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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:00-00000 **Chapter**

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completed your appearance(s).

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 4-24-24 at 10:00 to 11:00 a.m. per court's own mtn 4-22-24)
(cont'd from 8-07-24)

Docket 1

Tentative Ruling:

Tentative for October 23, 2024
Will a plan and disclosure statement be filed this year? Is it prudent to set a hearing with attendant deadlines now? *Appearance required.*

Tentative for August 7, 2024
The court thanks the Examiner for his recent report. It looks like matters are in hand and there is even some cause for optimism regarding the impending crop. Any estimate for the time necessary to file a plan and disclosure statement? *Appearance required.*

Tentative for April 24, 2024
Continue status conference for about 90 days to evaluate efforts at sale and plan/ disclosure, which should be on file by then, based on examiners report. Appearance is optional.

Tentative for January 31, 2024
Status? Appearance required.

Tentative for December 7, 2023

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CONT... Five Rivers Land Company LLC **Chapter 11**

Status? Appearance required.

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.

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

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.

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CONT... Five Rivers Land Company LLC **Chapter 11**

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.

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 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

Party Information

Debtor(s):

Five Rivers Land Company LLC — Represented By
Garrick A Hollander

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Theodor Albert, Presiding
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Wednesday, October 23, 2024 **Hearing Room 5B**

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8:24-10717 Henry George Brennan and Lisa Anne Brennan **Chapter 11**

#2.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Individual.
(set from hrg held on 7-24-24 re: mtn for order of extension of time to file objection to discharge and nondischargeability complaint)
(cont'd from 8-28-24)

Docket 1

Tentative Ruling:

Tentative for October 23, 2024
Is success of the plan entirely dependent on the adversary proceeding? Is it appropriate to set a confirmation date now? Should a separate disclosure statement be required? *Appearance required.*

Tentative for August 28, 2024
Do we need a disclosure statement? The plan is due by end of September, but is it prudent to set balloting and opposition deadlines now? What is the status of the mediation efforts? *Appearance required.*

Party Information

Debtor(s):

Henry George Brennan — Represented By
M. Candice Bryner
Craig G Margulies

Joint Debtor(s):

Lisa Anne Brennan — Represented By
M. Candice Bryner
Craig G Margulies

Trustee(s):

Arturo Cisneros (TR) — Pro Se

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8:24-10717 Henry George Brennan and Lisa Anne Brennan **Chapter 11**

#3.00 Debtors' Objection To Claim #9 By Acclai Recovery Management LLC

Docket 119

Tentative Ruling:

Tentative for October 23, 2024

A. Background

Henry George Brennan ("George") and Lisa Anne Brennan ("Lisa") (collectively, "Debtors") contend that Acclaim Recovery Management, LLC ("Acclaim") failed to establish *prima facie* validity for its $608,084.43 claim against Debtors because the proof of claim ("POC") was untimely, lacked sufficient support, and the judgment wasn't entered against Debtors individually, but rather against Newport Beach Center for Surgery, LLC.

Debtors filed their Chapter 11 case on March 24, 2024 and the deadline to file a POC was July 5, 2024. Acclaim was properly served with a notice of the claim bar date on May 3, 2024. However, Acclaim filed the POC on July 8, 2024 with the aforementioned claim amount purportedly owed by the Debtors. The basis for the POC is a judgment in a state court action that was entered on April 4, 2018 with an amended judgment date of July 6, 2018 against Newport Beach Cetner for Surgery, LLC. Debtor argues that the judgment does not mention Debtors' names and the POC lacks sufficient support to constitute *prima facie* evidence of the claim's validity. For these reasons, Debtor argues that the court disallow Acclaim's POC in its entirety.

Acclaim filed this opposition on October 8, 2024 in response to Debtors' claim objection. Acclaim states that Debtors made no effort to address the substance of the claim, but rather confined their claim objection to (1) whether the claim was filed timely; and (2) whether the POC itself provides adequate support for the substance of the claim.

Acclaim attached an amended POC with this opposition. Acclaim has also filed an adversary proceeding to have certain aspects of its claim

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CONT... Henry George Brennan and Lisa Anne Brennan **Chapter 11**

declared nondischargeable. Acclaim also proposes that the matter at hand be treated as a contested matter and consolidated with the adversary proceeding for the purposes of trial. The adversary proceeding has an initial status conference for January 9, 2025. On July 5, 2024, Acclaim filed a POC for $608,084.03, attaching a statement of itemized interest and charges. The entry of the judgment was on April 4, 2018 and the principal amount of debt is $369,676.70 with a legal interest rate of 10%. The daily interest amounts to $101.28 and the total interest due as of 7/5/24 is $231,424.80.

As the basis the POC states that it is for a judgment entered/fraudulent conveyance with only an attachment of the judgment and an amended judgment dated July 6, 2018 in the Los Angeles County Superior Court case of A*cclaim Recovery Management, LLC v. Newport Beach Center for Surgery, LLC.* Acclaim states that the judgment debtor on the judgments was an entity known as Newport Beach Center for Surgery, LLC ("NBCS") and that George was the managing member of NBCS which has been in existence and operating a surgery center in George's office suite since 2002. See Dumas Declaration, Exhibit A and Exhibit C. The declaration of Joseph Kar establishes that the judgment was amended again on October 4, 2023 to add debtor George as a judgment debtor. This was possible upon a showing by Acclaim that NBCS was the alter ego of George and the motion was preceded by two judgment debtor examinations wherein George was the witness and failed to appear. The amended judgment was vacated on January 11, 2024, less than two months before the bankruptcy filing because George claims that he had not been served with the motion to amend. Acclaim states that the evidence presented in the 2023 motion to vacate judgment did not include the specific evidence that is now included in its amended POC in the bankruptcy.

B. Legal Standard

Section 502(a) provides that a proof of claim that is filed under § 501 is deemed allowed unless a party in interest objects. To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Contr. Specialists, Inc.,* 223 F.

3d 1035, 1039 (9th Cir. 2000). Under Local Bankruptcy Rule 3007-1(c)(2), a copy of the complete proof of claim, including attachments or exhibits, must be attached to the objection to claim, together with the objector's declaration stating that the copy of the claim attached is a true and complete copy of the proof of claim on file with the court, or, if applicable, of the informal claim to which objection is made.

In the Ninth Circuit, a burden-shifting framework is established when evaluating whether to uphold or reject a claim objection, as articulated in *In re Hargrove,* 36 B.R. 625 (Bankr. C.D. Cal. 1984). See also *In re Holm*, 931 F.2d 620 (1991). Once a claimant files a proper proof of claim, it receives *prima facie* validity, which means the initial burden rests with the objector to present compelling evidence that the claim is invalid. *Holm*, 931 F.2d at 623. Should the objector meet this initial burden, the responsibility then shifts back to the claimant to prove the claim's validity. This establishes that the proof of claim constitutes sufficient evidence regarding its legitimacy and amount, effectively overcoming a simple objection without additional substantiation. *Hargrove*, 36 B.R.at 628 , which reinforces that a properly filed proof of claim is presumed valid unless successfully challenged. *In re Rodriguez,* 2014 WL 1378428, at 3 (9th Cir. BAP 2014) affirms that the objector must present evidence that is not merely speculative to disprove the claim.

Additionally, Rule 3002 governs the timely filing of a proof of claim ("POC") . Rule 3002(c) provides that a POC must be filed no later than 70 days after the order for relief under the chapter or date of conversion. While there are specific exceptions that permit late filings, such as for governmental units or under certain equitable considerations.

C. Timeliness of Filing POC

Acclaim filed the POC on July 8, 2024, three days after the claims bar date of July 5, 2024. This raises concerns regarding the timeliness of the claim, as adherence to the filing deadline is a key component of ensuring fairness and finality in the bankruptcy process. Late filings generally face disallowance unless the Acclaim can demonstrate that extraordinary

circumstances or excusable neglect justify the delay. In this context, Rule 3002(c)(6) as adopted by Rule 3003(c) could potentially provide grounds for extending the claims bar date if the Acclaim could show that they did not receive sufficient notice of the bankruptcy or the claims bar date. However, it seems likely that the Acclaim was given adequate notice regarding the bankruptcy proceedings and the associated deadlines but whether other factors apply is unclear.

Although there is a presumption of validity that is usually afforded to a POC, Acclaim simply did not file timely and although Rule 3002 as adopted in Rule 3003(c) does provide some exceptions for late filings, none appear to apply in this case (or at least not obviously so). On the other hand, if this would otherwise be a surplus case, which seems to be suggested in the facts, other equitable considerations must come into play such as in a liquidation a tardily filed claim is paid, albeit at a lower level than timely claims. See 11 USC §726(a)(3)

Furthermore, Acclaim has filed an adversary proceeding that is the same in substance and the factual contentions are based on the information available in that proceeding. For this reason, Acclaim argues persuasively that questions about whether and under what circumstances an untimely claim should be addressed are best left in connection with plan confirmation and other downstream proceedings in the case with the current claim objection proceedings focusing only on the substance of the claim.

D. Adequacy of Acclaim's POC

Under § 502(a), a claim is generally allowed unless a party in interest objects. Following a notice and a hearing, the Court is tasked with determining the claim's amount. However, as stated in 11 U.S.C. § 502(b), a claim will not be permitted if it is unenforceable against the debtor under any agreement or applicable law. In this case, the Debtors, as parties in interest, have objected and assert that the claim should be entirely disallowed due to procedural deficiencies in accordance with FRBP 3001. Specifically, Debtor is arguing that the Claimant failed to file a POC with adequate support as

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required under FRBP 3001(c) and (f). See *In re Kade*, 2020 WL 1166045 (9th Cir. BAP 2020)(court emphasized that failure to provide sufficient supporting documentation with a proof of claim renders the claim objectionable and unenforceable against the debtor).

Here, Debtor contends that the POC lacks sufficient support. Although Debtor's motion does not fully articulate the specific shortcomings of the POC, it raises a somewhat persuasive point that more than just the judgment and an itemized statement of interest is necessary. Furthermore, since the claim is predicated on a fraudulent conveyance, the absence of any supporting documentation or evidence from the Acclaim weakens the overall strength of the claim. Debtors argue that the claim is not *prima facie* valid and should be disallowed because Claimant failed to attach copies of writings upon which claims are based in order to carry its burden of establishing a prima facie case against the debtor. See *In re King Investments, Inc.* 219 B.R. 848, 858 (BAP 9th Cir. 1998). Although the POC is supported by FRBP 3001(f), the absence of supporting documentation does not justify disallowing the claim in its entirety. The Ninth Circuit Bankruptcy Appellate Panel has consistently held that failure to attach supporting documentation to a POC does not compel disallowance, but rather strips the claim of its prima facie validity, shifting the burden back to the Acclaim to establish the claim's legitimacy. *In re Heath*, 331 B.R. 424 (9th Cir. BAP 2005). In *Heath*, the court emphasized that noncompliance with Rule 3001 is not listed as a statutory ground for disallowance under 11 U.S.C. § 502(b), reinforcing the principle that disallowance must rest on substantive objections, not mere procedural deficiencies. Moreover, in *In re Medina*, BAP No. CC-11-1633 (9th Cir. BAP 2012), the court emphasized that while missing documentation may affect the *prima facie* validity of a claim, the ultimate disallowance still requires substantive evidence to challenge the claim's legitimacy. The lack of attachments does not, by itself, warrant automatic disallowance if the underlying debt remains valid .

Additionally, disallowance of the claim would not negate any lien rights the claimant possesses, as lien avoidance requires an adversary proceeding under FRBP 7001, consistent with due process protections. This was similarly affirmed in *In re Campell,* 336 B.R. 430 (9th Cir. BAP 2005), where the court

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reiterated that the absence of documentation alone is insufficient to disallow a claim without further substantive objections.

However, Acclaim has filed an amended POC and Debtor will likely file an objection to this. Acclaim and Debtor agree that the adversary and claim objection overlap and should be consolidated. In Acclaim's amended POC, it states that a judgment was initially entered against NBCS in 2018 with George as the managing member. In 2023, Acclaim successfully amended the judgment to add George as a debtor, alleging that NBCS was his alter ego. However, George claims he has not served with the motion to amend, and thus the judgment was vacated in January 2024, just before the bankruptcy filing. Acclaim argues that NBCS's assets were fraudulently transferred to entities controlled by Lisa, and these entities later sold the surgery center for $1,000,000 in 2021. Acclaim further maintains that the fraudulent transfer deprived them and other creditors of the assets that should have been available to satisfy NBCS's debts. According to Acclaim, George and Lisa acted as alter egos of NBCS, transferring its assets to protect them from creditors while continuing the surgery center's operations under new entities. Despite the sale of the surgery center for $1,000,000 in 2021, Acclaim argues that Lisa and George personally benefitted from the proceeds, with much of the money used for their personal expenses, rather than being available for creditors. The transferred assets included accounts receivable, equipment, and leasehold improvements, and Acclaim contends that George and Lisa orchestrated these transactions to hinder, delay, and defraud creditors, including Acclaim.

As discussed above, there are a number of issues that must be sorted through, and it does not appear appropriate for determination in a summary claims allowance proceeding. Consequently, the contested matter will be consolidated with the adversary proceeding and await determine thereunder, including argument on equitable issues such as whether strict adherence to Rules 3002(c) and 3003 (c) should be enforced, or int the alternative, equitably relaxed in the interest of justice.

Consolidate for trial with pending adversary proceeding. *Appearance required.*

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CONT... Henry George Brennan and Lisa Anne Brennan **Chapter 11**

Party Information

Debtor(s):

Henry George Brennan	Represented By M. Candice Bryner Craig G Margulies

Joint Debtor(s):

Lisa Anne Brennan	Represented By M. Candice Bryner Craig G Margulies

Trustee(s):

Arturo Cisneros (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:24-11457 NB Crest Investor Units, LLC **Chapter 11**

#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual. LLC
(cont'd from 7-31-24)
(cont'd from 10-02-24 per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for October 23, 2024
See ##5 and 6. *Appearance required.*

Tentative for July 31, 2024
Deadline for filing plan and disclosure statement: September 4, 2024.
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of the deadline by August 15, 2024.

Appearance required.

Tentative for July 10, 2024
Continue to coincide with UST's conversion motion set for July 31, 2024 at 10:00 a.m. *Appearance required.*

Party Information

Debtor(s):

NB Crest Investor Units, LLC Represented By
Brian T Corrigan

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8:24-11457 NB Crest Investor Units, LLC **Chapter 11**

#5.00 Debtor's Disclosure Statement Describing Debtor's Chapter 11 Plan Dated September 4, 2024

Docket 77

Tentative Ruling:

Tentative for October 23, 2024

Objections (based to the Original Disclosure Statement/Plan)(with Debtor Replies) appear below with in some cases the court's view on the issue.

(1) The Disclosure Statement is not supported by credible evidence as to value and costs because (1) Mr. Nelson's declaration inadmissible as he is not a qualified valuation expert to present the current and projected value of the Property; (2) The appraisal lacks evidentiary value because it was conducted in 2021 before the adverse effects of the COVID-19 pandemic on the real estate sector were realized; (3) the projections are based on the outdated valuation of the 2021 appraisal; and (4) the Construction Quote is not properly authenticated and cannot be regarded as credible evidence in support of the disclosure statement and plan.

(a) Reply: Greyhawk provides no evidence to dispute that the improvements will increase the current value to $28,510,000. The appraisal was conducted by CBRE and signed by a Washington State certified general real estate appraisers. As to the Projections submitted and the quote for the contractor, the projections are based on Debtor's business expertise and appraisal, and the quote is from a contractor that Debtor already employed in the past for the Property.

Court's view: Value of the collateral and cost of the proposed improvements and timeline to completion are critical questions, and this record is extremely

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thin.

(2) The Disclosure Statement contains no disclosure of balance sheets, income statements, cash flow statements for the two years before the bankruptcy. There is no historical performance provided against the proposed financial projections under the plan or any occupancy rate for Creditor Greyhawk to properly evaluate the feasibility of the Plan or assess how the claim will be treated.

Court's view: Yes, the disclosure is wafer thin, and a cash flow would particularly assist the creditor in determining whether the proposed new $900k is in any way sufficient to keep the project operating over the next twelve months while dealing with construction.

(3) Debtor claims that it expects to receive $1,500,000 in DIP financing from co-owners of the Property but provides no additional detail. The Disclosure Statement omits information including terms of the proposed financing, interest rate assigned to the financing or confirmation that the supposed financiers have consented to the financing. This is all critical given that this financing will be used to fund the construction and adequate protection payments for Greyhawk.

(a) Reply: Debtor argues that the terms of the DIP Financing are set forth in the Loan Commitment Letter attached as Exhibit 2 of the Nelson Declaration in the opposition to the relief from stay motion (but not attached to the amended disclosure statement). That Loan Commitment Letter provides the amount, the term for the loan, the interest rate, and additional terms. Whether the Financing will be approved with be subject to a separate motion, and Debtor can amend the Disclosure Statement to outline the terms of the Financing once it is approved, or Debtor can amend and state that Financing is

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proposed, subject to approval of the Bankruptcy Court.

Court's view : As stated above, the availability and timeline for these funds is critical to evaluate feasibility.

(4) The Disclosure Statement fails to include the litigation against the Receiver. All that is stated is a mention of the alleged claims, but with no further explanation. Creditors reviewing the Disclosure Statement and Plan will have no understanding of the nature of the claims, likelihood of success, costs of litigation, potential recovery, or the effect on creditors' expected distributions.

Court's view: Some background discussion would be appropriate so that creditors can understand the origins of the difficulties and better assess whether debtor is capable of fixing them.

(5) Pay off all creditor claims through a sale or refinancing of the Property is not supported., The Disclosure Statement offers no analysis of the likelihood of such a sale or refinance, nor does it provide the projected loan amount or sale price required to cover both secured and unsecured claims, including the additional $1.5 million in financing the Debtor claims it will obtain.

(a) Reply: The amended Disclosure Statement clearly states that all creditors will be paid from either the sale or the refinance of the Property. The Property is Debtor's major asset and creditors will be paid from either the sale or refinance. The Effective Date is clear and tied to the date of entry of final order on confirmation (effective one year from confirmation of plan). This allowed Debtor sufficient time to

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improve the Property and refinance or sell the Property.

Court's view: This is the linchpin of the plan. The plan would be much stronger if some analysis of what a loan to take out the proposed refinance/ construction etc. would look like, based on some market analysis. Is there really any prospect of a loan large enough to do all that is promised which could reasonably be obtained in twelve months? Mr. Nelson's loan commitment letter is not impressive as it is not backed by anything approaching analysis or any showing of wherewithal. Further, since Mr. Nelson is also the principal of debtor and the entity identified in the letter as prospective lender is not explained, his bona fides is at least questionable. Are there, for example, third party guarantors of financial strength who could provide enough credit to make it work? Will the property value alone suffice? Further, insofar as the proposal to make the "effective date" a year following confirmation, the court finds such tactics antithetical to the purposes of Chapter 11. Effective dates of a week or two, maybe a month are appropriate; a year later is offensive and looks like a tactic.

(6) The Debtor proposes to use $900,000 from an uncertain $1.5 million loan to make adequate protection payments to Greyhawk. However, not only is there no credible evidence that this loan will materialize, but even if it does, the proposed $900,000 is grossly inadequate to cover Greyhawk's accruing interest. With over $150,000 in interest accruing each month, the $900,000 reserve would be exhausted within six months.

Court's view: Yes , this seems very dubious.

(7) The Disclosure Statement is inadequate because it incorrectly classifies Greyhawk's claim as "unimpaired." Disclosure Statement §§ IV.A, IV.C. The term "impaired" is interpreted broadly as "any alteration" of a creditors legal, equitable, and contractual rights. See *In*

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re L & J Anaheim Associates, 995 F.2d 940, 942 (9th Cir. 1993). Greyhawk contends that it should be impaired under the plan because under the plan, it would be forced to reserve its rights to foreclosure while debtor controls the Property for a period of one year.

Court's' view: Of course, Greyhawk is impaired and the court expects this would be corrected in in any future draft.

(8) The plan includes no details about the maintenance or structure of the Disputed Reserve and fails to commit a specific amount to be deposited in the reserve. As a holder of the Disputed Claim, Greyhawk is not given any clarity as to how its distribution will be protected pending the allowance of its claim.

Court's view: Yes, this should be tightened up and more fully explained.

(9) The default provision is inadequate because it only provides general unsecured creditors with a remedy and excludes Greyhawk, an impaired secured creditor whose collateral is at risk under the plan.

(a) Reply: There are clear default remedies under the First Amended Plan so creditors are protected in the event they are not paid pursuant to the terms of the First Amended Plan. Because the Effective Date is clearly defined in the amended Disclosure Statement, creditors can pursue their remedies if a default occurs under the terms of the Plan as set forth in the revised Section 7.3.

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Court's view: This involves the same concern over an attempt to make the "effective date" something a year away from confirmation. This could be viewed as a tactic to attempt a second bit should the sale or refinance not happen timely. Don't count on it.

(10) The Plan is unconfirmable as it contains several provision purporting to interfere with Greyhawk's right to pursue claims against non-debtor third parties in connection with the loan. The provisions outline Debtor's attempt to impermissibly discharge the liabilities of non-debtor third parties or enjoin actions against them.

(a) Reply: Debtor has revised those provisions to ensure that no language seeks to impermissible discharge liabilities of non-debtor third parties. Debtor also proposes to further revise the language and add a section that states "For the avoidance of doubt, nothing in Section 7.3 shall be deemed or construed to be a release of any guarantors of Greyhawk's Promissory Note and Recorded Deed of Trust against the Property."

(11) The plan and Disclosure Statement propose some ideas of implementation and funding without any explanation for how the ideas will be executed or a backup plan in case the Debtor's ideas fail.

Court's view: The plan must make clear that the plan is a sale or refinance within 12 months. Otherwise, it is in default and a conversion will follow.

(12) The Plan fails to include a sufficient liquidation analysis, but only includes vague statements regarding the difference between itself and a chapter 7 trustee- none of which disclosed any specific financial information.

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(a) Reply: Debtor contends that it does include a liquidation analysis in the First Amended Disclosure Statement. Greyhawk asserts its claim exceeds 20 million and Debtor asserts that the unimproved value of the Property is $20 million. Greyhawk does not counter this value, so in chapter 7, no creditors would be paid any amount of their claims, and Greyhawk would only realize liquidation value. However, under the Plan, the creditors will be paid the full amount of their allowed claims on the effective date. If the value of the Property increases then the unsecured creditors would be clearly better off.

Debtor has some work to do here in amending this First Amended Disclosure Statement and not much time or patience left within which to do it. . First, Debtor should look into obtaining another appraisal report (or at least an update to this one) for a more recent valuation of the Property, given the age of the 2021 appraisal, the COVID-19 pandemic impact on the real estate market and the effect of ongoing water damage and related issues. Second, Debtor should provide some historical financial performance to compare with the proposed projections. Next, the DIP Financing seems not only dubious but potentially inadequate to make adequate protection payments because after the $600,000 is used for construction, $900,000 remains which may not be enough for Greyhawk's interest payments (expected to be more than $150,000 monthly). The Loan Commitment Letter (or such bolstered version showing as can be made available) should also be attached to the Amended Plan/Disclosure Statement . Further pending litigation details should be included, especially the claims against the Receiver and the amount in net litigation proceeds Debtor estimates to receive. The Liquidation Analysis could also be expanded . The Effective Date of the Plan, which is one year from confirmation, will not fly. That is a tactic to buy a year to see what happens in favor of maybe a "second bite" if it does not succeed.

Debtor should amend the disclosure statement significantly after taking the court's/Greyhawk's comments into account, and should work with Greyhawk to resolve the effective date and adequate protection payment issues. *One more* opportunity will be given but more than that should not be expected. Continue for hearing on amendments. *Appearance required.*

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

CONT... NB Crest Investor Units, LLC **Chapter 11**

Party Information

Debtor(s):

NB Crest Investor Units, LLC Represented By
Marc C Forsythe

10:00 AM
8:24-11457 NB Crest Investor Units, LLC **Chapter 11**

#6.00 Motion for relief from the automatic stay REAL PROPERTY

GREYHAWK BRE CCA LENDER, LLC
Vs.
DEBTOR

Docket 93

Tentative Ruling:

Tentative for October 23, 2024

(1) Relief from Stay Section 362(d)(1)

Section 362(d)(1) of the Bankruptcy Code provides that a court shall grant a party in interest relief from the automatic stay for "cause," including the lack of adequate protection of an interest in property of such party in interest. 11 U.S.C. § 362(d)(1). In cases involving single asset real property, the classic form of adequate protection is an equity cushion—the value in the property, above the amount owed to the secured creditor, that will shield that creditor's interest from loss during the time the automatic stay remains in effect. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Here, Greyhawk argues that its secured claim is in the amount of $20,650,000. The unpaid property taxes against the Property contribute to an additional $447,615.15 to the equity cushion analysis – raising the debt total to approximately $21,000,000. With 7% cost of sale, the realized value of the Property would be approximately $18.6 million – resulting in a deficit of $2,500,000. Greyhawk's claim continues to accrue at $150,000 per month, further cementing the lack of equity in the Property. Debtor contends that Greyhawk's only basis for alleging lack of adequate protection is the absence of an adequate equity cushion, through it only presents the current

10:00 AM

CONT... NB Crest Investor Units, LLC **Chapter 11**

unimproved value of the Property as evidence and provides no counter appraisal. Debtor assures that when it completes the improvements/construction on the Property, as contemplated in the Plan, Greyhawk's interest in the collateral will be supported as it is expected to sell the Property for approximately $28 million. Debtor also aims to protect Greyhawk through DIP Financing to make monthly adequate protection payments. In Greyhawk's reply, it asserts that the Property is likely depreciating given the continued lack of payment for property taxes and criticizes that the DIP Financing will not be enough to make adequate protection payments to Greyhawk.

A similar issue for the plan confirmation, the only evidence provided as to the current value of the Property is an outdated appraisal conducted in 2021 before the COVID-19 impacts on real estate took full effect. Neither party has offered any new appraisal value for the court to better determine whether there is adequate protection, or an equity cushion here. At the current rate, it is true that Greyhawk's secured claim is not adequately protected. However, Debtor assures that completion of the construction and subsequent sale of the Property will result in $28 million proceeds, enough to pay Greyhawk's claim in full. Debtor provides the Loan Commitment Letter as Exhibit 2 to support this promise. When this construction and sale will be completed may create another issue, as Debtor proposes an Effective Date of the Plan to be one year from the confirmation date. Adequate protection payments through the DIP Financing should be holding down Greyhawk in the meantime, but it looks like this may not be enough to cover the entire year.

Without an updated appraisal of the Property, the court cannot adequately determine whether there is enough equity cushion in the Property/adequate protection for Greyhawk, and this is the movant's burden under §362(g)(1).

(2) Relief from Stay Section 362(d)(2)

10:00 AM

CONT... NB Crest Investor Units, LLC **Chapter 11**

Section 362(d)(2) of the Bankruptcy Code provides that a secured creditor may obtain relief from the automatic stay with respect to an act against property of the bankruptcy estate if "(A) the debtor does not have an equity interest in such property, and (B) such property is not necessary to an effective reorganization." 11 U.S.C. § 362(d)(1).

Here, as demonstrated above, Greyhawk contends that its claim and the unpaid property taxes against the Property eliminate any equity Debtor may have had in the Property. The additional $1,616,214.09 in other secured claims further cement the lack of equity. Additionally, Greyhawk argues that the plan is patently unconfirmable and not essential to reorganization because they are full of unenforceable provisions, fail to provide adequate means for implementation, omit key requirements of a confirmable plan, and lack reliable evidence to support the Plan's viability. Debtor asserts that the Property is essential to Debtor's reorganization, and that Debtor is doing everything possible to secure Financing, improve the Property, and meet its obligations set forth in the Plan. Debtor argues that it should be given the opportunity to complete the improvements set forth in the Plan to be funded by the Financing while making adequate protection payments to Greyhawk through the Effective Date of the Plan.

The court agrees with Debtor that the Property is certainly necessary for reorganization, and likely Debtor's only opportunity means of reorganizing. But the real question is whether a reorganization is "in prospect." as required in the *Timbers* case. The entire plan rests on construction and sale of the Property in order to pay the creditors in full. This is debtor's burden under § 362(g)(2), and it is hard to see how it has been carried based on the thin record before the court. Financing is discussed of course and a plan is on file, but as described in #5 there is much to be desired on the crucial question of whether the debtor really has the wherewithal and ability has to make this happen in the near future.

(3) Relief from Stay Section 362(d)(3)

Section 362(d)(3) of the Bankruptcy Code provides that a court shall

10:00 AM

CONT... NB Crest Investor Units, LLC **Chapter 11**

grant relief from the automatic stay with respect to a stay of an act against single asset real estate unless, within ninety days of the filing of the petition in bankruptcy, the debtor (A) files a plan that has a reasonable possibility of being confirmed within a reasonable time, or (B) commences monthly payments. 11 U.S.C. § 362(d)(3). By Debtor's admission, this case is a single asset real estate case. Greyhawk argues that Debtor has not made any monthly payments to Greyhawk in satisfaction of Section 362(d)(2)(A) and fails under Section 362(d)(2)(B) for the reasons state above as the plan is patently unconfirmable. Debtor contends that there is no basis to grant under Section 362(d)(3) has Debtor has timely filed the Disclosure Statement and Plan which clearly outlines the Debtor's steps towards reorganization, including a timeline for completion of improvements, budget for improvements, projections for the Plan, and a definitive effective date for which creditors can rely on for a date certain for payment on debts. Greyhawk replied that setting the Effective Date of the Plan to be one year from confirmation attempts to extend the life of the bankruptcy case beyond the time period allowed under Section 362(d)(3) and avoiding the protections to creditors. The pivotal question is whether the plan filed "has a reasonable possibility of being confirmed within a reasonable time" as required in §363(d)(3)(A).

Although the one year effective date may be problematic, the court does not find this to be "extending the life of the bankruptcy beyond Section 362(d)(3)". The statute provides that Debtor was required to file a timely plan if determined to be a single-asset-real estate. Debtor has properly done so and aims to provide adequate protection payments through the Plan to Greyhawk through its DIP Financing (which will be subject to a separate motion). One year, although not ideal, is potentially required here, as the Property requires final construction that may take about 4-5 months, and subsequent sale which may take about the same time. Although it is a close question, the court thinks just enough has been done here to go to the next stage assuming debtor can pull together more substance than has been shown to date.

10:00 AM
CONT... NB Crest Investor Units, LLC **Chapter 11**
(4) Relief from Stay – Bad Faith Filing

Courts determine good or bad faith in a bankruptcy petition by "an amalgam of factors and not upon a specific fact." *Marsch v. Marsh (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994). The Bankruptcy Appellate Panel ("BAP") has developed an eight-factor test to analyze a bad faith filing: (1) The debtor has only one asset; (2) The secured creditors' lien encumbers that asset; (3) There are generally no employees except for the principals; (4) There is little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments; (5) There are few, if any, unsecured creditors whose claims are relatively small; (6) There are allegations of wrongdoing by the debtor or its principals; (7) The debtor is afflicted with the "new debtor syndrome" in which a one-asset equity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors; and (8) Bankruptcy offers the only possibility of forestalling loss of the property. Stolrow v. Stolrow's Inc. (*In re Stolrow's Inc.*), 84 B.R. 167, 171 (9th Cir. BAP 1988).

Here, Greyhawk contends that the totality of circumstances demonstrates that Debtor's bankruptcy case was filed in bad faith. First, Debtor has only one primary asset – an interest in Property. Second, Greyhawk's lien, as senior secured creditor, clearly encumbers the Property. Third, Debtor has no employees and no active business operations other than whatever interest it holds in the Property. Fourth, Debtor does not have enough income to support current operations, much less fund a reorganization or make adequate protection payments. However, this is disputed by Debtor, who believes that it can obtain DIP Financing to make adequate protection payments until construction and sale of the Property are completed, which will generate enough funds to pay all claims in full. Fifth, Greyhawk states that Debtor's principals have mismanaged the Property and are actively seeking to impair the Receiver's efforts to increase occupancy at the Property. Debtor provides explanation for this in the opposition, stating that there have been issues with Entrata because former employees have sought to illegally access Entrata to steal Debtor's information. For the loss of the revenue as a result of these issues, Debtor provides that its Financing will allow for sufficient funds to make adequate protection payments to Greyhawk

10:00 AM

CONT... NB Crest Investor Units, LLC **Chapter 11**

through the effective date of the plan. Thus, "wrongdoing" may not necessarily be present here. Seventh, the court agrees that this bankruptcy was filed on the eve of foreclosure. Finally, Debtor filed this bankruptcy after the Receiver was appointed and on the eve of Greyhawk's scheduled foreclosure.

While many of these factors appear present, and Debtor has not provided any convincing rebuttal of these factors, dismissal for a lack of good faith in filing is a matter for the bankruptcy court's discretion. *Stolrow*, 84 B.R. at 170. Petitions in bankruptcy arising out of a two-party dispute do not *per se* constitute a bad-faith filing by the debtors. Id. at 171. The factors that the court is not persuaded are present here include "available sources of income" and "allegations of wrongdoing", and Debtor has provided explanation for why Entrata has been an issue, but how it will remedy the situation. Filing a single-asset real estate on the eve of foreclosure is not necessarily grounds on its own for a bad faith filing. As stated above, Debtor has made efforts to provide a plan/disclosure statement that will pay Greyhawk's claim in full. The Disclosure Statement is certainly not perfect, and Debtor has several obstacles ahead to face with the DIP Financing statement, but on this first go around, perhaps an opportunity to present a confirmation disclosure statement and plan through amendments is appropriate.

But debtor should suffer no delusions as the court believes it gave *just enoug*h to get past this hearing. Much will depend on how much evidence can be adduced that the promised financing, sale and refinancing etc. is real, can be obtained in the near future and is sufficient to cover both construction, adequate protection, and other operational needs. The effort to impose all of the ongoing risk upon Greyhawk and or more game-playing with issues like the "effective date" will not be well received. Absent such stronger showing, the weight will tilt in favor of the movant at the next hearing.

Deny at this time without prejudice and continue to coincide with hearing on amended disclosure. *Appearance required.*

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

CONT... NB Crest Investor Units, LLC **Chapter 11**

Party Information

Debtor(s):

NB Crest Investor Units, LLC — Represented By
Marc C Forsythe

Movant(s):

Greyhawk BRE CCA Lender, LLC — Represented By
Alphamorlai Lamine Kebeh
Matthew Bouslog

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:24-11723 Cristelle Steenson Arenal **Chapter 11**

#7.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual
(cont'd from 8-14-24 per scheduling order entered 8-19-24 - see doc # 42)

Docket 1

Tentative Ruling:

Tentative for October 23, 2024

Debtor does not want a deadline for filing a plan be set at this time, but offers no proposed timeline. Vague reference is made of prospective refinancing but again, no timeline. The court will hear argument as to where debtor thinks this case is going and when. *Appearance required.*

Tentative for August 14, 2024
Deadline for filing plan and disclosure statement: to be determined at continued status conference October 9, 2024.
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of the deadline by September 1, 2024
Appearance required.

Party Information

Debtor(s):

Cristelle Steenson Arenal — Represented By
Michael G Spector

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:24-11746 Douglas M. Thompson **Chapter 11**

#8.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Individual.
(cont'd from 8-14-24)

Docket 1

Tentative Ruling:

Tentative for October 23, 2024
Schedule confirmation hearing about 90 days hence. *Appearance required.*

Tentative for August 14, 2024
Is a separate Disclosure Statement needed? The plan filing is fixed by statute, but is it appropriate to fix a confirmation hearing and balloting, opposition deadlines at this time? *Appearance required.*

Party Information

Debtor(s):

Douglas M. Thompson	Represented By Andy C Warshaw

Trustee(s):

Robert Paul Goe (TR)	Pro Se

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:24-11996 Toolipis Creative, Inc **Chapter 11**

#9.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual
(cont'd from 9-11-24)

Docket 1

Tentative Ruling:

Tentative for October 23, 2024
What will debtor accomplish with a 30-day continuance as requested?
Appearance required.

Tentative for September 11, 2024
Why no status report? *Appearance required.*

Party Information

Debtor(s):

Toolipis Creative, Inc	Represented By Anerio V Altman

Trustee(s):

Mark M Sharf (TR)	Pro Se

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:23-11627 Vu Le **Chapter 11**

#10.00 Second And Final Application For Fees And/Or Expenses For Period: 1/1/2024 to 9/18/2024:

ARTURO M. CISNEROS , SUBCHAPTER V TRUSTEE:

FEE: **$10,624.00**

EXPENSES: **$0.00**

Docket 149

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Vu Le — Represented By
Andy C Warshaw
Richard L. Sturdevant
David M Goodrich

Trustee(s):

Arturo Cisneros (TR) — Represented By
Arturo Cisneros

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:23-12077 Juice Roll Upz, Inc. **Chapter 11**

#11.00 First And Final Application for Compensation For Period: 10/11/2023 to 9/17/2024:

MARK M. SHARF , TRUSTEE CHAPTER 9/11:

FEE: **$22,836.00**

EXPENSES: **$0**

Docket 153

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Juice Roll Upz, Inc. Represented By
Anerio V Altman

Trustee(s):

Mark M Sharf (TR) Pro Se

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:23-12077 Juice Roll Upz, Inc. **Chapter 11**

#12.00 First And Final Fee Application for Compensation For Period: 10/10/2023 to 9/24/2024:

ANERIO V ALTMAN, DEBTOR'S ATTORNEY:

FEE: **$50,560.00**

EXPENSES: **$4962.69**

Docket 162

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Juice Roll Upz, Inc. — Represented By Anerio V Altman

Trustee(s):

Mark M Sharf (TR) — Pro Se

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:24-10803 Bridge Diagnostic, LLC **Chapter 11**

#13.00 First and Final Compensation For Pre-Confirmation Compensation And Reimbursement of Expenses For Period of March 1, 2024 to September 6, 2024:

EDWARD BIDANSET, CUTSHEET EXPRESS LLC, CHEIF RECONSTRUCTING OFFICER FOR CH 11 DEBTOR AND DEBTOR -IN POSSESSION, OTHER PROFESSIONAL

FEE: **$15,837.50**

EXPENSES: **$0.00**

Docket 209

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Bridge Diagnostic, LLC — Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Robert Paul Goe (TR) — Pro Se

10:00 AM
8:24-10803 Bridge Diagnostic, LLC **Chapter 11**

#14.00 First and Final Application For Pre-Confirmation Fees and Costs For Period: 3/1/2024 to 9/27/2024:

MARSHACK HAYS WOOD LLP, GENERAL COUNSEL:

FEE: **$178,703.00**

EXPENSES: **$8,970.32**

Docket 210

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Bridge Diagnostic, LLC — Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Robert Paul Goe (TR) — Pro Se

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:24-10803 Bridge Diagnostic, LLC **Chapter 11**

#15.00 First And Final Pre-Confirmation Fee Application For Period: 4/1/2024 to 9/27/2024:

ROBERT PAUL GOE , SUBCHAPTER V TRUSTEE:

FEE: **$60,925.00**
EXPENSES: **$106.48**

Docket 216

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Bridge Diagnostic, LLC — Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Robert Paul Goe (TR) — Pro Se

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:23-11421 Juan Manuel Bernal **Chapter 11**

#16.00 Application for Compensation of Interim Fees and Expenses For Period 7/13/2023 to 9/16/2024:

ARTURO CISNEROS, SUBCHAPTER V TRUSTEE:

FEE: **$18,990.00**

EXPENSES: **$0.00**

Docket 161

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Juan Manuel Bernal — Represented By
Robert P Goe
Reem J Bello

Trustee(s):

Arturo Cisneros (TR) — Represented By
Arturo Cisneros

10:00 AM
8:23-11421 Juan Manuel Bernal **Chapter 11**

#17.00 First Interim Application for Compensation and Reimbursement of Expenses For Period: 7/14/2023 to 9/30/2024:

GOE FORSYTHE & HODGES LLP, DEBTOR'S ATTORNEY:

FEE: **$165,549.50**

EXPENSES: **$2,003.07**

Docket 164

Tentative Ruling:

Tentative for October 23, 2024
Allow as prayed. *Appearance is waived.*

Party Information

Debtor(s):

Juan Manuel Bernal — Represented By
Robert P Goe
Reem J Bello

Trustee(s):

Arturo Cisneros (TR) — Represented By
Arturo Cisneros

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:23-11421 Juan Manuel Bernal **Chapter 11**

#18.00 Debtor and Debtor in Possession's Emergency Motion for Order Authorizing Interim Use of Cash Collateral Pursuant to 11 U.S.C. Sections 363(c)(2) and 363(b)(1) and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure; Memorandum of Points and Authorities; and Declaration of Juan Manuel Bernal in Support with Proof of Service
(OST Signed 7-21-2023)
(cont'd from 8-28-24 per order approving stip. to cont. use of case collateral entered 8-20-24 - see doc #153)

Docket 22

Tentative Ruling:

Tentative for October 23, 2024
Allow on same terms until Dec. 6. When is confirmation date? *Appearance is waived.*

Tentative for March 27, 2024
Authority is granted on the same terms through August 2024? Appearance required.

Tentative for December 6, 2023
Interim use of cash collateral was authorized until Dec. 6 but through confirmation was discussed at that last hearing. When is confirmation likely to be? Appearance required.

Tentative for August 30, 2023
Opposition? Appearance required.

Party Information

Debtor(s):

Juan Manuel Bernal Represented By

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
CONT... Juan Manuel Bernal **Chapter 11**

Robert P Goe
Reem J Bello

Trustee(s):

Arturo Cisneros (TR) Represented By
Arturo Cisneros

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:23-11421 Juan Manuel Bernal **Chapter 11**

#19.00 Confirmation Of Chapter 11 Subchapter V Plan
(set from s/c hrg held on 8-23-23)
(cont'd from 8-28-24 per order approving stip. to cont. hrg on confirmation of debtor's ch 11 plan entered 8-19-24 see doc #151)

Docket 1
***** VACATED *** REASON: CONTINUED TO 12-11-24 AT 10:00 A.M. PER ORDER APPROVING STIPULATION FOR ORDER TO CONTINUE HRG ON CONFIRMATION OF DEBTOR'S CH 11 PLAN & AUTHORIZING USE OF CASH COLLATERAL ENTERED 10-04-24 - SEE DOC #169**

Tentative Ruling:

Tentative for August 23, 2023
Separate disclosure statement not needed? Plan to be filed by 90th day. Confirmation to be scheduled approximately 45 days thereafter. Particulars at hearing. Appearance is required.

Party Information

Debtor(s):

Juan Manuel Bernal — Represented By Robert P Goe

Trustee(s):

Arturo Cisneros (TR) — Represented By Arturo Cisneros

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:24-11279 TA Partners Apartment Fund II LLC, a California li **Chapter 11**

#20.00 Motion To Remand To Los Angeles Superior Court

Docket 72

***** VACATED *** REASON: OFF CALENDAR - THIS MATTER MUST BE FILED IN THE ADVERSARY CASE**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

TA Partners Apartment Fund II LLC, Represented By
Garrick A Hollander
Peter W Lianides

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

8:24-11279 TA Partners Apartment Fund II LLC, a California li **Chapter 11**

#21.00 Debtor's Chapter 11 Disclosure Statement And Plan Of Reorganization

Docket 47

Tentative Ruling:

Tentative for October 23, 2024
The plan confirmation hearing is continued to December 11, 2024 at 10:00 a.m.. Continued deadlines as urged by debtor are granted. Debtor to submit a scheduling order reflecting the new deadlines.

Appearance is waived.

Party Information

Debtor(s):

TA Partners Apartment Fund II LLC, Represented By
Garrick A Hollander
Peter W Lianides

10:00 AM
8:24-10483 Heycart Inc **Chapter 11**

#22.00 Confirmation Of Second Amended Chapter 11 Plan
(set from dscl stmt hrg held on 7-31-24)
(cont'd from 9-25-24 per court's own mtn)
[No In Person Hearing per Nina]

Docket 168

Tentative Ruling:

Tentative for October 23, 2024

The court was encouraged to read that the debtor has reached agreement for plan treatment with SellersFunding, Clearco and the Committee. It would appear that virtually all of the §1129(a) elements are shown, possibly excepting the "best interests" test, classification issues and feasibility found at §§1129(a)(7) and (a)(11).

So it is with profound disappointment that the court learns that the Amended plan cannot be confirmed 'as is' for the simple reason that it does not adequately treat (or treat at all) the alleged secured claim of Victory Maritime Services USA. Debtor disputes the existence of the secret maritime lien claimed by Victory for freight charges on warehouses of inventory (and through its alleged agent Auric as to warehoused items in Canada).

Victory objects to Debtor's Plan on the grounds that it does not provide for Victory's secured claim. Victory is currently classified as a general unsecured creditor under Class 7, but it contends that it has an in rem maritime lien that takes priority to all other secured creditors in the case. Victory filed a claim on June 10, 2024 for a total of $325,081.08 comprised of a secured claim of $230,638.12 and a priority claim of $94,442.96. Victory is in the process of amending the claim to reflect a total pre-petition secured claim of $272,023.68 with the balance of the claim as a post-petition administrative and secured claim. Victory's specific arguments are summarized below:

(1) As a Non-Vessel Operating Common Carrier ("NVOCC"), Victory claims a valid maritime lien on the good it transports and stores for the Debtor, requiring that Victory be treated as a secured creditor in Debtor's reorganization plan especially since Debtor is relying on Victory's claimed collateral and the proceeds for the plan. In Logistics Management, Inc. v. One (1) Pyramid Tent Arena, 86 F.3d 908 (9th Cir. 1996), the Ninth Circuit concluded that NVOCCs, like Victory claims to be, are entitled to assert maritime liens on cargo for unpaid freight charges because NVOCC's assume the same responsibility for the delivery of cargo as do vessel owners or operators. Id. at 86 F.3d at 914.

(2) Historically, maritime liens are secret liens arising by operation of law that gives lienholders property rights in cargo and other maritime property. It is not created consensually and there is no requirement that a maritime lien be recorded or otherwise perfected by any filing. While creditors might take an Article 9 UCC security interest, the maritime lien has priority over such security interest in the same collateral.

Debtor replies to the first argument, contending that Logistics Management, which Victory relies on heavily for support, is different from our case because in that case, the plaintiff was an NVOCC with a contractual lien on the defendant's cargo. Here, there is no written contract providing for a maritime lien, and accordingly, the case is distinguishable. Debtor argues against the second argument as well, asserting that seamen wages as in Logistics Management have priority over preferred ship mortgage, and are "sacred liens" entitled to protection as long as a plank of the ship remains. Here, VMS's claim does not involve a seamen's wages. But are these distinctions conclusive?

Moreover, VMS has offered little to sustain its burden of establishing that the underlying claims are the type of claims that are governed by federal

10:00 AM

CONT... Heycart Inc **Chapter 11**

maritime law as opposed to land-based services which are governed by state law. For example, the court has not seen how any of Victory's claimed collateral was ever involved with a vessel at all. Finally, much of Victory's claim involves land-based storage services provided in Canada through Auric, and Victory has not established (at least not yet to the court's satisfaction) that it is entitled to assert a maritime lien under U.S. maritime law for services provided in Canada, or how such secret liens (which are antithetical to most principles of bankruptcy law and standard priority of liens in commercial law) ought to apply through an agency theory. The court observes from the pleadings that it does not necessarily seem that Auric is taking instructions from Victory as an agent would.

Unfortunately, the record is not developed enough for the court to rule on the contested issues one way or the other. Existence and priority of liens is the domain of adversary proceedings under FRBP Rule 7001(2.) Nor can the court's concerns about the existence and validity of Victory's lien be summarily adjudicated because *Logistics Management* and some of its rather sweeping pronouncements seem to have at least some applicability on these facts.

Of course , the court would prefer a settlement and it seems that for the relatively modest sums in question, both sides should have strong motivation to compromise. Victory should have concern whether, if these questions are properly before the court on a Rule 56 hearing, can it really prove the vessel connection invoking admiralty law?... or the existence of the lien without documentation?...or whether Auric gets swept into the lienholder category under some dubious agency argument? Of course, debtor has an even stronger motive since it is unclear whether it can prove feasibility of its plan at all without access to proceeds of the claimed collateral or survive the uncertainty of missing early confirmation because of these issues all while the crucial holiday season slips away.

If the parties wish the intervention of a mediator one can be appointed. Continue to a date approximately 30 days hence. *Appearance required.*

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CONT... Heycart Inc **Chapter 11**

Tentative for July 31, 2024

The court as of 7/30/24 has not seen an opposition to the amended Plan and Disclosure Statement since the last hearing . The court has read the explanation of how the cash flow is expected to increase in the months preceding the holiday season, which is projected to create net revenue later sufficient to fulfill the plan in contrast to recent negative MORS. The court has also reviewed the argument about contribution of "new value" to meet the requirements of cramdown, but the court is left not entirely persuaded.

The proposed sale by auction of the equity interest in the debtor is maybe helpful in providing some data on the quantum needed by market testing (See Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. Ptsp., 526 U.S. 434 (1999)), but maybe the bigger issue remains whether promised foregoing of principal wages (which the court understands to be the source of the new proposal, but maybe that is incorrect) and or the earlier suggestion of waiving sums reportedly due the principals prepetition, fits within the criteria establishing in the caselaw, or stated differently, avoids the forbidden "sweat equity" as recognizable "new value." See Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 204-07 (1988); In re Sun Valley Newspapers, 171 B.R. 71, 77 (9th Cir. BAP 1994)(New value exception to absolute priority rule was not satisfied by old equity owners' proposed capital contributions of cancelling their claim against Chapter 11 estate, cancelling their equity, and contributing new human capital or “sweat equity”). Debtor may argue that the forgiven wages are different as they represent a UST-blessed and now unavoidable? monetary value as a §503 quantifiable charge against the estate, and are thus "money or money's worth." Maybe, but just because a number is placed upon post-petition efforts by debtor's principals might not make them conceptually different from the familiar "sweat equity" promises of equivalence to actual money or money's worth. The court recognizes this area is somewhat nuanced and may not be fully decided in all respects in the Ninth Circuit. See e.g. Liberty National Ent. v. Ambanc La Mesa Ltd, Ptsp. 115 F. 3d 650. 655-56 (9th Cir. 1997) In re Brotby, 303 B.R. 177, 195 (9th Cir. BAP 2003).

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CONT... Heycart Inc **Chapter 11**

Also, as the court understands the new proposed plan, as described in the Debtor's "Supplement to the Motion…," there is now promised a $50,000 contribution from what is described as saved funds of the principals as truly money or money's worth and not from any funds of the DIP, whether funds as promised wages or otherwise. The court could not find this promise mentioned anywhere in the Amended Disclosure statement or in the Plan, but perhaps this needs a more prominent mention and clarification. Of course, the court would also need some briefing or at least explanation on this new value question before allowing the expenditure on disclosure of what still may be an unconfirmable plan.

No tentative. *Appearance required.*

Tentative for July 10, 2024
The court has several concerns about the adequacy of this disclosure. Perhaps most concerning is that the parties in interest, including the objectors, have had insufficient time to consider whether the Amended Disclosure filed July 3 has cured or alleviated any of the stated concerns. Among the main points the court sees are: 1. need for a liquidation analysis articulated not in generalities but via line item; 2. the "new value" proposed to be contributed is clearly not money or money's worth if the court understands correctly that this is merely a forgiveness of past shareholder contribution; 3. feasibility, especially in light of recent MORs.
No tentative. Appearance required.

Party Information

Debtor(s):

Heycart Inc

Represented By
Zev Shechtman
Eric P Israel
Michael G D'Alba
Carol Chow

10:00 AM
8:24-10483 Heycart Inc **Chapter 11**

#23.00 Motion For Adequate Protection Payments And Allowance Of An Administrative Claim

Docket 224

Tentative Ruling:

Tentative for October 23, 2024

For background discussion of the dispute over the existence of Victory's lien, see #22. Of course, there need be no adequate protection at all unless lien status is proven, which for reasons discussed is not resolved nor can it be in a summary proceeding like this motion.

But the court is aware that debtor is trying to get through the crucial holiday season and, one presumes, it needs the inventory in Victory (or Auric's) possession. Adequate protection can be ordered even concerning disputed secured claims pending resolution In re November 2005 Land Investors, LLC, 636 Fed.Appx. 723, 726 (9th Cir. 2016)
(Section 363(e) protects contested interests in the bankruptcy estate by requiring that "on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest."

Victory's papers contain a proposal for adequate protection. Debtor argues that Victory has failed to establish that value of the collateral/inventory, as no evidence was submitted to establish the value. Indeed, Victory does not seem to have provided any documents to support a specific value but has suggested an "adequate protection mechanism" on page 18 of the Motion by calculating a per-carton value of Debtor’s inventory in its possession as follows: pre-petition claim ($272,023.68)/ Number of Cartons (7,376 cartons) = $36.88 per carton. Using this formula, Victory proposes the adequate protection payments be based on the reduction in the number of cartons in Victory's possession (Initial Carton count – Current

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CONT... Heycart Inc **Chapter 11**

carton count X per carton value). For example, if the carton count reduces to 6,000: (7,376 - 6,000) x $36.88 = $50,724.64. This would be on a bi-weekly basis and proposed a bi-weekly payment of $5,000 regardless of the reduction in carton count. Victory also proposes replacement liens in the post-petition inventory acquired (presumably with proceeds); all accounts receivable from sale of inventory subject to the lien; and all cash proceeds from the sale of inventory subject to the lien. Finally, Victory requests an administrative expense claim on all unpaid post-petition storage fees related to the Canadian warehouse.

The court is not schooled as to either the logistics or the viability of such an approach, nor it the court suggesting Victory's formula should govern, but the approach, or something like it, seems reasonable and maybe the best approach under exigent circumstances. Anything that is truly administrative (i.e. incurred postpetition) will in any case need to be paid in full, in cash as of the effective date of any plan that might be confirmed.§ 1129(a)(9). As to the administrative expenses, Debtor contends that it has paid over half of the undisputed amount of administrative expenses claimed and will pay the remaining amount by October 16, 2024 (so perhaps this is no longer an issue?).

Debtor does not provide much response to the specific calculation of the adequate protection payments nor replacement liens, as it argues that Victory is not entitled to adequate protection since it does not have a valid secured lien on the inventory. However, the Debtor should be mindful that its "all or nothing" approach is hazardous as its entire reorganization may be at stake here if it does not work together to create an adequate protection stipulation. If no adequate protection is ordered, then no inventory in Victory's possession or control can be sold. The plan may have to be amended to treat the secured claim in a separate class via abandonment or similar treatment. But debtor must show the plan is feasible without access to proceeds of the claimed collateral the plan may fail for that reason. The court has denied the Motion for Reconsideration for Turnover Order without prejudice, so, at present Victory is technically obligated to turnover the inventory unless that order gets amended, and if Auric is creating further obstacles to doing so and Victory is not provided any form of compensation,

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CONT... Heycart Inc **Chapter 11**

then the parties may bring the Motion for Reconsideration to this court once again, mindful that an adjudication of lien status requires a ruling within an adversary proceeding.

The court is inclined to issue some form of adequate protection given the holiday exigencies without prejudice to final determination of the lien question. *Appearance required.*

Party Information

Debtor(s):

Heycart Inc

Represented By
Zev Shechtman
Eric P Israel
Michael G D'Alba
Carol Chow
Ryan Coy

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:24-10483 Heycart Inc **Chapter 11**

#24.00 Debtor's Motion To Approve Compromise With SellersFi

Docket 230

Tentative Ruling:

Tentative for October 23, 2024
Approve. Appearance is optional.

Party Information

Debtor(s):

Heycart Inc

Represented By
Zev Shechtman
Eric P Israel
Michael G D'Alba
Carol Chow
Ryan Coy

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:24-10483 Heycart Inc **Chapter 11**

#25.00 Debtor Motion To Approve Compromise With Clearco

Docket 233

Tentative Ruling:

Tentative for October 23, 2024
Approve. Appearance is optional.

Party Information

Debtor(s):

Heycart Inc

Represented By
Zev Shechtman
Eric P Israel
Michael G D'Alba
Carol Chow
Ryan Coy

10:00 AM
8:18-12449 Gregory Anton Wahl **Chapter 11**

#26.00 POST CONFIRMATION STATUS CONFERENCE
(cont'd from 5-01-24)
(cont'd from 9-25-24 per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for October 23, 2024
Continued to April 23, 2025 at 10:00 a.m. with expectation of a motion for final decree in meantime. *Appearance is waived.*

Tentative for May 1, 2024
Continue status conference to September 25, 2024 at 10:00 a.m. Updated report required. Appearance is optional.

Tentative for October 4, 2023
Schedule continued post confirmation status conference in about 6 months. Appearance required.

Tentative for 3/29/23:
Continue for further status conference September 27, 2023 @ 10:00AM.

Appearance: suggested

Tentative for 10/26/22:
Continue for further post confirmation status conference March 29, 2023 @

10:00 AM
CONT... Gregory Anton Wahl **Chapter 11**

10:00AM.

Appearance: optional

Tentative for 4/27/22:
Further status conference in, say, 6 months?

Appearance: required

Tentative for 9/29/21:
Continue for further status about 120 days. Appearance: required

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Tentative for 3/10/21:
Continue for further status conference is approximately 6 months.
Appearance is required.

Tentative for 7/22/20:
Set continued post confirmation status hearing in about 120 days.
Appearance is optional.

Tentative for 3/4/20:
Continue for further status conference in about 120 days.

Tentative for 11/13/19:
Continue status conference approximately 120 days.

10:00 AM
CONT... Gregory Anton Wahl **Chapter 11**

Tentative for 7/17/19:
See #2

Tentative for 6/17/19:
Status?

Tentative for 5/30/19:
Status?

Tentative for 5/8/19:
See #5.

Tentative for 1/23/19:
- Continue to May 8, 2019
- Plan and disclosure to be filed by April 22, 2019
- A bar date of 60 days after dispatch of notice, which notice to be sent by February 18, 2019.

Tentative for 11/28/18:
Status?

Tentative for 11/9/18:

10:00 AM
CONT... Gregory Anton Wahl **Chapter 11**

No tentative.

Tentative for 11/7/18:
Status of take out loans?

Tentative for 9/12/18:
Continue approximately 60 days to evaluate refinance efforts?

Tentative for 8/18/18:
Why no report?

Party Information

Debtor(s):

Gregory Anton Wahl — Represented By
Christopher J Langley

10:00 AM

8:23-12372 Tarzana Plaza Condominiums Association **Chapter 11**

#27.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Subchapter V Plan
(set from order confirming plan entered 5-30-24)
(cont'd from 9-25-24 per court's own mtn)

Docket 67

Tentative Ruling:

Tentative for October 23, 2024
Continue to February 26, 2025 at 10:00 a.m. as requested. *Appearance is waived.*

Tentative for May 8, 2024
The court has some concerns. While the Saal objection reads largely as a rambling and difficult to understand polemic, it is admitted by the DIP that some of the costs and deferred maintenance he mentions may have indeed been missed or underestimated. Very vague discussion follows to the effect that dues might have to be raised but little or no effort is made to quantify this or to give any timeline. Of even greater concern are two additional points: (1) the court has seen nothing from the Subchapter V trustee. It is usually that neutral voice that the court looks to in these contested Subchapter V cases in order to discern where the truth lies and (2) the rejecting class of unsecured creditors, no. 3, is very thinly represented. One ballot only and it was to reject? This is surprising in that the court would have expected far more creditor participation. The court must still make a finding of feasibility under § 1129(a)(11) and so the dimensions of the "misses" if any on the projected expenses ought to be quantified/estimated, or at least a second look from the Subchapter V trustee on that and related issues would be in order. While the court recognizes that certitude is not required, a closer examination may be necessary under §1191(c)(3) than is evident here. See e.g. Hamilton v. Curiel (In re Curiel), 651 B.R. 548, 561 (9th Cir. BAP 2023).

No tentative. Appearance required.

10:00 AM
CONT... Tarzana Plaza Condominiums Association **Chapter 11**

Tentative for March 20, 2024
Are all MORS filed, as required? Set confirmation hearing and related deadlines. Disclosure separate from the plan will not be required. Appearance required.

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.*

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.

Party Information

Debtor(s):

Tarzana Plaza Condominiums — Represented By Michael R Totaro

Trustee(s):

Arturo Cisneros (TR) — Pro Se

10:00 AM
8:24-11522 Piecemakers **Chapter 11**

#28.00 Debtor's Emergency Motion For Order Authorizing Interim Use of Cash Collateral and Providing Adequate Protection Pursuant to 11 U.S.C. sec 361 and 363
(OST Signed 6-21-24)
(cont'd from 10-02-24 per court's own mtn)

Docket 20

Tentative Ruling:

Tentative for October 23, 2024
Status? *Appearance required.*

Tentative for July 31, 2024
This continued hearing on use of cash collateral has generated more heat than light. Some of the arguments in the Opposition provoke good questions but many do not and are not procedurally relevant now. The main issues can be described as follows:

1. Is Debtor eligible to be in this case? The arguments seem to be directed toward whether the debtor is eligible because of restrictions on being in a "small business case" as a "small business debtor." But as Debtor replies, there is a difference between those definitions and eligibility for subchapter V. In a related argument, McKinney argues that the preponderance of the debts are not "business debts" pointing to her judgment arising largely from a statutory tort of abuse of a dependent adult. But debtor responds that much of the judgment relates to unpaid wage claims, attorneys fees and interest which might be classified as business in nature, but when added to other business debts puts the debtor above the 50% threshold. Another argument centers around wage claims that McKinney argues are not demanded and thus not genuine. This is unpersuasive since a debt is a debt and even if not demanded for immediate payment can still arise in later proceedings as enforceable, as she can well attest. The court is unsure of the correct resolution of all these issue but is quite sure this is not the appropriate

10:00 AM

CONT... Piecemakers **Chapter 11**

hearing or mechanism to test the issue. These are more appropriately decided in a motion to dismiss or convert, not is a summary proceeding aimed at use of cash collateral.

2. Is McKinney even a secured creditor? This is not clear either. The court has no persuasive evidence one way or the other. There are some discrepancies arising from an MOR but nothing approaching the means to arrive at a definitive answer. This is compounded by the fact that the threshold value number is relatively far from the acknowledged secured debt of SBA (stated value of $129,000 of personal property against a debt of over $202,000), So, the value would have to be substantially wrong for this to get into secured territory. This might require a formal §506 valuation by motion if the parties think it's worth the candle.

3. Are the budgeted expenses appropriate? Clearly paying Mr. Follette's mortgage or $30,000 per month to counsel is inappropriate, as seemingly acknowledged by Debtor. Mr. Follette is only entitled to the direct compensation authorized by the UST, and not indirect compensation such as mortgage payments. No money can be paid to counsel until and unless approved by the court in separate §330 order. Debtor seems to acknowledge this. In any event, the budget to be used in conjunction with ongoing payments comprising cash collateral use should be refined and clarified.

4. Conflicts of counsel? While important issues are raised this is not the appropriate mechanism to test them. They can or perhaps should be raised by separate motion.

The court does not believe this reorganization should be cut short in the context of denial of cash collateral use. SBA, the only acknowledged secured creditor, does not oppose. Some of the issues raised are serious but are not appropriate for summary decision here. The budget needs amendment and should be referenced in the new order on a trimmed down basis but cash collateral can continue to be used on the same terms on an interim basis pending a further hearing in about 60-90 days. *Appearance required.*

10:00 AM

CONT... Piecemakers **Chapter 11**

Tentative for June 26, 2024

Reportedly, the first lienholder, the SBA, has entered into a stipulation with the debtor regarding use of cash collateral and adequate protection. But the motion is also opposed by judgment creditor McKinney. McKinney claims an interest in cash collateral by virtue of her junior judgment lien under CCP§ 697.530 which extends to personal property of the judgment debtor much like the operation of a UCC-1. But under the Follette declaration the entire personal property of the estate has a value of only $200,000. There is reportedly no real property. The debt to the SBA is said to be about $202,000 under the stipulation offered. So, it may well be that, if these numbers are substantiated, McKinney is effectively unsecured. Moreover, McKinney's opposition reads more like a general opposition to the fitness of this management to run this or any debtor in possession; mention is made of fraudulent conveyances from the past and overall duplicity of several members of management. Those points may be well taken, and are important, but are not helpful in deciding this motion. Rather, at this point the court deals with the urgent question whether the debtor should continue to use cash collateral to operate the business and, if so, on what basis, so as to adequately protect the affected lienholder, the SBA. One supposes that if the business closes there is no likelihood of any recovery for unsecured creditors, including McKinney.

So, viewed from that perspective, the court sees no basis for disapproving the stipulation, and will allow use on that basis, at least temporarily. McKinney's points are better taken up in a motion for appointment of a trustee or to convert.

Grant per terms of stipulation with SBA. Appearance required.

Party Information

Debtor(s):

Piecemakers	Represented By Ralph Ascher

Trustee(s):

Mark M Sharf (TR)	Pro Se

10:00 AM
8:24-11522 Piecemakers **Chapter 11**

#29.00 Creditor Michelle McKinney's Motion To Convert Case To Chapter 7 Of The Bankruptcy Code

Docket 109

Tentative Ruling:

Tentative for October 23, 2024

This is Creditor Michelle McKinney's ("Creditor's") Motion to Convert Debtor's subchapter V bankruptcy to chapter 7 pursuant to FRBP 9014 and 11 U.S.C. § 1112(b).

A. Background

On June 17, 2024 Debtor filed its subchapter V Chapter 11 bankruptcy case. On September 4, 2024, Debtor submitted a disclosure statement that included a liquidation analysis of the value of Debtor's real property holdings as would be accounted for in a chapter 7 bankruptcy case . The Liquidation Analysis reflects that the net value of the real property holdings is $2,694,861.

Debtor seeks to charge the estate with capital gains taxes owed by partners Brenda Stanfield ($8,398) and Douglas Follette ($1,157,210), leaving only $1,501,500 available to unsecured creditors. Creditor contends that charging the partnership with tax liabilities of the partners violates federal tax law, and Debtor cannot generate the income necessary to pay either amount. Pursuant to Debtor's projected cash flow in the Cash Collateral Stipulation with the U.S. Small Business Administration ("Cash Collateral Stipulation"), Creditor also asserts that Debtor would operate a monthly loss of between $2,650 and $7,650. The court disapproved of the initial budget, but the updated budget reflects operation at a monthly loss of $5,525 and $10,525. Debtor through its counsel later represented that it would no longer charge professional fees of $30,000 per month, which would result in an updated budget with net profits monthly between $19,475 and $24,475.

However, Creditor submits that Debtor's June Monthly Operating

Report [Motion, RJN at Exhibit 4] reflects a loss of $35,141 for the month and further projected loss of $10,525 for July 4, 2024. Debtor's July Monthly Operating Report [Motion, RJN at Exhibit 5] showed a loss of $30,233 and a further projected loss of $10,525 for August. Finally, Debtor's August Monthly Operating Report [Motion, RJN at Exhibit 6] reflects a net profit of $15,801. Since the filing of this case, the Debtor in the ordinary course of its business has lost $49,573 (-$35,141 + -$30,233 + $15,801 = -$49,573) and on average is losing over $16,000 per month (-$49,573 ÷ 3 = -$16,524.33). This is all disputed by Debtor in the opposition, who contends that Creditor misinterprets the content of the Monthly Operating Reports ("MORs"), and a correct reading demonstrates that Debtor has a positive net cash flow. Specifically, Creditor's argument of a $30,233 loss and $10,525 projected loss was intended for the "Projections" Column A. Column B reflects the "Actual" cash flow which is in the positive amount of $35,140.82. Debtor states that the July MOR shows a negative cash flow of $30,229.53 and the August MOR shows a positive cash flow of $15,573, and that Creditor's error is significant because Creditor contends that Debtor has lost $49,573 for June to August, when in reality, Debtor allegedly gained $20,708 for the same period resulting in an overall positive cash flow. The court is not clear which interpretation is correct except to say that it is very concerning that the cash flow is so inconsistent, even before administrative claims are considered.

B. Legal Standard

Section 1112(b) of the Bankruptcy Code provides that the Court shall on request of a party in interest after notice and a hearing convert a Chapter 11 case to one under chapter 7 or dismiss the case, whichever is in the best interests of creditors and the estate, for cause unless the Court determines that the appointment of a trustee or examiner is in the best interests of creditors and the estate. Section 1112(b)(4) sets forth a non-exhaustive list of what constitutes "cause" to convert or dismiss a case under 1112(b)(1). In re Consol. Pioneer Mortg. Entities, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), aff'd, 264 F.3d 803 (9th Cir. 2001). "For purposes of this subsection, the term "cause" includes – (A) substantial or continuing loss to or diminution of the

estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). "The movant bears the burden of establishing by preponderance of the evidence that cause exists." Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014) (citation omitted).

Section 1112(b)(4)(A) also requires the bankruptcy court to find an absence of a reasonable likelihood of rehabilitation. Legal Serv. Bureau, Inc. v. Orange Cnty. Bail Bonds, Inc. (In re Orange Cnty Bail Bonds, Inc.), 638 B.R. 137, 150 (9th Cir. BAP 2022). "A debtor lacks a reasonable likelihood of rehabilitation where, for example, it lacks income . . . lacks operating funds . . . or lacks employees, capital, or continuing revenue-generating activity." In re Bay Area Material Handling, Inc., 76 F.3d 384, 384 (9th Cir. 1996). Reasonable likelihood of rehabilitation "is not the technical one of whether the debtor can confirm a plan, but, rather whether the debtor's business prospects justify continuance of the reorganization effort." In re Khan, 2012 WL 2043074, at *6 (B.A.P. 9th Cir. 2012).

If the bankruptcy court finds that cause exists to grant relief under § 1112(b)(1), it must then: "decide whether dismissal, conversion, or the appointment of a trustee or examiner is in the best interest of creditors and the estate; and (2) identify whether there are unusual circumstances that establish that dismissal or conversion is not in the best interest of creditors and the estate." In re Sullivan, 522 B.R. at 612 (citing 1112(b)(1), (b)(2), and In re Owens, 552 F.3d 958, 961 (9th Cir. 2009)). In choosing between dismissal or conversion, a bankruptcy court must consider the interests of all creditors. Id. (citing Owens, 552 F.3d at 961).

C. Procedural Considerations

The Motion is brought pursuant to Rule 9014 for an order to convert the case. Rule 9014(b) provides that "The Motion shall be served in the manner provided for service of a summon and complaint by Rule 7004 and within the time determine under Rule 9006(d)." Rule 9006(d) provides that "The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order,

or in any statute that does not specify a method of computing time," Rule 9006(f) provides that "When there is a right or requirement to act or under some proceedings within a prescribed period after being served and that service is by mail…three days are added after the prescribed period would otherwise expire under Rule 9006(a)."

Here, Debtor argues that the Motion is procedurally defective because it did not follow the notice requirements of the Bankruptcy Rules stated above. Debtor contends that Creditor was required to provide 24 days' notice prior to the hearing, not just the required 21 days' notice. The court disagrees with Debtor's interpretation of the procedural statute. The court understands FRBP 9006(f) to be applicable to a response/opposition's deadline, not the motion itself. The "three days added to the prescribed period" refers to the "prescribed period" of when some response deadline may have been initially due. For instance, if Debtor had 14 days to respond to the motion, Rule 9006(f) adds an additional three days. Creditor filed the motion and noticed the hearing 21 days prior to hearing which is correct under Local Bankruptcy Rule 9013-1(d). Moreover, while the court does not condone departures from the LBRs there is no showing that the arguably shorter period was any serious impediment to the filing of opposition. Accordingly, the court finds the procedural argument unpersuasive on such a weighty question, and so turns to the substantive issues below.

D. Convert to Chapter 7?

Creditor argues that "cause" exists to convert Debtor's bankruptcy to chapter 7 under Section 1112(b)(4)(A) because Debtor, from day one, projected that it would operate at a loss and has actually operated at deeper losses than even projected. Thus, Creditor contends that this would meet the first part of the rule in showing substantial or continuing loss to or diminution of the estate. Creditor also argues that there is no reasonable likelihood of rehabilitation because Debtor has lost more money than it has gained in this bankruptcy ($2,694,861.00 needed over 60 months to fund a plan under 1197(a)(7)).

Debtor strongly opposes, stating that Creditor misinterpreted the content of the MORs, and that there is in fact a positive cash flow. Specifically, Creditor's argument of a $35,141 loss and $10,525 projected loss was intended for the "Projections" Column A. Debtor explains that Column B tracks the actual cash receipts, cash disbursements, and net cash flow reported on lines 10-22 of p.2 of the June 2024 MOR titled "Summary of Cash Activity of All Counts." These lines, numbers and amounts result in a positive net cash flow of $35,140.82.

When looking at June MOR (Motion at Exhibit 4 at p.3), it does show "Projections" under Column A to be a loss of $10,525, but "Actual" cash flow in Column B resulted in a listed amount of $35,141. This amount is therefore positive according to Creditor's motion, but Creditor argues that this is in the negative. Unless the court is interpreting the MOR incorrectly, it does not appear to be a loss. Debtor states that the July MOR indeed shows a negative cash flow of $30,229.53 and the August MOR shows a positive cash flow of $15,573, resulting in a net gain of $20,708 from June to August, which is in line with the updated budget projected amount of $19,475 and $24,475 per month. [Motion at Exhibit 3 at p.11]. Perhaps the parties can further shed light on this issue, as determination of whether the $35,141 reflects a loss or gain is determinative of whether there has been a "substantial or continuing loss to or diminution of the estate". Under the court's current interpretation, there does not seem to be any substantial losses present to warrant conversion. The court would appreciate commentary from the Subchapter V trustee as to the accuracy of the cash flow. But in any event, the court is quite concerned over the erratic sales performance which calls into grave question the longer- term viability of this enterprise, particularly since growing administrative claims must still be reckoned.

E. Payment of Partners Tax Liabilities

Creditor argues it is contrary to the good faith requirement of Section 1129(a)(3) as well as 26 U.S.C. § 701 to require the estate to pay for Debtor's

10:00 AM

CONT... Piecemakers **Chapter 11**

partners' tax liabilities. Under 26 U.S.C. § 701, "a partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities." Here, the Liquidation Analysis reflects that the net value of the real property holdings is $2,694,861. However, Debtor seeks to charge the estate with prospective capital gains taxes owed by partners Brenda Stanfield ($8,398) and Douglas Follette ($1,157,210), leaving only $1,501,500 available to unsecured creditors. Creditor argues that these taxes should not be the responsibility of the estate, and if the real estate holdings are properly marketed then the approximately $2.7 million projected should be realized by creditors.

Debtor argues, perhaps correctly, that this issue is not pertinent to § 1112(b)(4) because this issue does not control the likelihood of reorganization but is instead an issue for confirmation. But it is worth noting that such an attempt to run this case for the benefit of partners rather than the creditors calls into serious question continuing good faith.

F. Conversion or Dismissal

Creditor requests that the bankruptcy be converted instead of dismissed because if dismissed, Debtor would continue the status quo, operating at a loss and jeopardizing the substantial equity in its real property holdings for the benefit of insiders. Creditor would continue her effort to appoint a state court receiver to liquidate the Debtor, as intended prior to the bankruptcy filing. However, conversion would minimize Debtor's continuing losses and result in prompt payment to creditors without further incurrence of fees to pursue reorganization for an unprofitable enterprise.

The court agrees in concept, but since it finds that conversion is not appropriate under Section 1112(b)(4) for the reasons stated above at this time, this question of whether dismissal or conversion is appropriate is moot.

Deny at this time without prejudice to renewal, particularly if further cash flow problems occur. *Appearance required.*

Party Information

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM

CONT... Piecemakers **Chapter 11**

Debtor(s):

Piecemakers	Represented By Ralph Ascher

Trustee(s):

Mark M Sharf (TR)	Pro Se

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

Wednesday, October 23, 2024 **Hearing Room 5B**

10:00 AM
8:24-11046 MASHindustries, Inc. **Chapter 11**

#30.00 Motion For Entry Of An Order: (1) Approving Compromise Pursuant To Rule 9019 Of The Federal Rules Of Bankruptcy Procedure; And (2) Authorizing Debtor To Assume Lease Pursuant To 11 U.S.C. § 365

Docket 185

Tentative Ruling:

Tentative for October 23, 2024

Grant as unopposed. *Appearance is waived.*

Party Information

Debtor(s):

MASHindustries, Inc.	Represented By Susan K Seflin Jessica Wellington David M Poitras

Trustee(s):

Gregory Kent Jones (TR)	Pro Se