

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DCNC NORTH CAROLINA I, L.L.C.	:	
and GOOSE MARSH, L.L.C.,	:	CIVIL ACTIONS
Appellants,	:	
	:	No. 09-3775
v.	:	No. 09-3776
	:	
WACHOVIA BANK, N.A.,	:	
Appellee.	:	

Norma L. Shapiro, S.J.

November 13, 2009

MEMORANDUM

This is an appeal from the Order of the bankruptcy court on July 13, 2009, dismissing the debtors' Chapter 11 petitions for cause.

This court has jurisdiction over appeals of final judgments and orders of the bankruptcy court under 28 U.S.C. § 158(a)(1). The district court acts as an appellate tribunal and is governed by traditional standards of appellate review. The decision to dismiss a Chapter 11 petition is committed to the sound discretion of the bankruptcy court, and review is for abuse of discretion. *Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.)*, 200 F.3d 154, 159 (3d Cir. 1999). Such an abuse exists where the decision rests on a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact. *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 118 (3d Cir. 2004). After careful review of the record before us, we find no abuse of discretion.

The relevant facts are set forth at length in this court's Memorandum dated October 5, 2009. *DCNC N.C. I, L.L.C. v. Wachovia Bank, N.A.*, Nos. 09-3775 & 09-3776, 2009 U.S. Dist. LEXIS 93046 (E.D. Pa. Oct. 5, 2009).

In the bankruptcy court, Judge Frank granted Wachovia Bank, N.A.'s motions to dismiss the bankruptcy petitions of DCNC North Carolina I, L.L.C. ("**DCNC**") and Goose Marsh, L.L.C. ("**Goose Marsh**") under 11 U.S.C. § 1112(b), and the debtors appealed. The parties first came before this court on the debtors' emergency motions for stay pending appeal and for expedited consideration. Oral argument was held on September 25, 2009. On the basis of the parties' briefs, arguments, and the record below, the court decided that debtors did not show a likelihood of success on the merits. *Id.*

After reviewing the submissions on appeal and the record below, we find no errors in Judge Frank's findings of fact, conclusions of law or application of facts to the law. The bankruptcy court properly exercised its discretion in dismissing the petitions. The decision of the bankruptcy court is affirmed on the court's previous opinion and the opinion of Judge Frank, *In re DCNC N.C. I, LLC*, 407 B.R. 651 (Bankr. E.D. Pa. 2009).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DCNC NORTH CAROLINA I, L.L.C.	:	
and GOOSE MARSH, L.L.C.,	:	CIVIL ACTIONS
Appellants,	:	
	:	No. 09-3775
v.	:	No. 09-3776
	:	
WACHOVIA BANK, N.A.,	:	
Appellee.	:	

ORDER

AND NOW, this 13th day of November, 2009, after review of all the briefs in this bankruptcy appeal, it is hereby **ORDERED** that the Order of the bankruptcy court dated July 13, 2009 is **AFFIRMED**. The Clerk is directed to mark these cases closed.

/s/ Norma L. Shapiro

J.