


ORDERED.

Dated: October 10, 2019



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 Karen S. Jennemann  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
 MIDDLE DISTRICT OF FLORIDA  
 ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:	)	
	)	
Melbourne Beach, LLC,	)	Case No. 6:17-bk-07975-KSJ
	)	Chapter 11
Debtor.	)	
_____	)	

**ORDER DENYING DISPUTED OWNERS’ CORRECTED  
 MOTION TO RECONSIDER AND DISQUALIFY THE CHAPTER 11 TRUSTEE**

This case came before the Court on September 9, 2019, to consider Pirogee Investments, LLC and Yellow Funding Corporation’s (the “Disputed Owners”) Corrected Motion to Reconsider Approval of Appointment of a Chapter 11 Trustee and for Disqualification of Chapter 11 Trustee.<sup>1</sup> Disputed Owners seek to reconsider the appointment of Jules S. Cohen (“Trustee”) as a Chapter 11 Trustee because he is not disinterested arguing his law firm, Akerman, LLP (“Akerman”), represents Synovus Bank (“Synovus”). After the hearing, the Court provided Trustee and Disputed Owners an opportunity to file a response or reply, which they did.<sup>2</sup> Having reviewed the pleadings

<sup>1</sup> Doc. No. 420. For additional background on the relationship between the Disputed Owners and the Debtor, a detailed history of this case is included in the Order Denying Disputed Owners’ Motion to Dismiss. Doc. No. 383.  
<sup>2</sup> The Trustee’s Response to the Disputed Owners’ Corrected Motion to Reconsider and Disqualify is Doc. No. 453, and the Disputed Owners’ Reply to the Trustee’s Response is Doc. No. 461.

and considering the positions of all interested parties, the Court finds no potential conflict and will deny the motion.

Section 327 of the Bankruptcy Code<sup>3</sup> provides a standard for disqualification<sup>4</sup> and states:

Except as otherwise provided in this section, the trustee [or the Chapter 11 Debtor], with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that ***do not hold or represent an interest adverse to the estate, and that are disinterested persons***, to represent or assist the trustee in carrying out the trustee's duties under this title.

...

In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an ***actual*** conflict of interest.<sup>5</sup>

Section 101 of the Bankruptcy Code defines disinterested person, which requires a person:

[D]oes not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.<sup>6</sup>

The Bankruptcy Code does not define an adverse interest; however, the Eleventh Circuit Court of Appeals has held a person holds an adverse interest when the person “possess[es], either an economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant . . . or . . . a

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<sup>3</sup> All references to the Bankruptcy Code refer to 11 U.S.C. §101 *et. seq.*

<sup>4</sup> See *In re Prince*, 40 F.3d 356, 360 (11th Cir. 1994) (“The purpose of section 327(a)... is to ensure impartiality in bankruptcy representation.”).

<sup>5</sup> 11 U.S.C. § 327 (a), (c). (Emphasis added.)

<sup>6</sup> 11 U.S.C. § 101 (14)(C).

predisposition under the circumstances that render such a bias against the estate.”<sup>7</sup> Courts analyze disqualification requests case-by-case looking at each case’s unique facts and circumstances.<sup>8</sup>

Here, Trustee is disinterested and able to fulfill his duties impartially. His duties include: accounting for, supervising, and selling the shopping center property, analyzing the claims of creditors, preparing and filing a plan, pursuing claims on behalf of the Debtor, distributing funds from the sale of the property, and advising the Court.<sup>9</sup> Trustee’s attenuated connection with Synovus will not affect his ability to carry out these responsibilities.

The Disputed Owners have not sufficiently explained why the Trustee will favor Synovus over the economic interests of the Debtor’s estate or its claimants just because his firm represents Synovus on unrelated matters. Synovus is not a creditor in this case. The only connection between Synovus and this case is that they hold a claim against one of the Disputed Owners, *not* the Debtor.

Nor does the fact the Trustee requested a waiver from Synovus indicate a conflict of interest. Trustee had a duty to disclose all connections bearing on his disinterestedness.<sup>10</sup> As a prudent and cautious fiduciary, he wanted to make sure neither his firm nor Synovus objected to his retention as a Chapter 11 Trustee.

The Disputed Owners cannot articulate how Akerman’s unrelated representation of Synovus prevents Trustee from performing his role without bias or would potentially cloud his

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<sup>7</sup> *In re New River Dry Dock, Inc.*, 497 Fed.Appx. 882, 886-87 (11th Cir. 2012)(quoting *Electro-Wire Products, Inc. v. Sirote & Permutt, P.C. (In re Prince)*, 40 F.3d 356, 361 (11th Cir. 1994)(quoting *Roger J. Au & Son, Inc. v. Aetna Ins. Co.*, 64 B.R. 600, 604 (N.D. Ohio 1986)). *See also In re Fundamental Long-Term Care, Inc.*, Case No. 8:11-bk-22258-MGW, 2019 WL 3956472 at \*4 (Bankr. M.D. Fla. August 21, 2019).

<sup>8</sup> *See In re Fullenkamp*, 477 B.R. 826, 832 (Bankr. M.D. Fla. 2011).

<sup>9</sup> Doc. No. 453; *See also* 11 U.S.C. § 1106.

<sup>10</sup> *In re Keller Financial Services of Florida, Inc.*, 243 B.R. 806, 812 (Bankr. M. D. Fla. 1999).

independence.<sup>11</sup> Disputed Owners' abstract allegations cannot satisfy the standard for disqualification.

Accordingly, it is

**ORDERED:**

1. The Corrected Motion to Reconsider Approval of Appointment of a Chapter 11 Trustee and for Disqualification of Chapter 11 Trustee (Doc. No. 420) is **DENIED**.
2. Jules S. Cohen shall remain as the Chapter 11 Trustee.

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The Clerk is directed to serve a copy of this order on all interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the Order.

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<sup>11</sup> See *In re Finao Corp*, Case No. 8:04-bk-20591-PMG, 2005 WL 419704 at \*3 (Bankr. M.D. Fla. Jan. 26, 2005) (quoting *In re Huntco*, 288 B.R. 229, 234 (Bankr. E.D. Mo. 2002)("[A]n attorney represents an interest adverse to the estate under § 327(a) 'only if the issues in which it represented the interest holder is [sic] somehow germane to the issues involved in the bankruptcy.'")).