

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-14974

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
Aug. 27, 2008
THOMAS K. KAHN
CLERK

D. C. Docket Nos.
07-01455-CV-WSD-1
05-12515-BKC-CR

In Re: ALLIED HOLDING, INC.,

Debtor.

VIRTUS CAPITAL LP,
HAWK OPPORTUNITY FUND, L.P.,

Plaintiffs-Appellants,

versus

ALLIED HOLDING, INC.,
TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTATION
INDUSTRY NEGOTIATING COMMITTEE,
YUCAIPA AMERICAN ALLIANCE FUND I, LP,
YUCAIPA TRANSPORT, LLC,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(August 27, 2008)

Before WILSON and PRYOR, Circuit Judges, and MIDDLEBROOKS,* District Judge.

PER CURIAM:

Allied Holding filed for voluntary bankruptcy pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 301, on July 31, 2005. Virtus Capital and Hawk Opportunity Fund are shareholders of Allied, whose shares were deemed worthless by Allied's Plan of Reorganization (the "Plan").

The bankruptcy court confirmed the Plan on May 18, 2007. Three days later, Virtus and Hawk appealed the bankruptcy court's order to the district court. They did not seek a stay with the bankruptcy court until June 25, 2007. The stay was denied, and Virtus and Hawk failed to request a stay with the district court. On September 29, 2007, the district court dismissed their appeal as equitably moot, finding that the Plan had been "substantially consummated" and that third parties had acted in substantial reliance on it. Upon careful review of the record and the

* Honorable Donald M. Middlebrooks, United States District Judge for the Southern District of Florida, sitting by designation.

parties' briefs, and after hearing oral argument, we affirm.

Considering all the circumstances, we agree with the district court that the Plan has been so substantially consummated that effective relief is no longer available. Several major transactions have already been executed pursuant to the Plan. If Virtus and Hawk were granted cash or shares in the reorganized Allied, or if the Plan's release provision were invalidated, such relief would undermine the reasonable expectations of the stockholders and creditors who carefully negotiated and relied on the deal struck by the Plan. Accordingly, Virtus and Hawk's appeal is equitably moot. *See In re Club Assocs.*, 956 F.2d 1065, 1069 (11th Cir. 1992).

AFFIRMED.