

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL S. NEWMAN, as a Receiver for
Founding Partners Capital Management
Company; Founding Partners Stable-
Value Fund, L.P.; Founding Partners
Stable-Value Fund, II, L.P.;
Founding Partners Global Fund, Ltd.
and Founding Partners Hybrid-Value
Fund, L.P.,

Plaintiff,

vs.

Case No. 2:09-cv-445-FtM-29SPC

SUN CAPITAL, INC. a Florida
corporation; SUN CAPITAL HEALTHCARE,
INC. a Florida corporation; HLP
PROPERTIES OF PORT ARTHUR, LLC a
Texas limited liability company,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #103), filed December 11, 2009, recommending that Investor Intervenors Annandale Partners LP, Annandale Partners II, LP, Barbara K. Baldwin, Belmont Strategic Income Fund, LP, Edward D. Fallin, Jr., Theodore S. Fries, Donald L. Hampton, Kenny Allan Troutt, as Trustee, on behalf of the Kenny Allan Troutt Descendants Trust, and The Rock of Gainseville, Inc.'s Motion to Intervene and Brief in Support (Doc. #30) be denied. The investors intervenors filed Objections (Doc.

#106) on December 24, 2009, and plaintiff filed a Response to Objections (Doc. #112) on January 7, 2010.

The parties dispute the standard under which a district judge must review the Report and Recommendation. Plaintiff asserts that review is under an erroneous or contrary to law standard, while the putative intervenors assert that the district court conducts a *de novo* review. The magistrate judge obviously felt the latter was the appropriate standard, since she resolved the motion by report and recommendation instead of by order. The Court agrees, and finds that a motion to intervene is a dispositive motion which must ultimately be decided by an Article III judge in the absence of consent. *E.g., Stackhouse v. McKnight*, 168 Fed. Appx. 464, 467 (2d Cir. 2006). Since there was no consent in this case, the Court will review the matter under a *de novo* standard.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); *Williams v. Wainwright*, 681 F.2d 732 (11th Cir. 1982), *cert. denied*, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." *Jeffrey S. v. State Bd. of*

Educ., 896 F.2d 507, 512 (11th Cir. 1990)(quoting H.R. 1609, 94th Cong. § 2 (1976)).

After conducting an independent examination of the file and upon due consideration of the Report and Recommendation and objections thereto, the Court accepts and adopts the Report and Recommendation of the magistrate judge and overrules the objections. The Court finds that the proposed intervenors have not established they have a right to intervene under FED. R. CIV. P. 24(a) or that they should be granted permissive intervention pursuant to FED. R. CIV. P. 24(b). The Court also finds no error in the magistrate judge's denial of intervenors' request to file a reply memorandum.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation (Doc. #103) is hereby **adopted** and the Objections are **overruled**.

2. Investor Intervenors Annandale Partners LP, Annandale Partners II, LP, Barbara K. Baldwin, Belmont Strategic Income Fund, LP, Edward D. Fallin, Jr., Theodore S. Fries, Donald L. Hampton, Kenny Allan Troutt, as Trustee, on behalf of the Kenny Allan Troutt Descendants Trust, and The Rock of Gainseville, Inc.'s Motion to Intervene and Brief in Support (Doc. #30) is **DENIED**.

3. The Clerk shall terminate the movants on the docket.

DONE AND ORDERED at Fort Myers, Florida, this 21st day of
January, 2010.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Sheri Polster Chappell
United States Magistrate Judge

Counsel of Record
Unrepresented parties