again raising the same issues, which the Court denied in an order entered in the main case on April 18, 2003.

In exhibits to the complaint, Dye may be questioning ownership of a bond in the amount of \$5,000 by James J. Clayton, because Clayton was not listed as a bondholder in filings with the Court in the fall of 2003. Mr. Clayton, a GMS employee, presumably purchased a bond after the list of bondholders was filed in the fall of 2002 and prior to the filing in April 2003 of the list of members in the reorganized debtor. Whatever the facts are concerning Clayton's ownership of that bond, Dye's observation about Clayton's ownership of a \$5,000 bond states no claim against Defendant. Moreover, Dye raised the same question concerning the amount of bonds in adversary proceeding no. 03-9119 brought against the Debtor and GMS. This Court dismissed that

complaint in an Order entered on July 3, 2003, finding no basis for his claims, and denied his motion for reconsideration in an order entered on January 14, 2004.

Because Dye raised all of the issues concerning bond ownership and fraud in prior proceedings in this Court in which orders were entered disposing of those claims, he is barred under the principles of claim preclusion, explained by the Court of Appeals in *Walls v. Justice Oaks II (In re Justice Oaks II)*, 898 F.2d 1544, 1550-51 (11th Cir. 1990), from raising those issues again.

The amendment to the complaint asserting that Defendant is liable to bondholders under 11 U.S.C. § 523(a)(2)(A) fails to state a claim for relief and is about as far off the mark as a litigant can be in expounding a legal theory of recovery. Section 523(a)(2)(A) deals with the dischargeability of debts of **individual debtors** arising from fraud, which Dye presumably noticed since he typed the section verbatim in his supplement to the complaint. That section has nothing to do with this Chapter 11 case. It has no application whatsoever to Defendant because Defendant is not an individual, is not a debtor in a bankruptcy case and is not shown to have committed any fraud.

There are additional reasons for dismissing this adversary proceeding not raised by Defendant. As to Count I, Dye seeks an award of damages against Defendant. Count I fails to state a claim for relief because Dye does not allege he was a bondholder. If this omission were overlooked, the Court lacks subject matter jurisdiction under 28 U.S.C. §§ 1334 and 157, because this claim did not arise under title 11 of the U.S. Code and did not arise and is not related to a case under title 11 within the meaning of 28 U.S.C. § 1334(b). *See In re Boone*, 52 F.3d 958, 960 (11th Cir.1995).

Count II fails to state a claim for relief because, among other reasons, U.S. Bank & Trust, N.A. is not the proper defendant against whom the relief sought can be obtained. It was not the plan proponent or the Debtor.

For these reasons, it is

ORDERED that Defendant's motion to dismiss this adversary with prejudice is GRANTED.

This 14th day of January 2004.

  
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JAMES E. MASSEY  
U.S. BANKRUPTCY JUDGE

List of Parties Notified:

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Number of labels for parties shown above: 3

Pursuant to Fed. R. Bank. P. 9022 and 7005, I certify that on the date stated below, I served a copy of the foregoing document(s) on each of the persons and entities named in the foregoing list either by United States Mail at the respective addresses shown or, if an attorney subscribes to a mail pick-up box in the Clerk's Office, by placing a copy in such attorney's mail pick-up box.

Date: 11/21/04

W. Yvonne Evans, Clerk of Court

By: Judith Hyatt  
Judith Hyatt (HYATTJ)