

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, January 31, 2024**

**Hearing Room**

**5B**

10:00 AM

**8:00-000000**

**Chapter**

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Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**8:23-11167 Five Rivers Land Company LLC**

**Chapter 11**

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.  
(cont'd from 12-07-23)**

Docket 1

**Tentative Ruling:**

Tentative for January 31, 2024  
Status? Appearance required.

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Tentative for December 7, 2023  
Status? Appearance required.

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Tentative for October 11, 2023  
The court was very pleased to read about the progress made over the last week in achieving what is reported to be an agreement in principle between the major actors toward a consensual reorganization or liquidation. The Examiner has chosen not to spread the salient terms on the record, not yet, for what the court accepts are prudent reasons. But Examiner asks for a continuance of about 45 days to achieve a wider acceptance including the major creditors and possibly in meantime to achieve necessary court approval. The court will grant such a postponement and requests guidance on how best to facilitate an approval of terms binding the estate. Suggested dates are November 29 at 11:00 a.m. or December 7 at either 10:00 a.m. or 11:00 a.m.

Appearance is required.

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Tentative for October 4, 2023  
Status? Has the time come to set deadlines? Appearance required.

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**Chapter 11**

Tentative for August 23, 2023

So, when can we expect at least enough cooperation to get reliable and complete schedules on file? If the debtor's report is to be believed, compliance from the Brars with the July 13 turnover order regarding books and records has been paltry, at best. Why is that? If there are ongoing disputes about ownership and/or applicability of the related entities (California Nut Growers and Golden Valley Ag.), that can be sorted out over time. Asterisks can be inserted as needed in meantime to explain that ownership might be disputed. The purpose of schedules is information, not necessarily determination of title. But useable schedules is an immediate, indispensable priority. So, viewed from the other side, schedules updated must be filed promptly, even if they have to be amended. The court appreciates the report of the examiner (filed August 18, 2023). The court would value further guidance from the examiner as to how the various challenges can be met.

The court will hear argument over whether some hard deadlines will help expedite matters, or whether other remedies might need to be employed. But the parties should not expect that this case can stay in its present reorganization posture absent cooperation and demonstrated progress toward a goal, or at the very least a roadmap of how some reasonable result for creditors can be achieved.

The examiner's report on arson is extremely disturbing.

Appearance required.

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Tentative for 7/12/23:

Because so much is unresolved at this time, and schedules are not even on file, it is premature to set deadlines. The court has seen the debtor's suggestion in the report for more concrete timetables near year's end, and that may yet be required. But first the court would like to hear from the examiner on at least the following issues: 1. How are operations going? Is it possible to discern whether operations are profitable (aside of course from the ruinous administrative costs of the proceeding)? 2. What are the cash position and projections for the next ninety days? Are problems from secured

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**CONT... Five Rivers Land Company LLC**

**Chapter 11**

claims a factor? 3. What is the level of cooperation from the Brar family? Do the Brars seem adamant about the transfers of properties formerly titled in debtor, or is there a finesse solution short of litigation? 4. What documentation is still needed to understand the overall position? 5. What resolution, if any, can the examiner suggest?

Appearance: required

<b>Party Information</b>
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**Debtor(s):**

Five Rivers Land Company LLC

Represented By  
Garrick A Hollander

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**8:23-12372 Tarzana Plaza Condominiums Association**

**Chapter 11**

**#2.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual.  
(cont'd from 12-13-23)**

Docket 1

**Tentative Ruling:**

Tentative for January 31, 2024

It sounds like the problems are many but the possible solutions are not yet agreed or even identified. While the court gets the question of expense regarding preparation of a disclosure statement, it is far less clear how the ordinary creditor is going to have any idea how we got here, how a consensus can be achieved or the path toward balancing future costs against income. Another status conference after the plan is filed would seem in order, in about 45 days. *Appearance required.*

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Tentative for December 13, 2023

Is a disclosure statement appropriate here? The issues about the Receiver's claim of cash collateral and about obligation to pay assessments seem to inject a level of complexity. Set deadlines for plan confirmation?  
*Appearance required.*

<b>Party Information</b>
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**Debtor(s):**

Tarzana Plaza Condominiums

Represented By  
Michael R Totaro

**Trustee(s):**

Arturo Cisneros (TR)

Pro Se

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**8:23-12759 Knotty Nuff Wood, Inc.**

**Chapter 11**

**#3.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual**

Docket 0

**Tentative Ruling:**

Tentative for January 31, 2024

It sounds like the best approach is to schedule another status conference for just following the filing of a plan, which deadline is March 28, 2024.

Appearance required.

<b>Party Information</b>
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**Debtor(s):**

Knotty Nuff Wood, Inc.

Represented By

Misty A Perry Isaacson

**Trustee(s):**

Robert Paul Goe (TR)

Pro Se



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**8:23-11905 Tuffstuff Fitness International, Inc.**

**Chapter 11**

**#4.00 Motion For Order Authorizing Debtor To (I) Reject Unexpired Non-Residential Real Property Lease Pursuant To 11 U.S.C. § 365, And (II) Abandon Any Remaining Personal Property Located At The Leased Premises [13971 Norton Ave, Chino, CA 91710] (cont'd from 12-6-23 per order apprvng stip. to reschedule hrg on mtn for order authorizing debtor to reject unexpired non-residential real property lease entered 11-22-23)**

Docket 42

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 4-03-24 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO RESCHEDULE  
HEARING ON MOTION FOR ORDER AUTHORIZING DEBTOR TO (i)  
REJECT UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASE  
PURSUANT TO 11 USC §365 ENTERED 1-10-24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Tuffstuff Fitness International, Inc.

Represented By  
John-Patrick M Fritz  
Carmela Pagay

**Movant(s):**

Tuffstuff Fitness International, Inc.

Represented By  
John-Patrick M Fritz  
Carmela Pagay

**Trustee(s):**

Caroline Renee Djang (TR)

Pro Se

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**8:23-12372 Tarzana Plaza Condominiums Association**

**Chapter 11**

**#5.00 Debtor And Debtor-In-Possession's Motion For Entry Of An Order Authorizing  
The Use Of Estate Property For Upkeep And Maintenance Expenses**

Docket 39

**Tentative Ruling:**

Tentative for January 31, 2024

This is Debtor-in-Possession Tarzana Plaza Condominiums Association's ("Debtor") motion for order under §363(c )(1) authorizing the use of estate property for upkeep and maintenance expenses.

On November 11, 2023, Debtor filed its voluntary petition under Subchapter V of Chapter 11. Debtor serves as the condominium association for the community located at 18530 Hatteras St., Tarzana, CA 91356 ("Property"). Debtor's history is a long tale of mismanagement by former board members, which led to the appointment of several receivers ("Limited Receivers"), and an order for special assessment by one of the Limited Receivers that requires all homeowners to pay \$259 per unit per month ("Special Assessment"). In order to move this case toward confirmation, Debtor retained Howard B. Grobstein as its chief restructuring officer ("CRO"). Since appointment, the CRO has obtained turnover of all funds held by the third-party management company, and has segregated accounts for ongoing regular, monthly, HOA dues, and dues collected on account of the Special Assessment. CRO has also personally toured the facility and has determined that there is regular maintenance and upkeep that needs to be done in order to keep Debtor in compliance with health and safety regulations.

Debtor is also informed that the LAPD is conducting a criminal investigation into former board members for possible criminal liability. Debtor's counsel has been in regular contact with the LAPD and understands they are seeking certain historic bank records. Thus, Debtor, and presumably the Trustee, wants to help any government agency with the investigation and seeks court approval to turnover bank statements requested by LAPD.

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**Chapter 11**

**A. Legal Standards**

Under 11 U.S.C. § 363(c)(1), if the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the trustee [or debtor-in possession] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1).

Neither the Bankruptcy Code nor the legislative history of § 363(c) offer guidance regarding what constitutes "ordinary course of business," but the Ninth Circuit has described two tests to aid in assessing whether post-petition transactions are in the ordinary course of business: (1) the horizontal dimension test and (2) the vertical dimension of creditor's expectation test. *In re Dant & Russell, Inc.*, 853 F.2d 700, 704 (9th Cir. 1988). The horizontal dimension test involves an "industry-wide perspective in which the debtor's business is compared to other like businesses." *Id.* The test is whether the post-petition transaction is "of a type that other similar businesses would engage in as ordinary business." *Id.* The vertical dimension, or creditor's expectation test, views the disputed transaction "from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a nature different from those he accepted when he decided to extend credit." *Id.* at 705. The debtor-in-possession's prepetition business activities are compared to its post-petition transactions. *Id.* Transactions may be extraordinary if their "size, nature or both are not within the day-to-day operations of a business." *Id.*

If an expense is not in the ordinary course of business, the court can still approve the expense under § 363(b). Debtors who wish to invoke § 363(b) to dispose of estate property must demonstrate that such disposition has a "valid business justification." *240 N. Brand Partners v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). Whether the articulated business justification suffices "depends on the case," in view of "all salient factors pertaining to the proceeding." *In re Verity Health Sys. of Cal.*, 2020 Bankr. LEXIS 39, at \*16 (Bankr. C.D. Cal. Jan. 9, 2020).

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**Chapter 11**

**B. Prepetition Accounts**

Stephen J. Donell, the Former State Court Receiver ("Former Receiver") appointed by the LA County Superior Court ("State Court") filed a response to the motion but did not object to the relief sought. The crux of his argument is centered on a clarification that the prepetition HOA funds were not commingled. Specifically, when Allstate HOA Management began management of the HOA funds, they would provide monthly reports that allowed the Limited Receiver Dominic LoBoglio ("Limited Receiver") to identify the Special Assessment funds, to which were segregated as follows: (1) regular assessment funds remained in the General Operating Account; and (2) Special Assessment funds were transferred to the Special Assessment Account. This was performed from July to October 2023. The Special Assessment funds were then transferred back to the General Operating Account to pay receivership administration costs.

As of the petition date, the General Operating Account included \$31,301.23 in Special Assessment funds collected in October 2023. The Limited Receiver transferred these funds on November 6, 2023 to the Special Assessment Account. On November 7, 2023, the state court ordered Former Receiver to pay the outstanding amount of his fees and costs. As in previous months, Limited Receiver transferred the Special Assessment funds to the General Operating Account in order to disburse the payment. However, this coincided with the petition date of the bankruptcy and resulted in \$31,301.23 in the General Operating Account as of the petition date without disbursement. Thus, Limited Receiver argues that the funds were not intended to be commingled, even though it might appear so.

Debtor does not appear to take issue with this characterization and explains in the reply that the CRO has now segregated the \$31,301.23 in special assessment funds from the operating account and the special assessment account now holds \$47,404.06 (October and November special assessment). Debtor does encourage, however, that future clarification could be resolved by a phone call or correspondence with counsel instead of a responsive pleading that requires a reply and further use time and monetary resources.

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**C. Use Estate Resources for Upkeep and Maintenance Expenses**

Debtor contends that the expenses it seeks funds for are in the ordinary course of business under Section 363(c)(1) of a condominium association because the expenses address common areas of the Property and satisfy the horizontal and vertical dimension test. The horizontal dimension test is satisfied because other condominium associations would expect to resolve issues of common areas and facilities used by the other owners of condominium units. Further, the vertical dimension test is also met because a hypothetical creditor should expect a condominium association to make these types of common-area expenditures, specifically ones that concern health and safety as in this case.

Debtor also seeks approval under Section 363(b). Debtor argues, and the court agrees, that a valid business justification exists here because the expenses all relate to common areas of the community and concern health and safety of the community. These are vital needs to ensure that the residences are able to sell or lease their units (and to continue paying dues), and to avoid potential violations or lawsuits against Debtor that could result in further cost to the estate. As the response does not object to the use of estate resources, the court finds in favor of Debtor's motion.

**D. Turnover of Records to the LA Police Department**

Debtor also seeks court approval to turnover bank statements requested by the LAPD further to its criminal investigation into former board members for possible criminal liability. Debtor's counsel has been in regular contact with the LAPD and understands they are seeking certain historic bank records. Debtor contends that turnover of certain bank records satisfies the horizontal dimension test because any debtor-in-possession is expected to comply with any reasonable request for a governmental agency regarding investigation of nondebtor parties. The vertical dimension/creditor's expectation test is also satisfied because a hypothetical creditor should expect any entity to comply with requests by governmental agencies for information, including bank records, needed for their investigations. The response does not address any issue with this request, and the court sees no

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reason to delay a criminal investigation here.

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To conclude, as the response does not object to the motion, but only seeks clarification on a certain characterization of facts, the court grants the motion as unopposed.

Grant. Appearance required.

<b>Party Information</b>
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**Debtor(s):**

Tarzana Plaza Condominiums

Represented By  
Michael R Totaro  
David Wood

**Trustee(s):**

Arturo Cisneros (TR)

Pro Se