United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, December 21, 2016 **Hearing Room 1568**

10:00 AM
2:15-29494 Group 6842, LLC, a California Limited Liability Co **Chapter 11**

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#1.00 Hearing
RE: [291] Motion to Modify Plan Debtors Notice Of Motion And Motion For Order Approving Non-Material Modifications To Debtors First Amended Chapter 11 Plan Of Reorganization; Memorandum Of Points And Authorities; Declaration Of Derek Folk In Support Thereof

fr. 12-20-16

Docket No: 291

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Group 6842, LLC, a California Limitec Represented By
Garrick A Hollander
Andrew B Levin

10:00 AM
2:15-29494 Group 6842, LLC, a California Limited Liability Co **Chapter 11**

#2.00 Hearing
RE: [292] Motion / Champs Notice Of Motion And Motion For An Order Estimating Claims For Plan Confirmation, Voting And Cure Amount Purposes; Memorandum Of Points And Authorities; Declaration Of Christopher C. Bright In Support Thereof with Proof of Service

fr. 12-20-16

Docket No: 292

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Group 6842, LLC, a California Limitec Represented By
Garrick A Hollander
Andrew B Levin

10:00 AM
2:15-29494 Group 6842, LLC, a California Limited Liability Co **Chapter 11**

#3.00 Hearing
RE: [285] Motion to Disallow Claims Debtors Motion For Order Disallowing Claim No. 5-1 Filed By Charter High School Of The Arts Association; Memorandum Of Points And Authorities; Declaration Of Derek Folk In Support Thereof Declarations Of Barry Katz And Don Hale, Jr. Filed Concurrently Herewith

fr. 12-20-16

Docket No: 285

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Group 6842, LLC, a California Limited — Represented By
Garrick A Hollander
Andrew B Levin

10:00 AM
2:15-29494 Group 6842, LLC, a California Limited Liability Co **Chapter 11**

#4.00 Hearing
RE: [280] Motion Debtors Motion To Confirm Debtors First Amended Chapter 11 Plan Of Reorganization

fr. 12-20-16

Docket No: 280

Tentative Ruling:

12/20/2016

For the reasons set forth below, the Debtor's Motion to Confirm the First Amended Plan is DENIED and the case is DISMISSED.

Pleadings Filed and Reviewed:

1) Plan Confirmation Motion:
   a) Debtor's First Amended Chapter 11 Plan of Reorganization ("Plan") [Doc. No. 252]
   b) Debtor's Motion to Confirm Debtor's First Amended Chapter 11 Plan of Reorganization ("Confirmation Motion") [Doc. No. 280]
      i) Declaration of Samuel G. Kohn in Support of Motion to Confirm Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 281]
      ii) Declaration of Derek Folk in Support of Motion to Confirm Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 282]
      iii) Supplemental Declaration of Derek Folk Regarding Revised Plan Financial Projections in Support of Motion to Confirm Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 312]
      iv) Declaration of Viann Corbin Re Ballot Tally in Support of Confirmation of Debtor's First Amended Chapter 11 Plan [Doc. No. 283]
      v) Declaration of Garrick Hollander in Support of Confirmation of the Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 304]
      vi) Declaration of Duane Martin in Support of Motion to Confirm Debtor's

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First Amended Chapter 11 Plan of Reorganization [Doc. No. 305]

c) Objection of the City of Los Angeles to Debtors Motion to Confirm Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 296]

d) Los Angeles County Treasurer and Tax Collector's Objection to Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 297]

e) CHAMPS' Objection to Confirmation of Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 298]

f) Debtor's Omnibus Reply to Objections to the Confirmation of the Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 303]

i) Declaration of Barry A. Katz in Support of Debtor's Omnibus Reply to Objections to the Confirmation of the Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 306]

2) Plan Modification Motion:

a) Debtor's Notice of Motion and Motion for Order Approving Non-Material Modifications to Debtor's First Amended Chapter 11 Plan of Reorganization ("Modification Motion") [Doc. No. 291]

3) CHAMPS' Claims Estimation Motion:

a) CHAMPS' Notice of Motion and Motion for an Order Estimating Claims for Plan Confirmation, Voting and Cure Amount Purposes ("Estimation Motion") [Doc. No. 292]

i) Declaration of Christopher C. Bright in Support of CHAMPS' Motion for an Order Estimating Claims for Plan Confirmation, Voting and Cure Amount Purposes [Doc. No. 293]

b) Debtor's Opposition to CHAMPS' Motion for an Order Estimating Claims for Plan Confirmation, Voting and Cure Amount Purposes [Doc. No. 299]

i) Evidentiary Objections to the Declaration of Christopher C. Bright in Support of CHAMPS' Motion for an Order Estimating Claims for Plan Confirmation, Voting and Cure Amount Purposes [Doc. No. 300]

ii) Supplemental Evidentiary Objections to the Declaration of Christopher C. Bright in Support of CHAMPS' Motion for an Order Estimating Claims for Plan Confirmation, Voting and Cure Amount Purposes [Doc. No. 313]

c) CHAMPS' Reply in Support of Motion for Order Estimating Claims for Plan Confirmation, Voting and Cure Amount Purposes [Doc. No. 310]

4) Debtor's Motion to Disallow CHAMPS' Claim:

a) Debtor's Motion for Order Disallowing Claim No. 5-1 Filed by Charter High School of the Arts Association ("Disallowance Motion") [Doc. No. 285]

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i) Notice of Objection to Claim [Doc. No. 288]
ii) Declaration of Barry A. Katz in Support of Debtor's Motion for Order Disallowing Claim No. 5-1 Filed by Charter High School of the Arts Association [Doc. No. 286]
iii) Declaration of Don Hale Jr. in Support of Debtor's Motion for Order Disallowing Claim No. 5-1 Filed by Charter High School of the Arts Association [Doc. No. 287]
(1) Original Signature Page to Declaration of Don Hale Jr. [Doc. No. 290]

b) CHAMPS' Opposition to Debtor's Motion for Order Disallowing Claim No. 5-1 Filed by CHAMPS and Request to Have this Contested Matter Consolidated with Adversary Proceeding No. 2:16-ap-01454-ER [Doc. No. 301]
i) CHAMPS' Evidentiary Objection to the Declaration of Barry A. Katz in Support of Debtor's Motion for Order Disallowing Claim No. 5-1 Filed by CHAMPS [Doc. No. 302]

c) Reply to CHAMPS' Opposition to Debtor's Motion for Order Disallowing Claim No. 5-1 Filed by Charter High School of the Arts Association [Doc. No. 311]
d) Supplemental Declaration of Christopher C. Bright that CHAMPS is Not Seeking to Purchase the Property [Doc. No. 314]
e) Evidentiary Objections to the Supplemental Declaration of Christopher C. Bright that CHAMPS is Not Seeking to Purchase the Property [Doc. No. 318]

5) Motion to Dismiss First Amended Complaint [Adv. No. 2:16-ap-01454]:
a) First Amended Complaint [Doc. No. 8]
b) Debtor's Notice of Motion and Motion for Order Dismissing Adversary Action for Failure to State a Claim Upon Which Relief Can Be Granted [Doc. No. 18]
i) Request for Judicial Notice in Support of Debtor's Motion for Order Dismissing Adversary Action for Failure to State a Claim Upon Which Relief Can Be Granted [Doc. No. 19]
c) CHAMPS' Objection to Debtor's Motion for Order Dismissing Adversary Action for Failure to State a Claim Upon Which Relief Can Be Granted [Doc. No. 21]
d) Debtor's Reply to CHAMPS' Objection to Debtor's Motion for Order Dismissing Adversary Action for Failure to State a Claim Upon Which Relief Can Be Granted [Doc. No. 23]

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6) Other relevant papers:
   a) Declaration of Duane Martin in Compliance with Order Authorizing Debtor to Enter Into Certain Real Property Lease [Doc. No. 220]
   b) Debtor's Second Amended Disclosure Statement, as Modified, in Support of Debtor's First Amended Chapter 11 Plan of Reorganization [Doc. No. 251]

Group 6842, LLC ("Debtor") filed a voluntary Chapter 11 petition on December 30, 2015. Debtor's only asset is an eight-story commercial office building and accompanying five-story parking structure located at 6842 Van Nuys Blvd., Van Nuys, CA (the "Property"). A portion of the Property is leased to Charter High School of the Arts Association ("CHAMPS"). CHAMPS entered into a ten-year lease with the Debtor on July 20, 2010.

On April 25, 2016, the City of Los Angeles ("City") filed a motion to dismiss or convert the case pursuant to §1112(b). Doc. No. 139. On July 21, 2016, the Court denied the City's motion to convert or dismiss without prejudice. Doc. No. 213.

On August 2, 2016, the Court authorized the Debtor to enter into a real property lease with JS California Rentals LLC ("JS"), an entity controlled by New York real estate investor Joseph Sutton (the "Sutton Lease"). Doc. No. 222. The Sutton Lease begins on October 1, 2016 and terminates on September 30, 2021, and requires the tenant to pay monthly base rent of $49,000. *See* Commercial Lease Agreement [Doc. No. 220]. The Debtor confirms that as of December 8, 2016, JS has not moved into the Property and commenced paying rent. The Debtor states that the lease is still valid, and that JS has not moved in only because the Plan has not yet been confirmed.

Summary of the Plan

The Plan provides for the Debtor to make monthly payments to holders of secured claims from net operating cash flow for the first thirteen months. On the thirteenth month after the Effective Date, the Plan provides for holders of secured claims to be paid in full from the proceeds of either a sale or refinancing of the Property. In support of its ability to obtain refinancing, Debtor provides a Letter of Intent dated July 1, 2016 from National Equity Funding ("NEF"). Doc. No. 251, Ex. 4. Debtor also provides a declaration from Samuel G. Kohn, the founder and CEO of NEF. Kohn states: "I believe that NEF will be able to provide sufficient financing to the Debtor on certain terms and conditions acceptable to the Debtor and NEF, which financing will satisfy the Debtor's obligations due in or about February 2018 (the 13th month after the effective date) under its Plan." Kohn Decl. at ¶4 [Doc. No. 281]. Neither the Letter

of Intent or the Kohn Declaration contain any specifics regarding the contemplated financing.

The Plan's classification scheme, and the votes of each class, are as follows:

1) Class 1.1: Secured real property tax claim of the County of Los Angeles ("County"), in the approximate amount of $467,896. The County will receive thirteen monthly payments of $11,881.00 from the Debtor's net cash flow. At the end of the thirteenth month following the Effective Date, the County will be paid in full from the sale or refinancing of the Property. The County voted to REJECT the Plan.
2) Class 1.2: Secured claim of the City of Los Angeles ("City"), in the amount of $9.5 million. The City will receive four quarterly payments of $45,166 from the Debtor's net cash flow. At the end of the thirteenth month following the Effective Date, the City will be paid in full from the sale or refinancing of the Property. The City voted to REJECT the Plan.
3) Class 1.3: Secured claim of D&A Semi-Annual Mortgage Fund III, L.P. ("D&A"), in the approximate amount of $6.8 million. The D&A claim will accrue interest at 8% per annum from September 1, 2014 through the Effective Date. D&A will receive thirteen monthly payments in the amount of $30,915 from the Debtor's net cash flow. At the end of thirteenth month following the Effective Date, D&A will be paid in full from the sale or refinancing of the Property. D&A voted to ACCEPT the Plan.
4) Class 2.1: Holders of priority unsecured claims. There are no claims in this class.
5) Class 3.1: General unsecured claims, in the approximate amount of $77,991.92. General unsecured claimants will be paid in full at the end of the thirteenth month following the Effective Date from the sale or refinancing of the Property. General unsecured creditors voted to REJECT the Plan.
6) Class 4.1: Equity interests of Ian Carter (32.5%), Kyles Family Investments (1%), True Capital Partners II, LLC (4%), Euroquest, LLC (45.5%), Earl Watson (3%), GTOET LLC (10%), Duane Martin, trustee of the Campbell-Martin Family Trust (3%), and Montgomery 2011 Investments LLC (1%). Equity interest holders will receive distributions after all claims of higher priority have been paid in full. (This class is unimpaired and did not vote on the Plan.)

The Plan provides that the "Debtor intends to assume the CHAMPS Lease under the terms of this Plan." Plan at ¶10.1. However, the Plan does not unequivocally

commit the Debtor to assuming the CHAMPS lease. The Plan provides that notwithstanding the Debtor's intent to assume the CHAMPS lease, "the Debtor shall have until the Confirmation Date to assume or reject" the CHAMPS lease. *Id.* The "confirmation date" is defined as the date on which the Confirmation Order is entered on the Court's docket.

The Debtor filed a motion to modify the Plan (the "Modification Motion") to effectuate minor amendments to the treatment of D&A's claim.

Opposition to the Plan

The City, County, and CHAMPS oppose confirmation of the Plan. The opposition of each entity is summarized below:

City's Opposition

The City asserts that the Plan cannot be confirmed for the following reasons:

1) The Debtor's October Monthly Operating Report reflects no income from the Sutton Lease. Sutton was supposed to commence paying rent in October 2016. Therefore, it appears that the Sutton Lease has fallen through.
2) The Plan is not feasible. The Debtor's financial projections unrealistically assume that the loan to the City will not amortize and that the City will continue receiving interest-only payments. The Debtor's prospects for takeout financing in February 2018 are not realistic, especially given that the Sutton Lease has apparently fallen through.
3) The Plan violates *Bank of America v. North La Salle Street Partnership*, 526 U.S. 434 (1999), by allowing equity holders to retain an interest even though the new value contribution to be made by the equity holders has not been exposed to the market.
4) The Plan violates the §1129(a)(7), the best interests of creditors test. Solely for the purposes of its liquidation analysis, Debtor estimates that the Property is worth $16 million. Yet for in connection with its Disclosure Statement, Debtor attached the Braun Appraisal, which values the Property at up to $24 million. It is not permissible for the Debtor to use different valuations of the Property for different purposes.

County's Opposition

The County asserts that the Plan cannot be confirmed for the following reasons:

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1) The Debtor states that the County's secured real property tax claim is $467,896. The County takes the position that as of December 2016, it is owed not less than $1,103,521.30 in delinquent taxes, plus an additional $224,293.61 in administrative expense taxes.
2) The Debtor and the County have stipulated to continue the hearing on the Debtor's objection to the County's claim to February 22, 2017. At a minimum, the full amount that the County claims it is owed should be held in reserve pending the conclusion of the litigation over the County's claim.
3) CHAMPS may be entitled to a partial public school exemption refund with respect to any taxes that are owed. To seek such a refund, CHAMPS must initiate a proper proceeding under Section 5096 of the California Revenue and Taxation Code. CHAMPS has represented that, pursuant to its lease, it has been paying its share of real property taxes directly to the Debtor. The County has not received those taxes. In the event that the Property is eligible for a partial public school exemption refund, the Court must determine whether CHAMPS or the Debtor should receive that refund.

CHAMPS' Opposition

CHAMPS asserts that the Plan cannot be confirmed for the following reasons:

1) The contemplated takeout financing is not feasible. The Debtor offers no explanation as to why it could succeed in refinancing or selling the Property within thirteen months, when it has not been able to achieve a sale or refinancing so far. The Debtor's loan with D&A came due in September 1, 2014—approximately 28 months ago. The Debtor was unable to sell or refinance the Property in the sixteen months before filing the petition, and has not been able to sell or refinance while in bankruptcy.
2) The Plan fails to include a provision for satisfying CHAMPS' claim. Although the Debtor contends that CHAMPS claim may be disallowed, in fact CHAMPS holds a claim in the amount of $500,262.

Debtor's Omnibus Reply

Debtor makes the following arguments in Reply to the Oppositions filed by the City, the County, and CHAMPS:

1) It is impossible to ever provide direct evidence of a firm commitment to a financing that is more than a year in the future. The Letter of Intent from National Equity Funding and the Declaration of Samuel G. Kohn provide

sufficient evidence of the Debtor's ability to refinance.

2) The plan does not violate the absolute priority rule because creditors will be paid in full.
3) The Plan's treatment of the County's claim complies with the Bankruptcy Code. Consistent with §1129(b)(2)(A), the Plan provides for the County to retain its lien on the Property until it is paid in full. With respect to any priority tax claim, the Plan provides for cash payments consistent with § 1129(a)(9)(C).

Related Motions

CHAMPS asserts that it holds a claim against the Debtor in the amount of $500,262, on account of the Debtor's failure to fulfill its obligations under the lease to adequately maintain the Property. The Debtor filed a motion to disallow CHAMPS' claim in its entirety (the "Disallowance Motion"). According to the Debtor, CHAMPS failed to provide proper written notice to the Debtor that repairs needed to be made. Debtor points to §23.1 of the lease, which provides that notices "shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Services Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23." Debtor asserts that CHAMPS never notified the Debtor of necessary repairs using any of the means specified in paragraph 23.Therefore, the Debtor asserts, it is not liable for failing to make necessary repairs. The Debtor further argues that with respect to repairs that the Debtor fails to make, CHAMPS' sole remedy under the lease is to make the repairs itself and deduct the cost from its rent. Next, Debtor asserts that even if CHAMPS had a claim, that claim would be offset by $211,000 in common area maintenance ("CAM") charges owed by CHAMPS. Finally, the Debtor argues that it has promptly and timely performed the necessary repairs and maintenance whenever CHAMPS has notified it of issues with the Property.

In opposition to the Disallowance Motion, CHAMPS asserts that the Debtor received actual written notice of necessary repairs. CHAMPS asserts that the fact that the notice was not provided by the means set forth in paragraph 23 of the lease is immaterial. With respect to the Debtor's claim that CHAMPS owes $211,000 in CAM charges, CHAMPS states that it was never billed for the alleged CAM charges during 2015 and 2016. CHAMPS further notes that the Debtor's schedules did not list any amount for unpaid accounts receivable, and asserts that Debtor should be estopped

from now alleging that CHAMPS owes previously unbilled CAM charges.

After the Debtor filed the Disallowance Motion, CHAMPS filed a motion requesting that its claim be estimated for voting, allowance, and cure purposes (the "Estimation Motion"). CHAMPS asserts that as a result of the Debtor's failure to make required repairs under the lease, it holds a claim of $500,262. In opposition, Debtor asserts that CHAMPS is not entitled to a claim in any amount because the Debtor plans to assume the CHAMPS lease through the Plan. Debtor argues that the assumed lease will become a post-petition obligation of the estate, and that accordingly CHAMPS is not entitled to vote upon the Plan.

CHAMPS commenced an adversary proceeding against the Debtor in which it reasserts the damages set forth in its Proof of Claim. The Debtor filed a Motion to Dismiss the action, arguing that CHAMPS is not entitled to assert claims in an adversary proceeding that duplicate the relief sought through its Proof of Claim. In opposition to the Motion to Dismiss, CHAMPS argues that an adversary proceeding is the most efficient mechanism to address the issues raised by CHAMPS' Proof of Claim. CHAMPS requests that the Court consolidated the contested proceeding initiated by the Debtor's objection to its claim with the adversary proceeding.

II. Findings of Fact and Conclusions of Law

The Plan is Not Feasible [Note 1]

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

"The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *Pizza of Hawaii, Inc. v. Shakey's Inc. (Matter of Pizza of Hawaii, Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985). To satisfy the feasibility requirement, the Debtor must present "evidence to demonstrate that the Plan has a reasonable probability of success." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1364 (9th Cir. 1986). "The key element of feasibility is whether there exists a reasonable probability that the provisions of the plan of reorganization can be performed. However, where the financial realities do not accord with the proponent's projections or where the projections are unreasonable, the plan should not be confirmed…. 'The inquiry is on the viability of the reorganized

debtor, and its ability to meet its future obligations, both as provided for in the plan and as may be incurred in operations.' 'In this respect, section 1129(a)(11) requires the plan proponent to show concrete evidence of a sufficient cash flow to fund and maintain both its operations and obligations under the plan.'" *In re Sagewood Manor Assocs. Ltd. P'ship*, 223 B.R. 756, 762 (Bankr. D. Nev. 1998) (internal citations omitted). "Feasibility is the heart of every Chapter 11 reorganization case. It is the most important element of § 1129(a)." *In re Linda Vista Cinemas, L.L.C.*, 442 B.R. 724, 737 (Bankr. D. Ariz. 2010).

In *Linda Vista Cinemas*, the court explained how the feasibility standard applies to Plans that propose a balloon payment:

> If a final payment, in the form of a "balloon" payment, is proposed to come from new financing to be acquired by the Debtor in the form of some new lending vehicle, then proof of feasibility is necessary. Whether that balloon payment can likely be made, and new financing acquired, requires credible evidence proving that obtaining that future financing is a reasonable likelihood. *See In re Inv. Co. of The Southwest, Inc.,* 341 B.R. 298, 311, 314, 316 (10th Cir.BAP2006) (plan not feasible where there was no evidence to demonstrate how the debtor would be able to fund required balloon payments).
>
> A court may not confirm a plan if its feasibility depends on future refinancing, unless there is an adequate evidentiary showing that such refinancing is likely to occur. *See In re Made in Detroit, Inc.,* 299 B.R. 170, 179–80 (Bankr.E.D.Mich.2003) (plan not confirmed when proponent made inadequate showing of ability to obtain financing); *In re Vanderveer Estates Holding, LLC,* 293 B.R. 560 (Bankr.E.D.N.Y.2003) (similar); *In re Walker,* 165 B.R. 994 (E.D.Va.1994) (similar with respect to future sale of property).

Linda Vista Cinemas, L.L.C., 442 B.R. at 738.

The Debtor has failed to carry its burden of demonstrating that the plan is feasible. The 100% payment to holders of claims depends entirely upon the Debtor receiving financing from NEF thirteen months after the Effective Date of the Plan. In support of its ability to obtain such financing, the Debtor provides only a non-binding Letter of Intent and a declaration from NEF's CEO. Neither document provides any details with respect to the contemplated financing. In fact, this purported evidence is an illusion.

The Debtor has been attempting to refinancing its indebtedness to D&A ever since September 1, 2014. *See* Disclosure Statement at 22 [Doc. No. 251]. More than two years have elapsed and the Debtor has not succeeded in obtaining refinancing. There is nothing in the record to indicate that the Debtor's prospects for refinancing have

improved. The Debtor's execution of the Sutton Lease does not improve the likelihood of a successful refinance. Under the terms of the Sutton Lease, JS was supposed to begin occupying the remainder of the Property and paying rent on October 1, 2016. More than two months later, that has not yet occurred and the Property remains only partially occupied. In an attempt to explain JS' failure to perform under the lease, the Debtor states that "the delay is attributed to the uncertainty as to the outcome of this Plan, which was always contemplated." Debtor's Omnibus Reply at 4 [Doc. No. 303]. That explanation rings hollow. Although the Sutton Lease contains a provision authorizing JS to terminate the lease should ownership or management of the Property be transferred, it does not condition performance under the lease on the confirmation of the Plan. *See* Commercial Lease Agreement at ¶39 [Doc. No. 220]. In its motion seeking authorization to enter into the Sutton Lease, the Debtor did not inform the Court that execution of the lease was conditioned upon confirmation of the Plan. Nor was this purported condition presented at the hearing. Instead, at the hearing the Debtor informed the Court that JS, the prospective tenant, was likely to perform because it "has billions of dollars behind it." *See* Audio of July 19, 2016 Hearing on Debtor's Motion to Authorize Sutton Lease (on file with the Clerk of the Court). Now that JS has failed to perform, the Debtor offers empty reassurances that performance will be forthcoming, and attempts to rewrite history by incorrectly claiming that performance was always conditioned upon Plan confirmation. Throughout this case the Debtor has repeatedly made representations about its ability to lease up the Property and obtain refinancing. So far none of those representations have materialized. The Court has no confidence in the Debtor's ability to consummate the Sutton Lease.

Even if JS were performing under the lease, the Debtor's hopes about refinancing with NEF are simply too speculative to support confirmation of the Plan. The NEF Letter of Intent and the Kohn Declaration do not provide "concrete evidence" of the Debtor's ability to refinance. *Sagewood Manor*, 223 B.R. at 762. Essentially, all that the Letter of Intent and Kohn Declaration state is that the Debtor and NEF are hopeful that they will be able to agree upon a refinancing transaction in thirteen months. The terms of the contemplated transaction are not specified. The vague Letter of Intent and Kohn Declaration only raise more questions. Has NEF provided financing of this type in the past? If so, what is its track record? If the financing with NEF cannot be consummated, what alternatives exist?

The Court recognizes that the Debtor's ability to make a future balloon payment can never be established with certainty. But in cases where courts have approved

balloon-payment plans, the Debtor has provided evidence showing there is a reasonable probability that the balloon payment will be made. *See, e.g.*, *SPCP Grp., LLC v. Cypress Creek Assisted Living Residence, Inc.*, 434 B.R. 650, 657 (M.D. Fla. 2010) (changes in debtor's management structure, as well as the fact that the debtor had increased its revenue during the Chapter 11 case, provided evidence of its ability to make a balloon payment); *Linda Vista Cinemas*, 442 B.R. at 732 (balloon payment was feasible because existing indebtedness would be reduced by half by the time the balloon payment became necessary). Here, no such evidence exists. Instead, all the Debtor provides in support of its ability to make the balloon payment is speculation and unwarranted optimism. The Debtor provides no "credible evidence proving that obtaining [the] future financing is a reasonable likelihood." *Linda Vista Cinemas*, 423 B.R. at 738.

Other circumstances cast further doubt on the Debtor's ability to obtain new financing. At present, the Debtor is making interest-only payments on its loan with the City. At some point the City's loan will amortize and the Debtor will be required to make principal payments. Therefore, the current budget projections presented by the Debtor benefit from the temporarily-reduced payments to the City. However, under any refinancing of the City's loan, the Debtor would at some point be required to begin paying at least some portion of the principle—it is not commercially reasonable for the Debtor to assume that it can keep making interest-only payments in perpetuity. Debtor has not been able to refinance the second-position debt with D&A even though it has benefitted from only being required to make interest payments under the City's first-position loan. At the point when the Debtor must begin to make principal payments on the indebtedness now held by the City, refinancing will become even more difficult.

The terms of any refinancing the Debtor could obtain will, even in 13 months, be far more complex and expensive than what is now available. **[Note 2]** Put simply, the Debtor's financial situation dire and will remain so for the foreseeable future. Any purported possibility of refinance or sale is not borne out by the evidence. The Kohn declaration which at best is simply a non-binding understanding that each party may perhaps enter into future negotiations, provides no evidence to the contrary.

The Court *Sua Sponte* Dismisses the Case

Section 1112(b) provides that the Court, upon request of a party in interest, "shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this

chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." The Court may dismiss or convert a case on its own motion. *See Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008).

The Debtor has been on notice of the possibility of conversion or dismissal ever since April 15, 2016. On that date, the Court issued an order requiring the Debtor to file, by June 6, 2016, either a motion to sell substantially all assets of the estate or a plan that the Debtor believed in good faith to be confirmable (the "Filing Requirement"). Doc. No. 131. The Court advised the Debtor that the case could be dismissed or converted if it failed to satisfy the Filing Requirement. The possibility of dismissal or conversion was also raised in connection with the City's motion to dismiss or convert, which was heard on June 21, 2016. The Court's tentative ruling was to convert the case to Chapter 7, but the Court took the matter under submission based on the parties' oral arguments. Therefore, the Debtor has received sufficient notice of the possibility of dismissal or conversion if the Debtor was unsuccessful in confirming a plan.

The Debtor has had more than sufficient time to confirm a plan. This single-asset real estate case was commenced on December 30, 2015. The case has been pending for nearly a year. The Debtor's inability to sell the Property or obtain refinancing in that time demonstrates that the Property's cash flow is simply not sufficient to support a sale or refinancing, and that the Debtor's hopes that a sale or refinancing may be achieved in the future are not realistic. Giving the Debtor more time will not improve the prospects for reorganization; if the Property could have been refinanced or sold by now, it would have been.

The Court finds that dismissal, as opposed to conversion, is in the best interests of creditors. As discussed above, the Property does not generate sufficient cash flow to adequately service the indebtedness against it. Given the Debtor's dire financial situation, a Chapter 7 Trustee would be unable to sell the Property for an amount that would provide any equity for unsecured creditors.

The Court's determination to dismiss the case renders moot the Debtor's motion to disallow CHAMPS' claim, CHAMPS' motion to estimate its claim for voting purposes, the Debtor's motion to modify the Plan, and the Debtor's motion to dismiss the adversary action filed by CHAMPS (the adversary proceeding will be dismissed concurrently with the dismissal of the main bankruptcy case).

The Court will enter an appropriate order.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Several creditors objected to the Plan's feasibility in connection with the hearing on the approval of the Disclosure Statement. The Court declined to address the feasibility objections in that context, finding that those objections were plan confirmation issues. *See* Ruling Approving Amended Disclosure Statement at 20 [Doc. No. 262].

Note 2

On December 14, 2016, the Federal Reserve increased the target federal funds rate to a range of 0.5% to 0.75%, and predicted that it would increase the federal funds rate three more times in 2017. *See* Fed Raises Key Interest Rate, Citing Strengthening Economy, *New York Times*, Dec. 14, 2016. These increases in the federal funds rate will cause borrowing costs for all types of lending to correspondingly increase.

Party Information

Debtor(s):

Group 6842, LLC, a California Limitec Represented By
Garrick A Hollander
Andrew B Levin

10:00 AM
2:15-29494 Group 6842, LLC, a California Limited Liability Co **Chapter 11**
Adv#: 2:16-01454 Charter High School of the Arts Association v. Group 6842, LLC, a California li

#5.00 Hearing
RE: [18] Motion to Dismiss Adversary Proceeding Debtors Notice Of Motion And Motion For Order Dismissing Adversary Action For Failure To State A Claim Upon Which Relief Can Be Granted; Memorandum Of Points And Authorities [Request for Judicial Notice filed concurrently herewith]

fr. 12-20-16

Docket No: 18

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Group 6842, LLC, a California Limited	Represented By Garrick A Hollander Andrew B Levin

Defendant(s):

Seth Scott, an individual	Pro Se
DOES 1 through 10	Pro Se
Group 6842, LLC, a California limited	Represented By Peter W Lianides
Duane Martin, an individual	Pro Se

Plaintiff(s):

` Charter High School of the Arts Asso	Represented By Jerrold L Bregman

10:00 AM
2:16-25186 Roneesha Curtis **Chapter 7**

#6.00 Hearing
RE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 14404 Lemoli Ave. Apt. 220 Hawthorne, CA 90250 with Proof of Service. (Unruh, Carol)

FR. 12-19-16

Docket No: 14

Tentative Ruling:

12/20/2016

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after the lease is in default. The Debtor is delinquent in the monthly rent of $1,075.00 for the period of June 1, 2016 to December 1, 2016. Decl. of Theresa Golden ¶ 9(d). The Movant filed an unlawful detainer action on August 19, 2016. *Id.* at ¶ 7(c)(1).

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867,

876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is also waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

REVISED SUBMISSION PROCEDURE

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Roneesha Curtis Pro Se

Trustee(s):

Wesley H Avery (TR) Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, December 21, 2016 **Hearing Room 1568**

11:00 AM

2:15-26482 Roberto Cuchillo and Araceli Mora De Cuchillo **Chapter 7**

#100.00 APPLICANT: David M Goodrich, Trustee

Hearing re: [24] Trustee's Final Report and Applications for Compensation

Docket No: 0

***** VACATED *** REASON: RESCHEDULED 12-20-16 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roberto Cuchillo — Represented By Michael H Colmenares

Joint Debtor(s):

Araceli Mora De Cuchillo — Represented By Michael H Colmenares

Trustee(s):

David M Goodrich (TR) — Pro Se