

**United States Bankruptcy Court
Central District of California
Riverside
Magdalena Reyes Bordeaux, Presiding
Courtroom 303 Calendar**

Thursday, January 11, 2024

Hearing Room 303

11:00 AM

6: -

Chapter 0

#0.00 Judge Reyes Bordeaux will hold hearings in person and remotely via Zoom.gov.

In person Appearance Policies

Parties may appear in person for hearings at United States Bankruptcy Court located at 3420 Twelfth Street, Riverside, CA 92501 in Courtroom 303. Parties appearing in person must wear face masks, practice social distancing, and comply with all applicable guidelines of the United States Bankruptcy Court, Central District of California, and any additional requirements required under California State Law at the time of the hearing. Please note that Judge Reyes Bordeaux will not be wearing a mask.

Remote Appearance Policies

Parties may also appear remotely for hearings using ZoomGov, which permits parties to appear by video or by telephone. Hearing participants and members of the public may use ZoomGov free of charge to connect to hearings before Judge Reyes Bordeaux. Video and audio connection information for hearing(s) on this calendar is listed below.

Individuals may use a personal computer (equipped with camera, microphone and speaker), or a mobile device (such as an iPhone) to appear by ZoomGov video and ZoomGov audio. Individuals may also use a telephone to appear by ZoomGov audio only (standard telephone charges may apply). A Zoom or ZoomGov account is not necessary to connect to the hearings and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

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Video/audio web address: <https://cacb.zoomgov.com/s/1615093469>

ZoomGov Meeting ID Number: 161 509 3469

Meeting Passcode: 3032024

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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Docket 0

Tentative Ruling:

- NONE LISTED -

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6:23-14433 Hector Manuel Ruelas-Quiroz and Giovvana Marlet

Chapter 7

**#1.00 Pro se Reaffirmation Agreement Between Debtor and Snap-on Credit LLC
re Tools of Trade**

EH____

Docket 18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Manuel Ruelas-Quiroz

Represented By
Dana Travis

Joint Debtor(s):

Giovvana Marlet Guerrero Sosa

Represented By
Dana Travis

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:23-14947 Angela Marie Aceves

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and LBS Financial Credit Union
re: 2018 Honda Civic

Also # 2.10

EH____

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angela Marie Aceves

Pro Se

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:23-14947 Angela Marie Aceves

Chapter 7

#2.10 Pro se Reaffirmation Agreement Between Debtor and First Tech Federal Credit Union re 2022 Honda Pilot

Also # 2

EH____

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angela Marie Aceves

Pro Se

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:23-14286 Francheska Juanita Valenzuela-Butler and Hollis Lanier

Chapter 7

**#3.00 CONT Pro se Reaffirmation Agreement Between Debtor and Altura Credit Union
re 2015 Toyota Scion**

From: 12/13/23

Also #4

EH ____

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francheska Juanita Valenzuela-	Pro Se
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Joint Debtor(s):

Hollis Lanier Butler Jr	Pro Se
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Trustee(s):

Lynda T. Bui (TR)	Pro Se
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6:23-14286 Francheska Juanita Valenzuela-Butler and Hollis Lanier

Chapter 7

#4.00 CONT Pro se Reaffirmation Agreement Between Debtor and Altura Credit Union
re 2016 Nissan Sentra

From: 12/13/23

Also #3

EH ____

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francheska Juanita Valenzuela-	Pro Se
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Joint Debtor(s):

Hollis Lanier Butler Jr	Pro Se
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Trustee(s):

Lynda T. Bui (TR)	Pro Se
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6:23-11032 Visionary Labels and Packaging, LLC

Chapter 11

#1.00 Application for Compensation for Caroline Renee Djang (TR), Trustee, Period: 3/22/2023 to 12/6/2023, Fee: \$12,045.50, Expenses: \$0

Also #2

EH____

Docket 162

Tentative Ruling:

The Court's Tentative Ruling is to Grant Movant's Application for Compensation of Fees And /or Expenses.

Having reviewed the Application for Compensation of Fees and/or Expenses for the period 3/22/23 through 12/6/2023, the Court finds that the Subchapter V Trustee's fees of \$12,045.50 and costs of \$0.00 were necessary and reasonable and are hereby approved as requested. Service proper. No objections filed.

APPEARANCES WAIVED ON 1-11-2024

If written or oral opposition is presented at the hearing, the hearing may be continued.

APPLICANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Visionary Labels and Packaging,

Represented By
Giovanni Orantes

Movant(s):

Caroline Renee Djang (TR)

Pro Se

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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CONT... Visionary Labels and Packaging, LLC

Chapter 11

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6:23-11032 Visionary Labels and Packaging, LLC

Chapter 11

#2.00 Application for Compensation for Giovanni Orantes, Debtor's Attorney, Period: 3/17/2023 to 10/18/2023, Fee: \$66,549.75, Expenses: \$1,699.16

Also #1

EH____

Docket 168

Tentative Ruling:

The Court's tentative ruling is to grant Movant's Final Application for Allowance of Fees and Reimbursement of Costs for the period 3/17/2023 through 10/18/2023.

Having reviewed the Final Application for Allowance of Fees and Reimbursement of Costs for the period 3/17/2023 through 10/18/2023, the Court finds that the fees of \$66,549.75 and costs of \$1,699.16 were necessary and reasonable, and are hereby approved as requested.
Service proper. No objections filed.

APPEARANCES WAIVED ON 1-11-2024

If written or oral opposition is presented at the hearing, the hearing may be continued.

APPLICANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Visionary Labels and Packaging,

Represented By
Giovanni Orantes

Movant(s):

Visionary Labels and Packaging,

Represented By
Giovanni Orantes

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Chapter 11

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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6:23-14710 Frontline Machining, LLC

Chapter 11

#3.00 CONT Scheduling and Case Management Conference

From: 11/2/23

EH____

Docket 6

Tentative Ruling:

Appearances are REQUIRED on 1/11/24. You can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

Party Information

Debtor(s):

Frontline Machining, LLC

Represented By
Andrew S Bisom

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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6:23-14297 GF SERVICES I LLC

Chapter 11

#4.00 CONT Secured Creditor JK Building Blocks, LLC, to Dismiss Case due to bad faith filing of Case

From: 11/2/23, 12/7/23, 12/19/23

Also #5

EH____

Docket 28

Tentative Ruling:

The Court's tentative ruling is GRANT Movant's Motion to Dismiss under §1112(b).

Appearance required on 1/11/24. If you wish to be heard on this matter, you can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

Notice

Service is proper under FRBP 2002 and LBR 9013-1(c) and (d).

Factual and Procedural History

Background Facts

Debtor is a real estate developer. Debtor's sole asset is comprised of two unimproved lots of land, 17.64 acres in the city of Corona (the "Properties"). Debtor contends that on or about July 7, 2022 the Properties were appraised and found to be worth \$17,000,000.00. There are seven (7) deeds of trust recorded on the Properties totaling approximately \$7.2 million with Movant JK Building Blocks, LLC being one of the secured creditors.

Debtor contends that it was in the process of securing a loan to pay off said deeds of

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trust, but JK Building Blocks, which holds the second deed of trust, recorded the Notice of Trustee Sale on August 24, 2023, and set the date for the foreclosure proceedings on September 21, 2023.

Bankruptcy Petition and Election to Proceed as a Subchapter V Debtor

On September 21, 2023, two and one half hours before the scheduled foreclosure sale, Debtor filed a face sheet voluntary petition electing to proceed under Subchapter V of Chapter 11. ECF doc. 1, ¶ 8. The paragraph where Debtor designated its case as a Subchapter V directs debtor to attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax returns. *Id.* If any of the identified documents did not exist, Debtor was directed to file a statement under the penalty of perjury that these documents do not exist, as required under § 1116(1)(B). Debtor filed the § 1116(1)(B) statement on September 28, 2023. ECF doc. 13.

On September 27, 2023, the Court issued its *Order Setting Initial Status Conference in Chapter 11 Case*, ECF doc. 11, and set the initial status conference on November 2, 2023.

On October 5, 2023, Debtor filed the rest of its case commencement documents, as well as a Disclosure of Compensation for its attorney. ECF doc. 15; 17; 18 and 21. To date, Debtor has not filed an application to employ its attorney, Yoon Ham.

Motion to Dismiss and Request for Designation as a Single Asset Real Estate Chapter 11

On October 31, 2023, Creditor JK Building Blocks, LLC ("JK" or "Movant") filed a *Request of Secured Creditor to Dismiss Case due to Bad Faith Filing of Case*, ECF doc. 28 (the "Motion"), arguing that this bankruptcy case was filed in bad faith, and that Debtor is a "single asset real estate" chapter 11 debtor, as defined by § 101(51B).

JK noted that Debtor filed this case 2.5 hours prior to its noticed foreclosure sale.

In JK's declaration in support of the Motion, John Kraemer, principal of JK Building

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Blocks, LLC, indicated that entities of which he is principal of also hold the 6th and 7th position deeds of trust. *Decl. of Kraemer in Support of Motion*, ¶¶ 5-6. Thereafter, Kraemer asserted that he decided to purchase the second position deed of trust against the Properties, then held by Case Retirement Plan Trust, which was recorded on April 4, 2023. *Id.* ¶ 7. As of the Petition Date, the Kraemer entities held the following interest in the Properties:

Deed of Trust Holder	Position	Amount of Debt Secured	Date Recorded	Date of Maturity
JK Building Blocks, LLC (fmr. Case Retire. Plan Trst.)	2nd	\$643,471.34	4/4/2023 (orig. 2/2/22)	1/17/2024 (Doc. 28, Ex. F)
Beachwalk Properties, Inc.	6th	\$191,160	11/21/2022	5/7/2023
Beachwalk Properties, LLC	7th	\$374,548.37	12/6/2022	4/14/2023

Creditor asserted that Debtor has failed to pay the note held by the First Deed of Trust Holder, and that JK has been forced to make the monthly payment of \$36,000 to prevent that creditor from instituting the default interest rate of 25% and increased monthly payment of \$75,000.

In the Motion, Movant argued that this case is a Single Asset Real Estate case, as defined by 11 U.S.C. § 101(51B), and thus it is not proper that Debtor chose to proceed in a Subchapter V.

It is Movant's position that Debtor has no realistic chance of reorganizing. JK notes that after reviewing Debtor's schedules and case commencement documents Debtor's has no realistic change or reorganizing for the following reasons:

- 1) Debtor has no income;
- 2) Debtor has not generated income for the two years prior to filing chapter 11 bankruptcy;
- 3) Debtor has no balance sheet;
- 4) Debtor has no statement of operations;

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- 5) Debtor has no cash flow statement;
- 6) Debtor has no federal tax returns;
- 7) Debtor's Properties were hours from a foreclosure sale initiated by the Second Deed of Trust on said Properties; and
- 8) Debtor has never made an interest payment (after the 6 months of prepaid interest is factored into the \$3,600,000.00 loan made to Debtor expired)

Declaration of Gregg Wolfer in Support of Motion, ¶ 8, ECF doc. 29.

Movant asserts that all payments on the First Deed of Trust have been made by third parties, including JK, to protect their interests. The First Deed of Trust matures according to its own terms on January 23, 2024. Further, at its § 341(a) meeting of creditors, held on October 23, 2023, Debtor admitted that there are no unsecured creditors.

At the November 2, 2023 status conference, the Court set a hearing on the Motion for December 14, 2023, and a responsive briefing schedule. *See* ECF doc. 33. Thereafter, on November 22, 2023, the Court continued the hearing on the Motion, and the status conference, to December 19, 2023, at 2 p.m. ECF doc. 37.

Joinder to Motion to Dismiss by GF Lender

On November 21, 2023, creditor GF Lender LLC filed a *Joinder to Motion to Dismiss Ch. 11 Case*, ECF 36.

Opposition to Motion to Dismiss

Creditor Randall Fox's Opposition to Motion to Dismiss

On November 20, 2023, Randall Fox, who asserts that he is a creditor of this Debtor, filed an Opposition to the Motion to Dismiss. ECF doc. 35 (the "Fox Opposition"). The Promissory Note, attached to the Fox Opposition, lists the borrower as "GF Services, LLC" while Debtor here is "GF Services I, LLC." In his opposition, Fox asserts that he was never informed by Debtor's principal, Chris Bowen ("Bowen"), that Bowen had formed another entity called GF Services I, LLC. In its Motion, Movant asserted that Debtor testified at the § 341(a) meeting that it mistakenly listed

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two unsecured creditors, Randall Fox and Stephan Longard, and that there are no unsecured creditors. ECF doc. 28, 2:24-27.

Debtor's Opposition to Motion to Dismiss

On December 5, 2023, Debtor filed its Opposition, ECF doc. 39. Debtor does not dispute that it filed this chapter 11 to prevent foreclosure and secure a "breathing spell" to obtain financing to pay all of its creditors and move forward with construction. *Debtor's Opposition*, ECF doc. 39. Bowen, the managing member of Debtor, contends he has been working since 2018 to get the Properties re-zoned and obtain a conditional use permit for the development of mixed commercial and residential space called "Skyline Village". Bowen claims he was successful in getting the approvals of the City Counsel for the City of Corona. To date, Debtor has incurred approximately \$2.5 million in capitalized costs to develop Skyline Village including, but not limited to, mortgage payments, interest thereon, drawing of plans, engineering, and entitlements.

Debtor maintains that the principal financial and legal issues revolve around satisfying the secured debt obligations of the secured creditors. Debtor asserted in its opposition that it had been working with Alliance Funding to secure upwards of \$35,000,000.00, subject to court approval, for the first phase of build out of Skyline Village. With loan approval and funding, Debtor intended to satisfy all notes/deeds of trust that are outstanding that are due and owing.

On December 12, 2023, Movant filed its Reply, reiterating its argument that dismissal is appropriate here. ECF doc. 44.

Stipulation Purporting to Resolve Motion to Dismiss

On December 19, 2023, hours before the hearing on the Motion, Debtor and JK filed a *Stipulation for Resolution of Motion to Dismiss*, ECF doc. 45, wherein Debtor and Movant agreed that Creditor would make the \$36,000 December monthly payment to the First Deed of Trust holder and that Debtor would pay to Movant \$1,123,119.20 no later than January 9, 2024. *Id.* Debtor further agreed to make the \$36,000 January monthly payment to the First Deed of Trust holder, with proof of timely payment sent to Movant's counsel. If Debtor failed to make the required payments under the

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Stipulation, the parties provided that Movant's counsel would file a declaration stating the same, and that the case would be dismissed with a 180-day bar. *Id.*

December 19, 2023 Hearing on Motion to Dismiss

At the hearing on the Motion to Dismiss, the parties argued the Stipulation was improperly before the Court, and required a noticed motion so that the other creditors of the Estate could file responses.

After considering the arguments of the parties, the Court made the determination that this case was a Single Asset Real Estate Case, as defined by § 101(51B) as of December 19, 2023, and continued the hearing on the Motion and the status conference, to January 11, 2024.

Oppositions to Stipulation, and to Motion

On December 27, 2023, Creditor GF Lender LLC filed an Objection to the Stipulation, arguing that the Stipulation provides for payment to a junior creditor in violation of the absolute priority rule. ECF doc. 47. Further, no payment can be made on a prepetition debt outside of a confirmed plan, without a showing of "extraordinary circumstances."

In a concurrently filed Reply to the Motion, Creditor GF Lender LLC argued that, in light of the Stipulation, JK could no longer be counted on to prosecute the Motion. Because it had joined in JK's Motion, GF Lender should be treated as the movant going forward, and argued that this case should be dismissed. ECF doc. 48.

On December 28, 2023, Creditors Randall Fox, Sam Tsapatolis, and Brian Golie, who assert that they are creditors of this Estate ("Asserted Creditors"), filed an opposition to the Motion, arguing that dismissal is not in their best interest of creditors. ECF doc. 49. Instead, Asserted Creditors argue that Movant has not established cause to dismiss this case, and that it is in the best interest of all creditors that the duties of the Subchapter V trustee be expanded or the case converted to a case under Chapter 7.

Withdrawal of Stipulation

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On January 4, 2024, JK filed a *Notice of Withdrawal of Stipulation*, ECF doc. 53, indicating that it no longer sought the Court's approval and that it would proceed with the Motion. JK also filed a Reply, ECF doc. 54, wherein it asserted that Debtor did not make the January payment required under the Stipulation. Further, JK contends that Debtor has not provided any evidence of a loan commitment without contingencies.

Pending Matters for January 11, 2024 Hearing

Having reviewed all of the above-referenced pleadings, the Court will consider JK's Motion to dismiss this case with a 180-day bar to refiling, as well as Asserted Creditor's request to expand the duties of the Subchapter V Trustee or convert the case to Chapter 7.

ANALYSIS

A. Single Asset Real Estate Designation

At the December 19, 2023 status conference, after considering the arguments of the parties, the Court made the determination that this case was a Single Asset Real Estate Case ("SARE"), as defined by § 101(51B) as of December 19, 2023.

The Bankruptcy Code defines "single asset real estate" as:

[R]eal property constituting a single property or project, other than residential real property with fewer than 4 residential [* 957] units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

11 U.S.C. § 101(51B).

The Ninth Circuit has recognized that real property must meet three elements to qualify as "single asset real estate" under this definition:

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- (1) the property is "a single property or project, other than residential real property with fewer than 4 residential units";
- (2) "the property generates substantially all of the gross income of a debtor who is not a family farmer"; and
- (3) "no substantial business is being conducted by a debtor [on the property] other than the business of operating the real property and activities incidental thereto."

In re Meruelo Maddux Props., Inc., 667 F.3d 1072, 1076 (9th Cir. 2012).

11 U.S.C. §§ 101(51B) and 362(d)(3) were enacted as part of the Bankruptcy Reform Act of 1994 ("BRA"). *Centofante v. CBJ Dev. (In re CBJ Dev.)*, 202 B.R. 467, 470 (B.A.P. 9th Cir. 1996). Section 218 of the Bankruptcy Reform Act of 1994 added these two subsections to the Bankruptcy Code to deal with the "single asset real estate" case. Section 101 (51 B) defines "single asset real estate" and section 362(d)(3) provides that the court shall grant relief from stay with respect to an act against "single asset real estate" unless the debtor has filed a plan or commenced interest payments within 90 days of the petition.

With the 1994 Reform Act, Congress provided a "Section-By-Section Description" in which it paraphrased the definition of "single asset real estate":

Section 218. Single asset real estate:

This section will add a new definition to the Code for "single asset real estate," meaning real property...which generates substantially all of the gross income of the debtor and has aggregate noncontingent, liquidated secured debts in an amount up to \$ 4 million.

H.R. Rep. No. 835, 103rd Cong., 2nd Sess. (1994) p. 10768.

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Section 218 of the 1994 Reform Act can be traced back to section 211 of S. 1985 which provided:

single asset real estate' means real property, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto ...

S. 1985, 102nd Cong., 2d Sess. § 211 (a)(2) (1992).

Senate Report 279 explained that "single asset real estate" was to be "limited to investment property of the debtor." S.Rep. No. 168, 103rd Cong., 1st Sess. October 28, 1993; S.Rep. No. 279, 102nd Cong., 2nd Sess. May 7, 1992.

In *In re Oceanside Mission Assocs.*, a debtor owned undeveloped real estate which generated no income. *In re Oceanside Mission Assocs.*, 192 B.R. 232, 234 (Bankr. S.D. Cal. 1996). A senior secured creditor brought a motion for relief from the automatic stay on the grounds that the property was "single asset real estate" and that debtor failed to comply with 11 U.S.C. § 362(d)(3), which required debtor to file a plan or commence interest payments within 90 days of the petition. Although the court denied creditor's motion, holding that the property was not "single asset real estate" under a superseded version of § 101(51B) that limited SARE cases to those where the aggregate non-contingent, liquidated secured debts was less than \$4,000,000, the bankruptcy court agreed with the creditor that ***undeveloped real property, which generated no income, could be the basis for a "single asset real estate" case.*** *In re Oceanside Mission Assocs.*, 192 B.R. 232 at 236 (emphasis added) ("Surely if any property is considered "investment property," raw, undeveloped land would be.").

Here, Debtor makes no argument as to the first two elements of the SARE requirements under § 101(51B). Instead, Debtor argues that if the Properties were developed and operating, it would not constitute a "single asset real estate" within the definition of 11 U.S.C. § 101(51B). Debtor, however, cites to *CBJ Development* and admits that most cases have held that construction and land development activities that do not generate any significant income do not constitute substantial business

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activity separate from operation of the property, and therefore are "single asset real estate" within the definition of § 101(51B). *Debtor's Opposition to Motion to Dismiss*, 4:17-20, ECF doc. 39.

Debtor's argument that if the Properties were developed, this would not be a SARE is very similar to the argument made by the debtor in *Shady Bird Lending, LLC v. Source Hotel, LLC (In re Source Hotel, LLC)*. In *Shady Bird*, the debtor had been developing a hotel with 178 rooms, conference rooms, an executive lounge, fitness center, restaurant, bars, and cleaning services. *Shady Bird Lending, LLC v. Source Hotel, LLC (In re Source Hotel, LLC)*, 606 F. Supp. 3d 952, 955 (C.D. Cal. 2022). According to debtor, construction of the hotel was approximately 85% complete, and approximately 15% of the hotel construction remains outstanding. *Id.* In addition to developing the hotel, the debtor intended to operate the hotel and its related businesses, including the restaurant and bars on the hotel property. *Id.* In its petition, the debtor did not designate itself as a "single asset real estate" case. *Id.* at 956. The bankruptcy court denied creditor Shady Bird's Motion for Order Designating Chapter 11 as Single Asset Real Estate Case (the "SARE Motion"). *Id.*

On appeal, the District Court found that the debtor was not currently conducting any business related to the hotel outside of activities related to its construction and development. *Id.* at 962. In reversing the bankruptcy court's denial of the SARE Motion, the District Court explained:

This court agrees with *In re CBJ*, id., that Congress' use of the present tense in the statute, i.e., "is being conducted", ***requires the court to evaluate the current business activities of a property or project rather than the intentions of the parties.*** As recognized in *In re Charterhouse*, "[i]n deciding whether property constitutes 'single asset real estate,' the Court must look to current facts, not to those existing in the past, nor to Debtor's aborted plans for the future."

Shady Bird Lending, LLC v. Source Hotel, LLC (In re Source Hotel, LLC), 606 F. Supp. 3d 952, 962 (C.D. Cal. 2002)(internal citations omitted) (emphasis added).

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Debtor's having obtained a Tentative Tract Map ("TTM") does not make this an operating business. Debtor admits as much in its Opposition, "Debtor acknowledges that the project is not yet complete and is not currently operating or generating any income..." *Debtor's Opposition*, 6:16-17, ECF doc. 39. "The use of the present tense by Congress in § 101(51B) suggests that only current activities may be considered in determining whether the debtor is conducting substantial business activities other than the operation of the property." *Centofante v. CBJ Dev. (In re CBJ Dev.)*, 202 B.R. 467, 473 (B.A.P. 9th Cir. 1996).

For the reasons stated above, the Court's designation of this case as a SARE under § 101(51B) was proper.

B. Motion to Dismiss under § 1112(b)

The bankruptcy court may dismiss a Chapter 11 case "for cause" pursuant to 11 U.S.C. § 1112(b). Although section 1112(b) does not explicitly require that cases be filed in "good faith," courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *In re Arnold*, 806 F.2d 937, 939 (9th Cir.1986). The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis. *Id.* A chapter 11 debtor has the burden of proving that the filing was in good faith. *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935, 940 (9th Cir. BAP 1997), *aff'd* 171 F.3d 1219 (9th Cir. 1999).

Collier on Bankruptcy explains the distinction between dismissal for cause under section 1112(b) and dismissal for lack of good faith:

In general terms, the cause requirement of section 1112(b) applies at various stages in the case to test whether the benefits of reorganization are likely to be achieved within a reasonable amount of time and in a manner that is consistent with the requirements and restrictions of the Code. Thus, the cause standard continually measures the value of maintaining the process, and also polices the diligence of the debtor or other plan proponent to ensure that the

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process is proceeding with all deliberate speed and in accordance with the requirements of applicable law. The basic focus of this section is to weed out unlikely reorganization prospects even though the debtor's intentions at the time of the filing may be strictly honorable. As the Second Circuit stated: "The purpose of § 1112(b) is not to test a debtor's good faith; it is to provide relief where the debtor's efforts, however heroic, have proven inadequate to the task of reorganizing his affairs effectively within a reasonable amount of time."

In contrast to testing the debtor's prospects of reorganization, the good faith standard focuses directly on the subjective intentions of the debtor and proper use of the bankruptcy system as a general system of equity and is designed to prevent "abuse of the bankruptcy process, or the rights of others, involv[ing] conduct or situations only peripherally related to the economic interplay between the debtor and the creditor community." As one court has explained: "Generally, the facts surrounding good faith will be determined by circumstantial evidence. It is unlikely that a debtor will ever acknowledge its own bad faith; therefore, one will reach conclusions about the party's intent from the totality of the circumstances surrounding the filing of the case.

7 *Collier on Bankruptcy* P 1112.07[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

While the focus of good faith upon the subjective intent of the debtor may distinguish lack of good faith as a basis for dismissal from most of the causes enumerated in section 1112(b)(4), courts have often used lack of good faith as a "cause" for relief under section 1112(b).

Pursuant to § 1112(b), courts have dismissed cases filed for a variety of tactical reasons unrelated to reorganization. While the case law refers to these dismissals as dismissals for "bad faith" filing, it is probably more accurate in light of the precise language of § 1112(b) to call them dismissals "for cause." *Marsch*, at 828.

To determine whether there is cause to dismiss a chapter 11 bankruptcy, courts weigh

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a variety of circumstantial factors. Those factors may include, but are not limited to, whether:

- (1) the debtor has only one asset;
- (2) the debtor has an ongoing business to reorganize;
- (3) there are any unsecured creditors;
- (4) the debtor has any cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments; and
- (5) the case is essentially a two party dispute capable of prompt adjudication in state court.

In re St. Paul Self Storage Ltd. Partnership, 185 BR 580, 582 (B.A.P. 9th Cir. 1995). See also *Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.)*, 84 B.R. 167, 170 (B.A.P. 9th Cir. 1988); *Trident Assoc. Ltd. Partnership v. Metropolitan Life Insurance Co. (In re Trident Assoc. Ltd.)*, 52 F.3d 127, 131 (6th Cir.1995); *Phoenix Piccadilly, Ltd. v. Life Ins. Co. (In re Phoenix Piccadilly, Ltd.)*, 849 F.2d 1393, 1394 (11th Cir.1988).

1. Debtor has only one asset

Here, Debtor does not dispute that it has only one asset, the two unimproved parcels identified above as the Properties. There is no evidence in the record to contradict that the Property has substantial equity available to pay all creditors in full.

JK has argued that Debtor's failure to designate itself as a SARE at the beginning of this case was calculated to prevent the truncated automatic stay provisions of § 362(d) (3) from being applied here is evidence of its bad faith in filing this as a Subchapter V case. While the Court did ultimately make the finding that this case is a SARE, as defined by § 101(51B), Debtor's position that the Properties are not merely undeveloped land, but instead are part of a project that Debtor has spent money, time, and resources during the last several years developing the Properties, including obtaining conditional use permits, having plans drawn, and was in the process of securing a constructions loan is not so incredulous to be indicative of bad faith.

2. Whether Debtor has an ongoing business to reorganize

Debtor argues that it is working towards reorganizing the secured debt on the

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Properties through refinancing, the proceeds of which would fund the reorganization. Debtor argues in opposition that it is working to develop the Property since 2018 to get said parcels re-zoned and obtain a conditional use permit for the development of mixed commercial and residential space called "Skyline Village," the Properties are still undeveloped. Debtor points to the substantial equity in the Properties that would seem to protect the claims of the secured creditors. Debtor argues that the value of the Properties supports giving it the opportunity to obtain post-petition financing to complete the construction of the project and to propose a feasible plan of reorganization.

GF Lender and Movant note that Debtor has no ongoing business to reorganize. These arguments are supported by Debtor's own admissions that it has no employees, no executory contracts, and no ongoing business operations. *See* ECF doc. 18. Movant argues that Debtor has presented no evidence of loan approval sufficient to pay the first and second deeds of trust on the Unimproved Land.

To date, Debtor has not presented evidence that it will secure a loan to refinance the secured debt, and with Debtor not making any income since the inception of this case, nor any evidence of any sources of cash flow to fund a reorganization, there is nothing to reorganize here.

3. Whether there are any unsecured creditors

Debtor asserts in Schedule E/F that there are two unsecured creditors, Randall Fox and Stephen Longard. *Schedule E/F*, ECF doc. 118. Randall Fox ("Fox"), however, filed a document in response to the Motion to Dismiss, wherein he asserts that he is actually a secured creditor who made a loan to "GF Services" and was not informed by Bowen that he (Bowen) has formed another company called "GF Services I." *Randall Fox's Opposition to Motion to Dismiss*, ECF doc. 35. Thereafter, Fox, along with the other Asserted Creditors Sam Tsapatolis and Brian Golie, filed another Opposition, ECF doc. 51, further explaining their position that they are secured creditors and arguing that this case should be administered by a bankruptcy trustee.

Here, there may be only two unsecured creditors, with the Asserted Creditors opposing dismissal of this Chapter 11 case. Movant argues that the documents attached to Fox's Opposition show that he is a creditor of GF Services, LLC, and not a

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creditor of Debtor GF Services I, LLC, and thus his Opposition should not be considered here. The Court will not make a determination that the Asserted Creditors are not parties in interest, at the least, in this case, for the purposes of this Motion.

To date, Debtor has not filed amended schedules to remove the Asserted Creditors from its schedule of creditors holding unsecured claims.

4. *Whether Debtor has cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments*

Debtor represented in its Initial Ch. 11 Status Report, filed the same day as the first status conference on November 2, 2023, that a "cash flow statement is being prepared and will be filed with the Court upon completion." ECF doc. 32, ¶ A3.

Debtor's position since the inception of this case is that it has been, and continues to be, engaged in active discussions Alliance Funding regarding terms for debtor-in-possession financing, which will provide Debtor with the funding necessary to complete the development of the Properties, service debt, and operate until its circumstances are stabilized. Debtor has not, however, provided evidence of an actual loan commitment, nor has it filed a motion for Court approval of debtor-in-possession financing. As explained above, Debtor's own admissions show that there is no cash flow to fund reorganization, and the Debtor has had no income (nor has it filed tax returns) for the two years prior to filing this Chapter 11 case. ECF doc. 18.

To date, Debtor has not filed a cash flow statement or indicated that there is income to sustain a plan of reorganization or make adequate protection payments.

5. *Whether the case is essentially a two-party dispute capable of prompt adjudication in state court*

As to the fifth element of there being a two-party dispute capable of adjudication in state court, Movant argues that it is the active party here and that the dispute is capable of determination by the non-judicial foreclosure of JK' s second deed of trust. This, however, would result in the debts secured by the third through seventh deeds of trust being adversely affected by Movant's proposed foreclosure.

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The arguments made by GF Lender and Asserted Creditors in their responsive briefs demonstrate that there are more than two parties who are impacted by this bankruptcy.

C. Why Dismissal is in the Best Interest of Creditors

While bankruptcy courts have flexibility to determine "cause" under Bankruptcy Code § 1112(b), once cause has been shown, a court must convert or dismiss the case absent "unusual circumstances." *In re Prods. Int'l Co.*, 395 B.R. 101, 107-09 (Bankr. D. Ariz. 2008).

Movant and GF Lender argue that Debtor's failure to file a proposed plan of reorganization or to file any notice of financing commitment demonstrate that dismissal is appropriate here because there is no legitimate ability to reorganize or likelihood of rehabilitation.

Asserted Creditors, whom Debtor contends are unsecured, argue only some secured creditors will benefit from the dismissal of the case at this time. It is Asserted Creditors position that all creditors would benefit from a Sub V Trustee or Chapter 11 Trustee being given additional powers, or the case being converted to Chapter 7, so that the Property equity can be preserved and all potential claims owned by the Debtor can be investigated.

Here, dismissal is in the best interest of creditors and the estate. All secured creditors will return to their pre-petition positions, *i.e.*, reservation of their state law rights to move against the Properties to satisfy their claims. Additionally, Debtor will be empowered to continue its efforts to obtain refinancing without the administrative expenses that would result from having to seek bankruptcy court approval.

1. Enlargement of Duties Subchapter V Trustee not Applicable after SARE Designation

Under 11 U.S.C. § 1182, definitions as to Subchapter V:

(1) Debtor.—The term "debtor"—

(A) subject to subparagraph (B), means a person engaged in commercial or

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business activities (including any affiliate of such person that is also a debtor under this title and **excluding a person whose primary activity is the business of owning single asset real estate**) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor...

11 U.S.C. § 1182(1)(A)(emphasis added).

Thus, the statute itself prohibits SARE debtors from proceeding under Subchapter V. For the reasons explained above, the Court's designation of this Debtor as a SARE, as of December 19, 2023, was appropriate. Thus, Asserted Creditors' request to enlarge the duties of the (former) Subchapter V trustee cannot be considered by the Court.

2. Will Creditors be in a Worse Position after Dismissal?

Both GF Lender and JK argue in favor of dismissal, while Asserted Creditors favor conversion to Chapter 7. The Court has an independent obligation under § 1112 to consider what would happen to all creditors on dismissal and, in light of its analysis, whether dismissal or conversion would be in the best interest of **all** creditors. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 613 (B.A.P. 9th Cir. 2014)(emphasis added).

Asserted Creditors argue that conversion to Chapter 7 is in the best interest of creditors, as they contend that Debtor's reorganization prospects have yet to truly be evaluated/determined by an impartial third party. It is Asserted Creditors' position that a bankruptcy trustee could investigate all potential claims owned by Debtor, including against its principal Bowen, as well as Debtor's counsel potentially having an interest in the Debtor or being involved in Debtor so as to not be disinterested.

The Court, however, must consider the best interest of all creditors. Here, there are seven creditors holding undisputed secured claims totaling approximately \$7,205,60. The claims held by Asserted Creditors were scheduled as unsecured in the amount of \$368,000. ECF doc. 18. The three Asserted Creditors, however, submitted

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documentation that shows they may hold claims against a different entity and not this Estate. *See* ECF doc. 35.

Having considered the equities here, the Court finds that dismissal is in the best interest of all creditors of the Estate.

a. State Court Action is Still Available to Interested Parties after Dismissal

After dismissal, Asserted Creditors will retain their rights to have their claims resolved in state court, where the state court can resolve their purely state law claims that GF Services, LLC and Debtor GF Services I, LLC should be treated as the same entity.

Here, it would not be in the best interest of all creditors of the estate to use the equity in the Properties to incur the administrative expense of having a trustee, and their counsel, to litigate the claims of Asserted Creditors. Instead, the Court finds that it is in the best interest of all creditors of the Estate to dismiss this case for cause and leave the parties to their state law rights against Debtor and its Properties.

3. Imposition of a 180-Day Bar under § 349 and § 109(g)(1)

The court may prohibit the debtor from filing another bankruptcy petition for a period of 180 days where the debtor has failed to properly prosecute the case. 11 U.S.C. §§ 105, 109(g) and 349(a). The Court has authority to temporarily bar subsequent bankruptcy petitions that relate to a debtor's existing debts. *See In re Leavitt*, 209 B.R. at 942 ("Inherent in [the authority to dismiss a case with prejudice] is the power to **bar subsequent bankruptcy petitions** that seek to discharge such debt.")(emphasis added); *In re Mitchell*, 357 B.R. 142, 157 (Bankr. C.D. Cal. 2006) ("§ 349 gives a court authority to 'sanction a debtor for cause by imposing a bar against re-filing'").

An adversary proceeding is not necessary for the imposition of this bar. That is because the relief is being requested pursuant to Section 349(a), as opposed to the Court's general equity jurisdiction. *See In re Van Ness*, 399 B.R. 897, 904-05 (Bankr. E.D. Cal. 2009) ("To be sure, orders made on motion under two Bankruptcy Code provisions [Sections 109(g) and 349(a)] can operate to bar certain future filings, but

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both instances are associated with orders dismissing a pending case.").

While the Court finds that there is cause for dismissal of this SARE Chapter 11 under § 1112(b)(4), it does not necessarily follow that Debtor's failure to file status reports and monthly operating reports were the result of "willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case." *See* § 109(g)(1). Debtor's use of chapter 11 to seek a "breathing spell" and time to secure refinancing may have been ill-advised and ultimately unsuccessful, but it may not amount to willful conduct sufficient for grounds to impose a 180-day bar.

Recommendation

GRANT Debtor's Motion to Dismiss Chapter 11 Bankruptcy Case for Cause under 11 U.S.C. § 1112(b)(4).

Party Information

Debtor(s):

GF SERVICES I LLC

Represented By
Yoon O Ham

Movant(s):

JK Building Blocks, LLC

Represented By
Dean P Sperling

Trustee(s):

Mark M Sharf (TR)

Pro Se

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#5.00 CONT Scheduling and Case Management Conference

From: 11/2/23, 12/7/23, 12/19/23

Also #4

EH____

Docket 11

Tentative Ruling:

Tentative ruling may be posted or updated before hearing. If this tentative is not updated by 4:00 p.m. on the day before the hearing, a tentative may not be posted.

Appearances are REQUIRED on 1/11/24. You can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

Party Information

Debtor(s):

GF SERVICES I LLC

Represented By
Yoon O Ham

Trustee(s):

Mark M Sharf (TR)

Pro Se