

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

In re WDRL-TV, INC.)	Case No. 06-61051-LYN
)	
Debtor,)	
)	
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LIBERTY UNIVERSITY, INC.,)	Adversary No. 07-06092
)	
Plaintiff,)	
)	
v.)	
)	
WDRL-TV, INC., and)	
MNE BROADCASTING, LLC, and)	
MELVIN N. ELEAZER,)	
)	
Defendants,)	
)	
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MEMORANDUM AND ORDER

This matter comes before the court on the motion of Charter Communications VI, LLC and Interlink Communications, LLC (collectively “Charter”) to intervene in this adversary proceeding.

Jurisdiction

This Court has jurisdiction over this matter. 28 U.S.C. § 1334(a) & 157(a). This adversary proceeding as initiated by the Original Complaint is a core proceeding. 28 U.S.C. § 157(b)(2)(A). Accordingly, this Court may enter a final order.

Facts

WDRL-TV, Inc., (“the Debtor”) is a corporation that operates as a television station. Melvin N. Eleazer (“Eleazer”) is the sole shareholder and principal officer of the Debtor. He is also the sole shareholder of MNE Broadcasting, L.L.C. (“MNE”). MNE owns the Federal Communications Commission (“FCC”) license that is necessary for the Debtor to operate. Liberty University Inc. (“Liberty”) is a Virginia Corporation. Charter Communications VI, LLC and Interlink Communications, LLC (collectively “Charter”) are the holders of the largest unsecured claim in this case.

On March 7, 2007, the Debtor, Liberty, MNE, and Eleazer entered into an Asset Purchase Agreement (the “APA”) that was subsequently approved by the court. The parties also entered into a Time Brokerage Agreement (“the TBA”) and a side letter agreement modifying the terms of the APA and the TBA (“the Side Letter”). Charter was not a party to the APA. The APA, however does provide that Charter is to be paid its claim in full from the proceeds of the sale of the Debtor’s assets and the FCC license to Liberty.

On September 19, 2007, Liberty filed the above-styled adversary proceeding asserting that the Debtor has breached the terms of the APA in that it is not in compliance with requirements under certain licenses/permits issued by the Federal Communications Commission.

On October 19, 2007, Charter filed a separate adversary proceeding seeking a judgment compelling the parties to the APA to exercise their best efforts to consummate the sale under the APA and other agreements, to declare that Eleazer and MNE hold assets in constructive trust for Charter, to award Charter damages for breach of contract against all defendants, and to, in the alternative, appoint a trustee under Section 1104(a) of the Bankruptcy Code.

On October 19, 2007, Charter filed a motion to intervene in this adversary proceeding under Fed. R. Bankr. P. 7024(a)(2). Charter claims an interest in the transaction that is the subject of this adversary proceeding and asserts that it is so situated that the disposition of the transaction may as a practical matter impair or impede Charter's ability to protect its interest.

Liberty opposes the motion. The Debtor, Eleazer and MNE have filed a joint opposition to the motion to intervene.

Discussion

The Court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest. Fed. R. Civ. P. 7024(a)(2) as made applicable by Fed. R. Bankr. P. 7024.

Charter, as a prospective intervener must meet four requirements:

First, the intervenor must submit a timely motion to intervene in the adversary proceeding. Second, he must demonstrate a "direct and substantial interest" in the property or transaction. Third, he has to prove that the interest would be impaired if intervention was not allowed. Finally, he must establish that the interest is inadequately represented by existing parties.

In re Richman, 104 F.3d 654, 659 (4th Cir. 1997).

Charter has filed a timely motion to intervene. Next Charter must demonstrate that it has a direct and substantial interest in the transaction that is the subject of the complaint. In In re Haeger, 221 B.R. 548 (Bankr. M.D. Fla. 1998), the debtor's insurer brought an adversary complaint against the debtor and an employee of the debtor who had been injured triggering the liability claim that was the subject of the complaint. The insurer then dismissed the employee as a defendant. The

employee sought to intervene. The Court noted that

. . . The “interest test” has been characterized as “primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” Nuesse v. Camp, 385 F.2d 694, 700 (D.C.Cir 1967).

Haeger, 221 B.R. at 550.

In this case the execution of the obligations under the APA may well determine whether Charter is paid its claim, and surely will determine when it will be paid its claim. Charter has an interest in the resolution of the dispute raised in this proceeding.

Next, Charter must demonstrate that its interest would be impaired if intervention were not allowed. Charter must show that a potential disposition of the adversary could impair its ability to protect its interests. If Liberty prevails and is allowed to terminate the APA, then Charter may once again be an unsecured creditor seeking payment. It may be where it was more than a year ago if not worse off. Its interests would be impaired.

Finally, Charter must establish that its interest is adequately represented by existing parties. The Supreme Court has held that the party seeking to intervene as of right need only show that the representation of its interest may be inadequate and this burden is minimal. Trbovich v. United Mine Workers of America, 404 U.S. 528, 538, n.10, 92 S.Ct. 630, 636, n.10, 30 L.Ed.2d 686 (1971) (“The requirement of the Rule is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal. See 3B J. Moore, Federal Practice 24.09-1 (4) (1969).”)

This dispute has taken on the shape of a three-cornered ring with Charter in one corner, Liberty in another corner, and Eleazer, MNE and the Debtor in the last corner. Liberty seeks to terminate the APA. It’s interest will not necessarily be parallel to those of Charter.

As a debtor-in-possession, the Debtor has a fiduciary duty to the unsecured creditors, including Charter. But Charter sued both the Debtor and Eleazer in the United States District Court for the District of West Virginia. Eleazer, MNE and the Debtor on the one side and Charter on the other, are, at this point, natural legal adversaries. And the Debtor has a 100% interlocking ownership with MNE and it is Eleazer who owns them both. The Debtor will have an incentive to align its prosecution tactics with the objectives not only with its fiduciary duties, but also with the interest of Eleazer and MNE. While this incentive may not necessarily manifest itself during the pendency of this litigation, it is nonetheless present as an impediment to any conclusion that the Debtor will act in the best interest of Charter in the same manner that Charter would. Charter cannot look to the Debtor, MNE, or Eleazer, either individually or collectively, to prosecute a defense that is parallel to the interest of Charter.

The problem is that Charter has filed its own adversary proceeding asserting its rights as it believes they relate to the Documents, the closing of the sale, and the rights of the other parties. Charter has chosen that other adversary proceeding as the procedural vehicle through which to protect its rights. This vehicle provides Charter with an adequate means to protect its interests. Indeed, counsel for Charter asserted at the hearing on this matter that it had filed the second adversary proceeding “essentially for the same purposes” as the motion to intervene. Accordingly, it need not be permitted to intervene in the instant adversary proceeding.

Charter has also moved to consolidate this proceeding with Adversary No. 07-06100 which it filed against Liberty, MNE, Eleazer and the Debtor. The two adversary proceedings will not be consolidated, but the Court will continue to consider both adversary proceedings concurrently. This joint administration will further assure that Charter has an opportunity to defend its any rights that

it may have in this bankruptcy case.

ORDER

The motion of Charter Communications VI, LLC and Interlink Communications, LLC to intervene is denied. The motion to consolidate Adversary No. 07-06092 and 07-06100 is denied, but the two proceedings shall be jointly administered.

So ORDERED.

Upon entry of this Order the Clerk shall forward a copy to Steven L. Higgs, Esq., George A. McLean, Jr., Esq., Peter M. Pearl, Esq., Peter Brodell, Esq., and Howard J. Beck, Jr. Esq.

Entered on this 21st day of December, 2007.



A handwritten signature in black ink, appearing to read "William E. Anderson", is written over a horizontal line. The signature is fluid and cursive.

William E. Anderson
United States Bankruptcy Judge

