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In re Ellingsworth Residential Community Association, Inc.

United States Court of Appeals, Eleventh Circuit - January 13, 2025 - F.4th. - 2025 WL 78887

Debtor, a Florida not-for-profit homeowners association (HOA), brought prepetition state-court action against homeowner for allegedly failing to conform her yard to association's covenants, and homeowner filed state-law counterclaims.

After state court dismissed lawsuit and directed debtor to pay homeowner's attorney fees and costs, debtor petitioned for Chapter 11 bankruptcy under subchapter V. Homeowner objected, arguing that debtor was ineligible and that its proposed plan of reorganization did not comply with Bankruptcy Code requirements.

The United States Bankruptcy Court for the Middle District of Florida entered orders confirming debtor's plan over homeowner's objections and denying homeowner's motions for stay relief, and for mandatory abstention. Homeowner appealed.

The District Court affirmed confirmation order and stay-relief order and dismissed appeal from abstention order. Homeowner, proceeding pro se, filed appeals, which were consolidated.

The Court of Appeals held that:

- Homeowner waived her arguments in support of her motions to supplement the record;
- As a matter of first impression for the Court, a not-for-profit company can be "engaged in commercial or business activities" as required to qualify for subchapter V of Chapter 11 of the Code;
- Debtor engaged in "business activities" and, thus, was eligible to be a subchapter V debtor, despite being a not-for-profit corporation;
- The Bankruptcy Court did not clearly err in determining that debtor's reorganization plan satisfied the Code's confirmation requirements;
- The Bankruptcy Court did not abuse its discretion in denying homeowner's request for stay relief; and
- A bankruptcy court order conclusively denying mandatory abstention is immediately appealable as a "final" order.

A not-for-profit company can be "engaged in commercial or business activities" as required to be eligible for subchapter V of Chapter 11 of the Bankruptcy Code; Congress did not include not-fo--profit companies alongside the list of other excluded debtors in the statute, nor did it include any textual requirement that a debtor pursue a profit, the broad eligibility of the Code's definition of "small business debtor" does not limit subchapter V to for-profit entities, but, instead, allows any entity involved in regular business-like functions—no matter if its primary goal is to earn a profit—to qualify for reorganization under subchapter V, and, since nonprofit entities are allowed to file for Chapter 11 relief, and subchapter V is within Chapter 11, it would be insensible to consider such entities capable of petitioning for Chapter 11 relief but not for relief under a subchapter of Chapter

11.

Florida not-for-profit corporation operating as a homeowners association (HOA) engaged in “business activities,” and thus was eligible to be a debtor under subchapter V of Chapter 11; HOA’s nonprofit status did not preclude it from engaging in business-like operations, but, to the contrary, Florida law permitted it to collect assessments, manage budgets, enforce rules, and maintain common areas, and, in practice, HOA operated much like a small business—overseeing the maintenance of shared properties, contracting with service providers, and negotiating with third parties on behalf of its members.

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