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

Wednesday, December 11, 2024 **Hearing Room 5B**

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

#0.00 **Hearings on this calendar will be conducted using ZoomGov video and audio.**

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- Say your name every time you speak.
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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Wednesday, December 11, 2024 **Hearing Room 5B**

10:00 AM
8:24-11796 Xiaodong Bai **Chapter 11**

#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 8-28-24)

Docket 1

Tentative Ruling:

Tentative for December 11, 2024
Has a plan been filed? *Appearance required.*

Tentative for August 28, 2024
No current business? How/when is income expected?
Deadline for filing plan and disclosure statement: November 30, 2024
Claims bar: 60 days after dispatch of notice to creditors advising of bar date.
Debtor to give notice of the deadline by: September 15, 2024.
Absent objection, the disclosure statement may be incorporated into the plan as a single document, which is likewise due by the November 30 deadline, but the court expects a detailed explanation how income is to be generated sufficient to fund the plan.

Continued status conference is on December 11, 2024 at 10:00 a.m.
Appearance required.

Party Information

Debtor(s):

Xiaodong Bai — Represented By
Thomas B Ure

United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, December 11, 2024 **Hearing Room 5B**

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8:24-12827 The CookQueen LLC, Soulfull Seafood, Roots Fruits, Chapter 11

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

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED - ORDER OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 11-19-24 - SEE DOC #17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

The CookQueen LLC, Soulfull — Represented By Damian J Nassiri

Trustee(s):

Arturo Cisneros (TR) — Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, December 11, 2024 **Hearing Room 5B**

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8:24-12827 The CookQueen LLC, Soulfull Seafood, Roots Fruits, Chapter 11

#3.00 United States Trustee To Dismiss Case Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. §1112(b)

Docket 13

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED - ORDER OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 11-19-24 - SEE DOC #17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

The CookQueen LLC, Soulfull	Represented By Damian J Nassiri

Trustee(s):

Arturo Cisneros (TR)	Pro Se

10:00 AM

8:24-12827 The CookQueen LLC, Soulfull Seafood, Roots Fruits, Chapter 11

#3.10 Motion To Vacate Dismissal

Docket 18

Tentative Ruling:

Tentative for December 11, 2024

Debtor, although represented by counsel, has reportedly been running the case in pro se as counsel has been unable to upload files electronically. Unfortunately, the motion filed by Debtor is procedurally deficient for many reasons. It was not served on any party, particularity the Chapter 11 Trustee and United States Trustee. The motion does not have a declaration attached or supporting exhibits of the required documents that Debtor failed to file. Although no case law is cited, Pioneer Investment provides for relief from an order of dismissal for excusable neglect. Debtor indicates that the reason for delay or failure to file the required documents is due to a number of contributing issues: (a) Debtor's counsel cannot access the CMECF system; (b) creditors are not cooperating; (c) Debtor's move from Las Vegas to California amid a flood; and (d) Debtor's failure to contact anyone for support. It is unclear what Trustee or the OUST thinks of this, as neither was served with the motion. Furthermore, it appears that a new proceeding has been filed by the same debtor under case no.13027 In sum, no basis is shown for relief from the initial dismissal.

Deny. *Appearance required.*

Party Information

Debtor(s):

The CookQueen LLC, Soulfull	Represented By Damian J Nassiri

Trustee(s):

Arturo Cisneros (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, December 11, 2024 **Hearing Room 5B**

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8:24-13027 The CookQueen LLC, Soulfull Seafood, Roots Fruits **Chapter 11**

#3.20 Order To Show Cause Why Case Should Not Be Dismissed Because Debtor Is Not Represented By Counsel And For Removal Of Misjoined Individual Debtor

Docket 1

Tentative Ruling:

Tentative for December 11, 2024

The court will trust that counsel will take care that procedural irregularities are all corrected.The opposition suggests that there are also three misjoined entities, not merely dba fictitious names. It would seem that the prudent course is to dismiss the case entirely and refile with as many separate cases as it appropriate. The court will hear argument. *Appearance required.*

Party Information

Debtor(s):

The CookQueen LLC, Soulfull Pro Se

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, December 11, 2024 **Hearing Room 5B**

10:00 AM

8:24-12674 The Original Mowbray's Tree Service, Inc. **Chapter 11**

#4.00 Debtor's Emergency Motion For Entry Of Interim And Final Orders Authorizing Use Of Cash Collateral
(OST Signed 10-21-24)
(cont'd from 10-22-24)
(cont'd from 11-19-24 per order approving stip. to cont. 11/19/24, final hrg on debtor's emergency mtn for entry of interim & final orders authorizing use of cash collateral entered 11-08-24 - see doc #162)

Docket 5

***** VACATED *** REASON: CONTINUED TO 1-08-25 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE DECEMBER 11, 2024, FINAL HEARING ON DEBTOR'S EMEREGENCY MOTION ENTERED 12-11-24 - SEE DOC #211**

Tentative Ruling:

Tentative for December 11, 2024
Grant as unopposed. *Appearance is optional.*

Tentative for October 22, 2024

Opposition due at hearing. *Appearance required.*

Party Information

Debtor(s):

The Original Mowbray's Tree — Represented By
Robert S Marticello

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

#5.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual.
(cont'd from 9-11-24)
(cont'd from 11-06-24 per hrg held on mtn to convert case to ch 7 on 10-23-24 - see ruling)

Docket 1

Tentative Ruling:

Tentative for December 11, 2024
See ## 6-8.10. *Appearance required.*

Tentative for September 11, 2024
Set a date for adequacy of the disclosure statement filed 9/4/24, for approximately 30 days hence. If approved at that continued date, a confirmation date will then be set with attendant deadlines for a companion plan to be filed. *Appearance required.*

Tentative for July 24, 2024

There seem to be contentious issues which may require a disclosure statement, centering on questions about the reported prepetition conveyance of an interest in real property (or in a partnership that owned real property?) and possible conflict between the duties of a DIP and the current management, which may also be involved in the transfer described. Also, counsel may have conflicts which ought to be examined and revealed. The court makes no pronouncement at this time, but merely observes that these are not insignificant issues.

The revocation of subchapter V status seems problematic since there is a difference between a "small business debtor" and eligibility for filing

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CONT... Piecemakers **Chapter 11**

Subchapter V. In any event that should be the subject of a separate motion.

The court would values the input of the Subchapter V trustee. Is it appropriate to set a deadline for confirmation? *Appearance required.*

Party Information

Debtor(s):

Piecemakers	Represented By Ralph Ascher

Trustee(s):

Mark M Sharf (TR)	Pro Se

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8:24-11522 Piecemakers **Chapter 11**

#6.00 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)
(cont'd from 10-23-24)

Docket 20

Tentative Ruling:

Tentative for December 11, 2024
Granted on same basis pending further hearing on plan or disclosure statement, if any. See #8. *Appearance required.*

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

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CONT... Piecemakers **Chapter 11**

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 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

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CONT... Piecemakers **Chapter 11**

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.*

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

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Central District of California
Santa Ana
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Debtor(s):

Piecemakers	Represented By Ralph Ascher

Trustee(s):

Mark M Sharf (TR)	Pro Se

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8:24-11522 Piecemakers **Chapter 11**

#7.00 Creditor Michelle McKinney's Motion To Convert Case To Chapter 7 Of The Bankruptcy Code
(cont'd from 10-23-24)

Docket 109

Tentative Ruling:

Tentative for December 11, 2024
See #8. *Appearance required.*

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

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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 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

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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

Debtor(s):

Piecemakers	Represented By Ralph Ascher

Trustee(s):

Mark M Sharf (TR)	Pro Se

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8:24-11522 Piecemakers **Chapter 11**

#8.00 Motion For Approval Of First Amended Disclosure Statement

Docket 126

Tentative Ruling:

Tentative for December 11, 2024
An Amended Plan was filed on December 6, 2024. The court discerns little substantive change. At the last hearing on the Motion to Convert to Chapter 7 filed by Creditor McKinney, the court noted that “it needs to understand how this case works. There is a very clear opponent. Can she be crammed down? The court is not seeing it on these facts. If there is no way to save this debtor though reorganization it is better to liquidate. Debtor gets one shot at this only. Debtor needs to show the court how this works or hire a chapter 7 trustee.”

Debtor writes in the reply that the proposed plan may be subject to further amendment because Debtor and its general partners are discussing a potential settlement of the McKinney state court judgment . If a settlement is accomplished, then it will require a consensual plan incorporating the terms of a settlement. Debtor suggests continuance of the disclosure statement hearing for 30-60 days to allow the parties to explore the potential for settlement and agree to a consensual plan. Because this was in the reply, it is unclear whether Creditor McKinney would be amenable to settlement. However, this would provide some resolution, since the parties are clearly still in disagreement over the feasibility of the plan.

But what should the court do if McKinney is not interested in a settlement? The court is not obliged to authorize disclosure statements on "visionary schemes" or on patently infeasible plans. See e.g. In re Pizza of Hawaii, Inc., 726 F. 2d 1374, 1382 (9th Cir. 1985). The court is not convinced that an earnout plan is feasible based on this record. While the Debtor and McKinney differ on the particulars, each month showed alternatingly a small profit or loss, achieving on average about $2600 in monthly profit. But this is highly misleading as it develops that something like $700,000 has been accrued as an unpaid administrative claim for employees who reportedly work but do not

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CONT... Piecemakers **Chapter 11**

take wages (at least not so far). If that number is figured in then this enterprise has operated at a considerable loss, even before accrued professional fees and other administrative costs are considered. That some may be as much as $1 million if costs of appeal are also considered along with the administrative claim and professional fees. But even if the workforce could be relied upon to continue to labor indefinitely on a volunteer basis, $2600 or thereabouts per month is insufficient to amortize McKinney's $4,342,000 secured claim. By the court's rough calculation, and assuming an 8% cramdown interest rate, a 60 month or five year amortization of McKinney's claim would cost $88,040.10 per month, a sum far more than has ever been reportedly earned by this debtor. Even with a thirty year amortization of McKinney's claim at an 8% rate would still be cost $31,860 per month. In sum, the court does not see how this plan can be confirmed. Although in subchapter V the traditional absolute priority test is abrogated, the "best interest of creditors" found at §1129(a)(7) still remains under §1191(a), i.e. if a nonconsenting class such as McKinney would receive more in a liquidation, a plan paying a lesser amount on a present value basis cannot be confirmed over objection. While there is some debate as to whether that conclusion obtains here, the more credible picture painted on this record is of a diminishing estate where the monthly numbers disguise that, effectively, money is lost every month.

Of course, the court is reluctant to terminate reorganization efforts so long as there is any reasonable prospect. So, the court will hear argument if there is any value to continuing this for discussion on a Second Amended disclosure/plan.

No tentative. *Appearance required.*

Party Information

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, December 11, 2024 **Hearing Room 5B**

10:00 AM

8:24-11522 Piecemakers **Chapter 11**

#8.10 Debtor's First Amended Disclosure Statement In Support Of Chapter 11, Subchapter V Case

Docket 122

Tentative Ruling:

Tentative for December 11, 2024
See #8. *Appearance required.*

Party Information

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, December 11, 2024 **Hearing Room 5B**

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

#9.00 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)
(cont'd from 10-23-24)

Docket 1

Tentative Ruling:

Tentative for December 11, 2024
Continue to coincide with continued hearing on disclosure statement January 22, 2025 at 10:00 a.m.

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

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

Wednesday, December 11, 2024 **Hearing Room 5B**

10:00 AM

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

Brian T Corrigan

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

#10.00 Debtor's Disclosure Statement Describing Debtor's Chapter 11 Plan Dated September 4, 2024
(cont'd from 10-23-24)

Docket 77
***** VACATED *** REASON: CONTINUED TO 1/22/25 AT 10:00 A.M. PER ORDER GRANTING EXPARTE MTN TO CONT. HRG ON DEBTOR'S DISCLOSURE STATEMENT ENTERED 12-02-24 - SEE DOC #123**

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

10:00 AM
CONT... NB Crest Investor Units, LLC **Chapter 11**

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 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

10:00 AM

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

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 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

10:00 AM

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

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 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 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

10:00 AM

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

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.

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.

10:00 AM

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

(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.

(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

10:00 AM

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

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.*

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**

#11.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 10-23-24)

GREYHAWK BRE CCA LENDER, LLC
Vs.
DEBTOR

Docket 93

Tentative Ruling:

Tentative for December 11, 2024
This is interdependent on disclosure statement amendments which are to be heard January 22, 2025 at 10:00 a.m. *Appearance is optional.*

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

10:00 AM

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

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 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)

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 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

10:00 AM

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

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.

(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,

10:00 AM

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

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 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 enough* 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,

10:00 AM

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

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.*

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

10:00 AM
8:24-11279 TA Partners Apartment Fund II LLC, a California li **Chapter 11**

#12.00 Confirmation Of Debtor's Chapter 11 Plan Of Reorganization
(set from disclosure hrg held on 10-23-24)

Docket 92

Tentative Ruling:

Tentative for December 11, 2024
Debtor filed a Notice for Request for Continuance of the Chapter 11 Plan Confirmation Hearing on December 4, 2024. Debtor requests that the court continue the hearing four weeks, as Debtor is currently in negotiations with creditors, and anticipates a resolution. On September 25, 2024, the Court heard Hankey's motion for Relief from the Automatic Stay and, for "cause," granted Hankey Capital relief from the stay to exercise its rights and remedies (including the completion of its nonjudicial foreclosure auction sale of the Property), effective January 31, 2025, subject to Debtor's right to seek a 15 day extension of such January 31, 2025 effective date if, and only if, Debtor has a signed
contract for the sale or refinance of the Property making active revisions to the Plan that will be fully supported by the creditors. Hankey has filed an objection and ballot to reject the plan. A continuance to January 22, 2025 at 10:00 a.m. will be granted but the Hankey deadlines are not altered.
Appearance required.

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

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

Wednesday, December 11, 2024 **Hearing Room 5B**

10:00 AM

CONT... TA Partners Apartment Fund II LLC, a California li **Chapter 11**

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, December 11, 2024 **Hearing Room 5B**

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

#13.00 Confirmation Of Chapter 11 Subchapter V Plan
(set from s/c hrg held on 10-23-24)

Docket 49

Tentative Ruling:

Tentative for December 11, 2024
Grant as unopposed. *Appearance required.*

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

10:00 AM

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

#14.00 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)
(cont'd from 10-23-24)

Docket 22

***** VACATED *** REASON: CONTINUED TO 3-12-25 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HRG ON CONFIRMATION OF DEBTOR'S PLAN & USE OF CASH COLLATERAL ENTERED 11-25-24 - SEE DOC #182**

Tentative Ruling:

Tentative for October 23, 2024
Allow on same terms until December 6, 2024. Continued to December 11, 2024 at 10:00 a.m. to coincide with plan confirmation *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.

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

Wednesday, December 11, 2024 **Hearing Room 5B**

10:00 AM

CONT... Juan Manuel Bernal **Chapter 11**

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, December 11, 2024 **Hearing Room 5B**

10:00 AM

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

#15.00 Confirmation Of Chapter 11 Subchapter V Plan
(set from s/c hrg held on 8-23-23)
(cont'd from 10-23-24 per order approving stip. to cont. hrg on confirmation of debtor's ch 11 plan entered 10-04-24 see doc #169)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-12-25 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HRG ON CONFIRMATION OF DEBTOR'S PLAN & USE OF CASH COLLATERAL ENTERED 11-25-24 - SEE DOC #182**

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

10:00 AM
8:20-10143 Bridgemark Corporation **Chapter 11**

#16.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 7-03-24)
(cont'd from 10-02-24 per court's own mtn)
(cont'd from 11-06-24)

Docket 1

Tentative Ruling:

Tentative for December 11, 2024
Continue as a status conference to Jan. 22 to coincide with hearing on motion described at end of status report recently filed. *Appearance is optional.*

Tentative for November 6, 2024
This case has been dragging post-confirmation for far too long. Is a final decree appropriate now? *Appearance required.*

Tentative for July 3, 2024
Continue to Oct. 2, 2024 at10:00 a.m. per request, to combine with final decree. *Appearance is not required.*

Tentative for April 3, 2024
Continued to July 3, 2024 at 10:00 a.m. per request. Final decree motion is expected, preferably to coincide. *Appearance suggested.*

10:00 AM
CONT... Bridgemark Corporation **Chapter 11**

Tentative for December 6, 2023
Continue to April 3, 2024 @ 10:00 per request. Appearance is optional.

Tentative for September 13, 2023
Continue to Dec. 6, 2023 at 10:00 a.m. Appearance is optional.

Tentative for 3/15/23:
Continue for further status conference June 28, 2023 @ 10. The court expects a final decree motion to be filed before or to coincide .

Appearance: optional

Tentative for 11/2/22:
Continue for final post confirmation conference in about 120 days. It is expected that a motion for final decree will be filed in meantime.

Appearance: suggested

Tentative for May 25, 2022:
Continue for further status conference to November 2, 2022 at 10:00 a.m. with the expectation that a motion for final decree will be filed either for that date or before. Appearance is optional.

Tentative for 12/8/21:
Status? Appearance: required

Tentative for 8/25/21:
See #2.

10:00 AM
CONT... Bridgemark Corporation **Chapter 11**

Tentative for 8/4/21:
See #s 5 and 6.

Tentative for 7/28/21:
See #s 14-16.

Tentative for 6/23/21:
Continue to adequacy of disclosure or confirmation hearing.

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

10:00 AM
CONT... Bridgemark Corporation **Chapter 11**

Tentative for 2/26/20:
The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation — Represented By
William N Lobel

10:00 AM
8:20-12963 World of Dance Tour Inc. **Chapter 11**

#17.00 POST CONFIRMATION STATUS CONFERENCE RE: [189] Third Amended Chapter 11 Subchapter V Plan Dated January 7, 2022
(set from ex parte mtn hrg held on 11-03-21)
(cont'd from 5-22-24)

Docket 189

Tentative Ruling:

Tentative for December 11, 2024
Has a final decree been entered? Appearance required unless final decree entered.

Tentative for May 22, 2024
Status? Are we ready for a final decree? Appearance required.

Tentative for December 13, 2023
Will a final decree be sought in near future? Appearance required.

Tentative for 6/28/23:
Should the case be administratively closed pending motion for final decree? Continue the status conference for fall 2023?

Appearance: required

Tentative for 1/25/23:
It appears that the plan is proceeding as planned. Continue for further status in about 180 days. Will a final decree be sought in that period?

10:00 AM
CONT... World of Dance Tour Inc. **Chapter 11**

Appearance: required

Tentative for 9/14/22:
It would seem things are going as planned. Set a further status conference for first quarter 2023.

Appearance: optional

Tentative for 6/8/22:
A status report would have been helpful.

Appearance: required

Tentative for 2/23/22:
The court agrees with the comments of the V Trustee that attempts in the plan or stipulation to plan treatment to circumscribe the powers and duties of the trustee in this or subsequent proceeding are anathema to equity and must be stricken. Rather, if the plan fails it is the province of the trustee and/or the court to determine the appropriate course of action. Are the parties agreeable to modifications in the confirmation order as mentioned in the debtor's brief to achieve confirmation?

Appearance: required

Tentative for 11/3/21:
Opposition was only very recently filed on this *ex parte*/shortened time motion. The court observes that several of the deadlines proposed by debtor have already passed and/or are unreasonably short. It would seem likely that

10:00 AM

CONT... World of Dance Tour Inc. **Chapter 11**

new deadlines should be set with input from Sweet Lemons, and Al Hassas, in the interest of moving this case along. Yes, the motion is a procedural hash, and the court does not appreciate when counsel make everything into a last-minute emergency; but in the interest of getting this reorganization moving, we might as well seize the opportunity now rather than further complain about delays. In future the court expects adherence to procedure. At the very least the plan should be corrected to remove mention of any creditors who are not really creditors (Paul Mitchell and B of A's PPP loan, per objection?)

Appearance: required

Party Information

Debtor(s):

World of Dance Tour Inc.	Represented By Fred Neufeld

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, December 11, 2024 **Hearing Room 5B**

10:00 AM

8:21-11775 Fullerton Pacific Interiors, Inc. **Chapter 11**

#18.00 POST- CONFIRMATION STATUS CONFERENCE
RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual. Inc.
(set from order confirming plan entered 4-15-22)
(cont'd from 5-01-24)
(cont'd from 9-11-24)

Docket 1

Tentative Ruling:

Tentative for December 11, 2024
It sounds like a final decree is in order. The court will continue for one final post confirmation status conference (January 29, 2025 at 10:00 a.m.) with the expectation that in meantime a motion for final decree will be filed.
Appearance is optional.

Tentative for September 11, 2024
The status conference has been continued a couple times over discussions about an IRS issue. Status? *Appearance required.*

Tentative for August 7, 2024
So, what is the upshot regarding discussions on plan modifications?
Appearance required.

Tentative for June 5, 2024
Status? Appearance required.

10:00 AM

CONT... Fullerton Pacific Interiors, Inc. **Chapter 11**

Tentative for May 1, 2024
Continue status conference to September 25, 2024 at 10:00 a.m. to coincide with what is expected to be a motion for final decree. Appearance is optional.

Tentative for October 4, 2023
Schedule continued post confirmation status conference in about 6 months. Will debtor seek either an early final decree or administrative closing? Appearance required.

Tentative for 3/15/23:
When should a final decree motion be filed? Continue for further quarterly status conference.

Appearance: suggested

Tentative for 9/14/22:
Set continued status conference in first quarter 2023?

Appearance: optional

Party Information

Debtor(s):

Fullerton Pacific Interiors, Inc.	Represented By Donald W Reid

Trustee(s):

Mark M Sharf (TR)	Pro Se