10:00 AM

9:26-11018 600 Spring, LLC **Chapter 11**

#1.00 Status Conference Hearing
RE: [16] Motion to Dismiss Debtor Motion to Dismiss Bankruptcy Case

Docket 16

Tentative Ruling:

August 6, 2026

Appearances required. All appearances are in-person. The Court will take no remote appearances.

Background

The Operating Agreement

On May 22, 2017, Scott Gillen ("Gillen") on behalf of C64829 LLC ("C64829") and Barry Shy ("Barry") entered into that *Operating Agreement as of 5/22/2017 of 600 Spring LLC* (the "Agreement"), forming an entity called 600 Spring LLC (the "Debtor"), with the purpose of purchasing, developing, and selling certain real property in Malibu, California. *See* Docket No. 16, *Motion to Dismiss Bankruptcy Case* (the "Motion"), pp. 11-12, *Exhibit 1*; *see also* Docket No. 19, *Opposition to Application for Order Setting Hearing on Shortened Time re: Motion to Dismiss Bankruptcy Case* (the "Opposition"), pp. 31-32, *Exhibit C*. The Agreement notes that the Debtor's members are Barry and C64829, 50% to each, and "Gillen shall be the Manager until he resigns, dies, or otherwise is removed from the office by the Member." *See* Docket No. 16, p. 11. The Agreement further provides that C64829 and Gillen "will handle the day to day operations for the company, including but not limited to all aspects of developing and selling the property, they will receive no salary or compensation for this work." *See id.* Lastly, the A greement provides that it "may be amended or modified only by a writing duly executed by the Members." *See id.* at p. 12.

Rommy Shy ("Rommy"), who purports to be the authorized agent for BR Shy

Irrevocable Trust (the "Trust"), asserts that the Agreement incorrectly identifies Barry as the 50% member of the Debtor, and that the member should have been the Trust. *See* Docket No. 16, p. 2, lines 8-15. To correct this error, and to add Barry as a manager, according to Rommy, a second agreement was entered into on May 22, 2017, which listed as 50% members of the Debtor, C64829 and the Trust, and also now included Barry as a manager of the Debtor in addition to Gillen (the "May Amended Agreement"). *See* Docket No. 16, pp. 17-18, *Exhibit 2*. The agreement to amend the Agreement was an "oral" one between Rommy and Gillen, according to Rommy. *See id.* at p. 2, line 13. Gillen appears to dispute that any "oral" agreement was made to amend the Agreement. What is more, it appears that Rommy agrees that the only conceivable "writing duly executed by the Members" to amend the Agreement was the May Amended Agreement itself. The May Amended Agreement provided no indication that it was an amended or "corrected" agreement, and that Barry and C64829 were agreeing to its amendment. There simply is no reference at all to the Agreement in the May Amended Agreement. What is clear is that the signatures of C64829 and Gillen are imaged onto the May Amended Agreement from some other document, presumably the Agreement. Rommy claims that the Agreement was revised "with the original signatures in place," but that is not what the May Amended Agreement shows, and the Court questions Rommy's statement as such. As Rommy executed a declaration under the penalty of perjury making the statement, no matter the result of the Motion, the Court will retain jurisdiction under Fed. R. Bankr. P. 9011, and its inherent powers to sanction conduct.

It is also not clear what authority Rommy had to enter into an oral agreement with Gillen regarding the Agreement since it was only Barry and Gillen that were members, according to the Agreement. It is further unclear what authority Rommy had to physically "revise" the Agreement on the part of both Barry and Gillen. Again, any modification of the Agreement had to be agreed to by both Barry and Gillen, in writing.

According to Gillen, in September of 2017, Barry "requested that [the Debtor's] membership structure be amended to remove his name from [the Agreement] in order to limit exposure [in a divorce proceeding]." *See* Docket No. 19, p. 5, lines 23-26. To that end, claims Gillen, the Agreement was amended in September 2017 by that *Amended and Restated Operating Agreement of 600 Spring LLC* (the "September Amended Agreement"), which September Amended Agreement removed Barry as a member of the Debtor, thereby ceding to Gillen and C64829 complete control over the Debtor, and 100% of the profits of the Debtor to C64829. *See id.* at pp. 34-37, *Exhibit D*. As with the May Amended Agreement, the Court finds no writing by Barry agreeing to the September Amended Agreement. Unlike the May Amended Agreement, Barry's signature is nowhere on the September Amended Agreement, so even that argument is unavailable. What is more, Gillen, in the Debtor's bankruptcy petition, ostensibly acknowledges that the membership interests in the Debtor are as provided in the Agreement, rather than the September Amended Agreement, seemingly conceding that the September Amended Agreement was ineffective. *See* Docket No. 1, *List of Equity Security Holders*, p. 10.

Thus, it seems to the Court, on the record confronting it, unless there is a writing that has not yet been provided, the only effective operating agreement for the Debtor is either the Agreement, or the May Amended Agreement.

Authority to File a Bankruptcy Petition

A voluntary petition under Chapter 11 of Title 11 of the United States Code was filed on behalf of the Debtor on July 16, 2026 (the "Petition"), with such filing purportedly authorized by Gillen as the Debtor's manager. *See* Docket No. 1. Citing no less than the Agreement and California law, the Trust argues that the bankruptcy filing was unauthorized. *See* Docket No. 16, p. 2, lines 1-4. Gillen, through the Debtor, argued that the Agreement provides Gillen with "broad powers," including the power to file the Petition. *See* Docket No. 19, p. 3, lines 1-10.

By the Court's measure, the parties appear to agree on the state of the law. "State law governs whether a business is authorized to file a bankruptcy petition." *In re Auburn Ace Holdings, LLC*, 2009 WL 10696602 *2 (W.D. Wash. 2009) (citing *In re Avalon Hotel Partners, LLC*, 302 B.R. 377, 380 (Bankr. D. Or. 2003)). "Courts look to state statute and the entity's articles of incorporation and/or by-laws to determine whether a bankruptcy filing was authorized." *Id.* (citing *In re Hawaii Times, Ltd.*, 53 B.R. 560, 561 (Bankr. D. Haw. 1985)); *see also In re SSRE Holdings, LLC*, 2021 WL 3829303 *4 (9th Cir. BAP 2021). Pursuant to Cal. Corp. Code § 17704.07(b)(4), "an act outside the ordinary court of the activities of the limited liability company may be undertaken only with the consent of all members." The filing of a bankruptcy petition on behalf of a limited liability company falls outside the ordinary course of business activities of such a company. *See In re SSRE Holdings, LLC*, 2021 WL 3829303 at * 5.

The default rules for limited liability companies "may be varied as among the members or as between the members and the limited liability company by the operating agreement." *See* Cal. Corp. Code § 17701.10(d).

Under California's default rules for limited liability companies, the Petition filing was an act outside the Debtor's ordinary course of business, and therefore must have been approved by all of the Debtor's members, unless the Agreement or the May Amended Agreement (unless there is yet some other agreement), whichever controls, provides otherwise. Relevant here is whether the Agreement or the May Amended Agreement provided Gillen with the authority to file the Petition without Barry's or the Trust's consent.

The Ninth Circuit BAP has held that the operating agreement of a limited liability company need not specifically grant the authority of less than all members to authorize a bankruptcy filing in order to meet the exception to the default rule. *See In re SSRE Holdings, LLC*, 2021 WL 3829303 at *5. Rather, such authority may be gleaned by a "broad general grant of authority" standing for that proposition in the operating agreement. *See id.* In the *In re SSRE Holdings, LLC* matter, the operating agreement provided that "the Manager shall have full, complete and exclusive authority, powers and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs." *Id.* at *4. If the operating agreement in *SSRE Holdings, LLC* stopped there, perhaps the BAP would have as well. However, the operating agreement went on to provide that "it is 'the intent of the Agreement that no limitations be placed on the powers of the Manager.'" *See id.* This last provision, coupled with the first provision in the operating agreement convinced the BAP that the default California rules for limited liability companies had been altered by agreement, and allowed for the filing of a bankruptcy petition by less than full consent of all members of the company. *See id.* ("'full, complete and exclusive' control over all of SSRE's affairs without limitation" "necessarily encompasses all matters for which authority can be granted under California law…").

The Agreement provides that "[Gillen] shall be the Manager," and, "will handle the day to day operations for the company, including but not limited to all aspects of developing and selling the property…" *See* Docket No. 19, p. 31. Again, the purpose of the Debtor was to acquire, improve, and sell certain real property in Malibu, California. The "day to day operations for the company" would not include placing the Debtor into bankruptcy. *See In re Lexington Hospitality Grp., LLC*, 577 B.R. 676, 686 (Bankr. E.D. KY 2017)("filing bankruptcy is not part of a business' day-to-day operations.") The grant of authority to Gillen in the Agreement is not the expansive granting of powers of the Debtor to Gillen, coupled with a statement that those powers are to be without limitation, similar to the agreement in SSRE.

The Court struggles to appreciate how, if the Agreement controls, the Petition was authorized without approval of all of the Debtor's members.

The Trust argues that it matters not which operating agreement the Court views as applicable, this Case was an unauthorized filing, and so it must be dismissed. *See* Docket No. 16, p. 6, lines 3-15. On the contrary, the Motion was filed by the Trust. If the Trust is not a member of the Debtor, what standing does the Trust have in this matter? To the Court's knowledge, Barry has not been served with the Motion or the Opposition. The Court may enter its own show cause order, but must the Motion not fail if the May Amended Agreement is found invalid for lack of standing?

The Joint Status Report

The Court has reviewed that *Joint Status Report as to Motion to Dismiss – Debtor and BR Shy Irrevocable Trust* (the "Report"). *See* Docket No. 31. It appears that Gillen

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on behalf of the Debtor believes that discovery must be had to fully flesh out what operating agreement controls, and what authority the members of the Debtor conferred on the other. *See id.* at p. 3, lines 2-3.

The parties have not agreed on a final hearing date on the Motion.

While not provided in the Motion, it appears to the Court that the Trust moves under 11 U.S.C. § 1112(b). "Section 1112(b) of the Code provides for dismissal of a Chapter 11 for cause. Whether there was authority to file a bankruptcy can be cause." *In re Karben4 Brewing, LLC*, 661 B.R. 392, 396 (Bankr. W.D. Wis. 2024). The Motion was filed on July 21, 2026. *See* Docket No. 16. The Court will hear from the parties on the application of 11 U.S.C. § 1112(b)(3).

Party Information

Debtor(s):

600 Spring, LLC	Represented By David B Golubchik John-Patrick M Fritz