

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 25, 2024

Hearing Room 301

1:00 PM

1: -

Chapter

#0.00 All hearings on this calendar will be conducted in Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.

Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:23-11059 CPI Luxury Group

Chapter 11

#1.00 Status conference re: chapter 11 case

fr. 9/28/23; 12/7/23; 3/7/24

Docket 1

Tentative Ruling:

The Court will hold a continued chapter 11 case status conference at **1:00 p.m. on June 6, 2024.**

The debtor must file a status report, addressing whether the case should be dismissed or converted to one under chapter 7, to be served on the debtor's 20 largest unsecured creditors, all secured creditors and the United States trustee, no later than **14 days** before the continued status conference.

The Court will prepare the order setting the deadlines for the debtor to file a status report and continuing the hearing on the status conference.

Appearances on April 25, 2024 are excused.

Party Information

Debtor(s):

CPI Luxury Group

Represented By
M Douglas Flahaut
Aram Ordubegian
Christopher K.S. Wong

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1:24-10377 Philmar Studios Inc

Chapter 11

#2.00 Status conference Re: Chapter 11 case

Docket 1

***** VACATED *** REASON: Rescheduled for 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philmar Studios Inc

Represented By
Robert M Yaspan

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1:24-10406 K3B Enterprises, LLC

Chapter 11

- #3.00** U.S. Trustee's Motion to:
1. Dismiss case pursuant to 11 U.S.C. § 1112(b) with a one-year bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 349; and
 2. Refund compensation pursuant to 11 U.S.C. § 329

Docket 14

Tentative Ruling:

The Court will dismiss this case for cause under 11 U.S.C. §§ 105(a), 349 and 1112(b), based on the debtor's lack of good faith in filing this case, with a one-year bar to refiling. *See* cal. no. 3.01; *see also* cal. no. 8 for April 24, 2024.

The Court will deny the United States Trustee's request to order the debtor's counsel to disgorge compensation.

The United States Trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

K3B Enterprises, LLC

Represented By
Giovanni Orantes

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

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1:23-10966 K3B Enterprises LLC

Chapter 11

#3.01 Debtor's Motion under FRBP 9024 for reconsideration of or vacating order imposing 180-day bar to refiling

fr. 4/18/24

Docket 57

Tentative Ruling:

The Court will deny the motion.

I. BACKGROUND

A. First Bankruptcy Case Filed by K3B Enterprises LLC

On July 10, 2023, K3B Enterprises LLC ("K3B") filed a chapter 11 petition, initiating case no. 1:23-bk-10966-VK (the "First Case"). During the First Case, K3B was represented by RHM Law LLP [doc. 35].

Kaysan Ghasseminejad ("Kaysan") signed the voluntary petition as K3B's managing member. In its list of equity security holders, K3B identified Kaysan as a 100% equity interest holder, and in its statement of financial affairs, K3B identified Kaysan as its managing member with 100% interest in K3B.

1. K3B's Real Property and Scheduled Secured Claims

In its schedule A/B, K3B disclosed its interest in a residence located at 9996 Sunset Boulevard, Beverly Hills CA 90210 (the "Sunset Residence"). The Sunset Residence is a 7,885 square foot home with six bedrooms, eight bathrooms, three fireplaces, one guest house and a pool. Exh. 0 to Declaration of M. Cary Calkin [doc. 69]. In schedule A/B, K3B provided a value at \$15 million for its interest in the Sunset Residence. In its schedule A/B, K3B did not identify an interest in any other assets [doc. 13].

As testified by Kaysan in August 2023, at the meeting of creditors held in this case,

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CONT... K3B Enterprises LLC

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Kaysan lives in the Sunset Residence with his father (Behnam Ghasseminejad), his mother and his grandmother. Declaration of Lance N. Jurich, ¶ 2 and Exh. 9 thereto [doc. 70]. K3B does not generate any income; Kaysan and his family do not pay rent to K3B. *Id.*; see also K3B's schedule G and Statement of Financial Affairs, Part 1 [doc. 13].

In its amended schedule D, K3B identified 4 secured claims: (1) the claim of the Los Angeles County Tax Collector ("LACTC"), in the alleged amount of approximately \$326,000, based on property taxes owed for the Sunset Residence; (2) the claim of Preferred Bank, in the alleged amount of approximately \$7.3 million, secured by a first deed of trust encumbering the Sunset Residence; (3) another claim owed to Preferred Bank, in the alleged amount of approximately \$2 million, secured by a second deed of trust encumbering the Sunset Residence; and (4) the claim of Sunwest Bank ("Sunwest"), arising from cross collateralized loans secured by, among other real properties, the Sunset Residence and an office building located in Encino, California (the "Encino Office Building") [doc. 27]. [FN 1]

In August 2023, K3B filed a status report and attached Kaysan's supporting declaration. In this declaration, Kaysan stated that K3B was formed on April 2, 2019 for the sole purpose of acquiring the Sunset Residence. Kaysan further represented that his father, Benham Ghasseminejad, was assisting Kaysan with the day-to-day operations of K3B and held no ownership interest in K3B. Declaration of Kaysan Ghasseminejad, filed on August 9, 2023, ¶ 3 [doc. 22].

2. Proofs of Claim Filed Against K3B's Estate

In August 2023, LACTC filed proof of claim no. 3-1 against the K3B estate, asserting a secured claim in the amount of \$572,474.42. LACTC indicated that its secured claim was based on past-due property taxes.

In September 2023, Preferred Bank filed proof of claims nos. 5-1 and 6-1, each of which identified claims secured by deeds of trust which encumbered the Sunset Residence. Claim 5-1, secured by a first deed of trust, was in the amount of \$7,598,893.52; claim no. 6-1, secured by a second deed of trust, was in the amount of \$2,107,886.90. [FN 2]

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3. K3B's Section 341(a) Meeting of Creditors

At the section 341(a) meeting of creditors held on August 15, 2023, Kaysan testified as K3B's principal and managing member. *See* Declaration of Lance N. Jurich (the "Jurich Declaration"), ¶ 2 and Exh. 9 thereto [doc. 70]. The following testimony appears in the transcript of the section 341(a) meeting:

U.S. TRUSTEE: So [K3B], they just own a piece of property, that's all they do?

MR. K. GHASSEMINEJAD: Yes. That's it.

U.S. TRUSTEE: Okay. What do you do at [K3B] as the managing member of anything?

MR. K. GHASSEMINEJAD: Nothing. Just living with my mom and dad.

...

U.S. TRUSTEE: Okay. And [K3B] just owns one piece of real property?

MR. K. GHASSEMINEJAD: Yes.

U.S. TRUSTEE: And where is that property located?

MR. K. GHASSEMINEJAD: It's 9996 Sunset Boulevard, Beverly Hills. It's in California, 90210.

...

U.S. TRUSTEE: Okay. Prior to purchasing this property, did [K3B] own any other properties?

MR. K. GHASSEMINEJAD: No. It was created for this house.

...

U.S. TRUSTEE: And up to the point of filing for bankruptcy, was [K3B] current on making the monthly mortgage payment for the first?

MR. K. GHASSEMINEJAD: Not truly.

...

U.S. TRUSTEE: Right. But does the Debtor itself, [K3B], have any source of income?

MR. K. GHASSEMINEJAD: Oh, no. No, no, no, no, no.

U.S. TRUSTEE: Okay. Then who was paying for the monthly mortgages on the property?

MR. K. GHASSEMINEJAD: Mostly my dad.

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...

U.S. TRUSTEE: Okay. And when you purchased the property, you're the sole member, so any equity investment in [K3B] would come to you. Was your intent to rent this property out, to live there?

MR. K. GHASSEMINEJAD: No. No. No intent to rent.

...

U.S. TRUSTEE: Do you know if property taxes are current on the property?

MR. K. GHASSEMINEJAD: No. Behind. We're behind on that. I don't know the exact amount. Maybe 200. I don't know exact amount.

...

U.S. TRUSTEE: What's [K3B's] intentions to do with the property?

MR. K. GHASSEMINEJAD: To save. To keep it.

U.S. TRUSTEE: And how is [K3B] going to afford to keep it?

MR. K. GHASSEMINEJAD: Probably—my dad and I have been talking about refinancing the property and I believe he communicated that to you direct at some other time. We will be refinancing the property, the home.

...

MR. K. GHASSEMINEJAD: ...it's our home. We live there.

U.S. TRUSTEE: I thought you said you live there only part-time, no one else lives there?

MR. K. GHASSEMINEJAD: No. My mom and dad and myself and my mom's mom.

U.S. TRUSTEE: Live there.

MR. K. GHASSEMINEJAD: We all live there.

U.S. TRUSTEE: Do they pay any rent?

MR. K. GHASSEMINEJAD: No.

U.S. TRUSTEE: Have they ever paid any rent?

MR. K. GHASSEMINEJAD: No.

U.S. TRUSTEE: Is there a reason why they don't pay any rent to [K3B]?

MR. K. GHASSEMINEJAD: No. No. He does enough to help. He stays there. Maybe that's the compensation.

...

U.S. TRUSTEE: . . . I'm talking for [K3B], the daily books and

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records, who keeps –

MR. K. GHASSEMINEJAD: No, there is [sic] no books. There is [sic] no books.

U.S. TRUSTEE: So there are no finances–

MR. K. GHASSEMINEJAD: Just a home.

U.S. TRUSTEE: —financials being provided at all?

MR. K. GHASSEMINEJAD: No. No. No, no.

...

MR. GOMEZ: And why weren't the property taxes paid when they came due?

MR. K. GHASSEMINEJAD: Just, I should have. I just didn't.

Transcript of the August 15, 2023 section 341(a) meeting (the "Transcript"), Exh. 9 to the Jurich Declaration.

4. Preferred Bank's Motion for Relief from Automatic Stay and K3B's Decision to Dismiss its First Bankruptcy Case

In October 2023, Preferred Bank filed a motion seeking relief from the automatic stay regarding the Sunset Residence [doc. 40]. According to Preferred Bank, as of October 18, 2023, the total amount owed to it on both deeds of trust encumbering the Sunset Residence was "[n]ot less than \$10,038,559.71[.]" Declaration of Erika Chi, executive vice president of Preferred Bank, ¶ 8 [doc. 40]. Preferred Bank represented that five months of deed of trust payments had not been made to Preferred Bank. Moreover, based on K3B's scheduled value of \$15 million for the Sunset Property, and the aggregate amount of the debt encumbering the Sunset Residence, including that owed to Preferred Bank and Sunwest, and past due property taxes, K3B had no equity in the Sunset Residence.

In October 2023, K3B filed a status report (the "October Status Report") [doc. 43]. In this status report, K3B stated that:

[K3B] was formed on April 2, 2019 for the sole purpose of acquiring real property located at 9996 Sunset Blvd., Beverly Hills, CA 90210.

Encino Towers LLC - which owns a real property located at 17835

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Ventura Blvd., Encino 91316 - filed its own Chapter 11 petition on the same date as the Debtor herein (Case no. 1:23-bk-10965). The entities, their assets and liabilities as [sic] intertwined, as set forth in the [K3B]'s initial Status Report [Docket No. 22].

The liens against the Sunset property are approximately: \$7,598,894 Preferred Bank (senior), \$2,107,887 Preferred Bank (junior); cross-collateralized debt of about \$12,063,094.74 owed to Sunwest Bank. Preferred Bank filed a Motion for Relief from the Automatic Stay [Docket No. 40]; that is set for hearing on November 8, 2023.

Encino Towers, LLC has accepted an offer of \$14,000,000 for the sale of the Ventura Blvd. property to an unrelated entity. The sale of the Ventura Blvd. will resolve the junior Sunwest Bank lien on the Sunset property.

October Status Report, p. 2. *See also* Declaration of Behnam Ghasseminejad, dated March 18, 2024 ("March 18, 2024 Benham Declaration"), ¶ 15 [doc. 57].

On November 2, 2023, the Court held a continued status conference in the First Case. At that status conference, K3B consented to the dismissal of the First Case with a 180-day bar to refiling. *See* March 18, 2024 Benham Declaration, ¶ 15 [doc. 57].

On November 3, 2023, the Court entered its *Order Dismissing Chapter 11 Case With 180-Day Bar to Refiling* (the "K3B Dismissal Order") [doc. 48]. The K3B Dismissal Order provides, in relevant part:

The Debtor having consented to dismissal of this case with a 180-day bar to refiling, such dismissal appearing to be in the best interests of creditors and the estate and good cause appearing, it is hereby

ORDERED, that the Debtor's case is dismissed, and the Debtor may not be a debtor under any chapter of 11 U.S.C. §§ 101 et seq. for 180 days from the date of entry of this order.

K3B Dismissal Order, p. 2. The First Case was closed on November 21, 2023. *See*

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B. K3B's Affiliate and Co-Debtor, Encino Towers, LLC

Encino Towers, LLC ("Encino Towers") is an affiliate of K3B. On April 8, 2021, Encino Towers was formed for the sole purpose of acquiring an office building located at 17835 Ventura Blvd., Encino 91316 (the "Encino Office Building"). Declaration of Kaysan Ghasseminejad, filed on August 9, 2023, ¶¶ 4-5 [First Case, doc. 22].

In a declaration regarding Encino Towers, Kaysan represented as follows:

[Encino Towers] was formed on April 8, 2021 for the sole purpose of acquiring an office building located at 17835 Ventura Blvd., Encino 91316. [Encino Towers] made an offer of \$12,990,000 for the [Encino Office Building], which was accepted on June 25, 2020.

[Encino Towers] was in a position to acquire the office building through the U.S. Small Business Administration's ("SBA") 504 Loan Program – the SBA loan proceeds would enable [Encino Towers] to fund the purchase in exchange for a junior 20/25year loan at 2.5%. [Sunwest] had agreed to fund a senior loan of \$6,869,000, subject to completion of the SBA loan.

...

Although [Encino Towers] initially qualified for the 504 Loan Program in August 2021, [Encino Towers] was unable to comply with the requirements to complete the junior loan in time to meet the sale closing date. [Sunwest] thereafter agreed to also fund a junior short term bridge loan of \$4,939,000.

Declaration of Kaysan Ghasseminejad, filed on September 14, 2023, ¶¶ 6, 8 and 10 [Case No. 1:23-bk-10965-VK ("Encino Towers Case"), doc. 80].

In July 2021, Encino Towers obtained two loans from Sunwest: one for \$6,869,000 (the "First Loan") and a second for \$4,939,000 ("Second Loan" and, together with the "First Loan," the "Loans"). Declaration of M. Cary Calkin ("Calkin Declaration") ¶ 8

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[doc. 69]. A loan agreement and a promissory note memorialized the Loans. *Id.*, ¶ 8 and Exhs. A-D thereto. To secure each of the Loans, separate deeds of trust were recorded in August 2021, encumbering the Encino Office Building. *Id.*, ¶ 9 and Exhs. E-F thereto. Regarding the Second Loan, Encino was required to pay Sunwest all principal and accrued unpaid interest by **December 1, 2021**. *Id.*, ¶ 8 and Exh. D thereto.

Encino Towers did not pay off the Second Loan by its maturity date, triggering a default. *Id.*, ¶ 10. On March 13, 2023, Kaysan, as Encino Towers' member/manager, executed a forbearance agreement between Encino Towers and Sunwest (the "Forbearance Agreement"). Calkin Declaration, ¶ 11 and Exh. G thereto.

The Forbearance Agreement provided, in relevant part:

RECITALS

- A. [Sunwest] is the holder of a Promissory Note dated July 8, 2021, in the principal amount of \$4,939,000.00 from [Encino Towers]...(the ["Second Loan"]). The [Second Loan] is secured by a Deed of Trust, dated July 8, 2021...
- B. [Encino Towers] is in a monetary/technical default under the above-described [Second] Loan, and [Sunwest] is entitled to enforce its judicial and non-judicial remedies against the [Encino Property], including commencing foreclosure proceedings.
- C. [Encino Towers] wishes to obtain a commitment from [Sunwest] to refrain during the term of this Agreement from further exercising its rights due to [Encino Towers'] current default under the [Second] Loan. [Sunwest] is willing to issue such commitment by forbearing from completing its foreclosure proceedings on the real property collateral under applicable law, upon the terms and subject to the conditions set forth in this Agreement.

...

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Therefore, [Encino Towers] and [Sunwest] agree as follows:

...

4. Primary Collateral: **[the Encino Office Building]**.

(a) Upon **execution and delivery** of this **Forbearance Agreement** to [Sunwest] before the end of business day **March 10, 2023**, [Encino Towers] will immediately list the [Encino Office Building] for sale...

...

(c) Within sixty (60) days of the execution of this Forbearance Agreement, [Encino Towers] will accept the highest offer submitted for purchase of the [Encino Office Building] and will enter into Escrow Agreement to complete sale of [the Encino Office Building]. Escrow to close within 30 to 45 days from the date Escrow was opened. Failure to accept the highest offer submitted will result in recordation of a Notice of Default as well as any and all available creditor remedies in the sole discretion of [Sunwest].

...

(e) Within one hundred twenty (120) days of the execution of this Forbearance Agreement, Escrow shall close with a full and complete payoff of [Sunwest's] loan. Failure to close with a full and complete payoff of [Sunwest's] loan will result in recordation of a Notice of Default as well as any and all available creditor remedies in the sole discretion of [Sunwest].

Additional Collateral. [Encino Towers] agrees to Complete the following Actions:

(a) [Encino Towers] **will** Pledged [sic] as additional collateral to this loan, the following real properties:

- **9996 Sunset Blvd., Beverly Hills CA 90210**
- **213 S. Gale Drive, Beverly Hills CA 90211**
- **1314 Sierra Alta Way, Los Angeles, CA 90069**

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(b) [Encino Towers] **will execute and deliver** this Forbearance Agreement to [Sunwest] before the end of business day **March 10, 2023**. [Encino Towers] **will execute and deliver three (3) Deed of Trust(s)**...on each of the 3 above-mentioned real properties recited in Section #4(a) (Additional Collateral) to [Sunwest] before the end of business day on **March 20, 2023**.

...

Within thirty (3) days of execution of this Agreement and from the execution of each of the three (3) Deed of Trust(s), [Encino Towers] **will** provide a **Sales' [sic] Activity Status Report** of each of the 3 real properties, as mentioned in Section #4(a) (Additional Collateral) of this Agreement.

...

Within sixty (60) days of the execution of this Forbearance Agreement, [Encino Towers] will accept the highest offer submitted for purchase of each of the 3 real properties, as mentioned in Section #4(a) (Additional Collateral) and enter into an Escrow Agreement to complete sale of subject 3 real properties, as mentioned in Section #4(a) (Additional Collateral). Escrow to close within 30 to 45 days from the date Escrow was opened. Failure to accept the highest offer submitted will result in recordation of a Notice of Default on **[the Encino Office Building]**, including but not limited to the three (3) additional real property collateral as mentioned in Section #4(1) (Additional Collateral) as well as any and all available creditor remedies in the sole discretion of [Sunwest].

...

Within one hundred twenty (120) days of the execution of this Forbearance Agreement, Escrow(s) shall close with full and complete remittance of the Escrow's Net Proceeds for each of the 3 above-mentioned real properties recited in Section #4(a) (Additional Collateral) to [Sunwest]. Failure to close with a full and complete remittance of the Escrow's

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Net Proceeds to [Sunwest] will result in recordation of a Notice of Default on **[the Encino Office Building]**, including but not limited to the three (3) additional real property collateral as mentioned in Section #4(a)(Additional Collateral) as well as any and all available creditor remedies in the sole discretion of [Sunwest].

(f) Upon expiration of this Agreement, [Encino Towers] shall make a **lump-sum balloon payment** to [Sunwest] of the **Current Outstanding Principal Balance, all accrued arrearages, all unpaid accrued interest, back payments, costs/expenses and any remaining past due amounts on or before July 10, 2023.**

(g) **NO** Renewal, Modification, Extension and Change in Terms will be considered on this loan. All amount owing on this loan will be **PAID IN FULL** ON OR BEFORE *July 10, 2023.*

[Encino Towers] acknowledges that the Notes contain a floating and/or variable interest rate provision, and that the actual monthly payment due is subject to change. [Encino Towers] further acknowledges that any deferred payments on the principal balance on the Note during the forbearance period will be due upon maturity of the forbearance agreement.

Borrower's initials: [handwritten in initials "KG"]

6. **Forbearance.** Subject to [Encino Towers'] **full and timely performance** of the terms and conditions set forth in this Agreement...[Sunwest] will forbear from completing its foreclosure proceeding, to enforce [Encino Towers'] obligations under the Loan Documents, through *July 10, 2023*....[Encino Towers] acknowledges that any failure of [Encino Towers] to reinstate the monetary obligations under the Loan Documents pursuant to the payment obligations described

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in Paragraph 4 above or failure to cure the technical default under the Loan by *July 10, 2023* shall result in the pursuit of [Sunwest's] foreclosure remedies and/or other remedies available to [Sunwest] at law or in equity, without further or prior notice to [Encino Towers].

[Sunwest] may immediately pursue its remedies against [Encino Towers] and/or the collateral if any of the following occurs:

- (a) [Encino Towers] fails to make any payment in accordance with Paragraph 4; or
- (b) [Encino Towers] fails to comply with any terms and conditions contained in this agreement or within the Loan Documents (including but not limited to the obligation of paying real property taxes on a current basis) not otherwise modified by this Agreement.

Forbearance Agreement, Exh. G to the Calkin Declaration, pp. 1-5 (emphases in bold and/or underlined in original; emphases in italics added).

With respect to the Forbearance Agreement, Kaysan has represented:

[Encino Towers] continued the process to obtain the SBA loan – now to pay off the junior [Sunwest] bridge loan - but unfortunately, was unable to secure admission to the program and unable to take advantage of the low interest rate loan....

By this time, the bridge loan was close to maturity and in order to avoid a notice of default ("NOD") that would cause a valuation decrease for the [Encino Office Building], on March 13, 2023, [Sunwest], [and Encino Towers] discussed extending the loan until July 10, 2023, in exchange for cross-collateralization on three other real properties, as follows: (1)...21439 PCH HWY, Malibu, CA 90265; (2)...213 S Gale Drive, LLC - 213 S. Gale, Beverly Hills, CA

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90211; (3)...1314 Sierra Alta Way, Los Angeles, CA 90069. At that time, the Gale property was in escrow and an offer on the Sierra Alta property was expected imminently. As such, we believed that the sale proceeds would promptly cure the approximate \$500,000 default on the junior bridge loan. [Sunwest] Bank agreed to consider this offer and get back to [Encino Towers].

Thereafter (about March 23, 2023), [Encino Towers] accepted a \$14 million offer on the [Encino Office Building] (no broker) and stipulated that the sale must close by March 31, 2023....Unfortunately, the buyer demanded a \$800,000 discount two days before the closing, and the sale fell apart.

[Encino Towers] then informed [Sunwest] that it would formally list the [Encino Office Building] with a broker. [Sunwest] - via its representative, Tom Chaves - responded that [Sunwest]...would file the NOD at 9am on the following Monday. We pleaded with Mr. Chavez to not file the NOD as it would reduce the value of the Property. Mr. Chavez responded that unless the debt were to be cross-collateralized on the Gale, Sierra Alta and...[the Sunset Residence] (owned by [K3B]), that the NOD would be filed....

We again pleaded with Mr. Chavez that the Sunset [Residence] could not be tied up in this deal because it is the family's principal residence. Mr. Chavez and [Sunwest] ...declared that the NOD would be filed at 9 am on Monday. Believing we had no choice, we relented and executed the cross-collateralization documents on the Gale and Sierra Alta properties, and the family residence on Sunset Blvd.

Declaration of Kaysan Ghasseminejad, filed on September 14, 2023, ¶¶ 11-15 [Encino Towers Case, doc. 80].

Following the execution of the Forbearance Agreement, K3B, as trustor and owner of the Sunset Residence, executed and delivered to Sunwest, as beneficiary, a deed of trust that was recorded in March 2023 (the "Sunwest Deed of Trust"), encumbering the Sunset Residence. Calkin Declaration, ¶ 11 and Exh. H thereto.

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Encino Towers defaulted under the Forbearance Agreement. Among other things, Encino Towers failed to accept the highest offer submitted to purchase the Encino Office Building within 60 days of the Forbearance Agreement's execution, i.e., by May 9, 2023, and it failed to close a sale with a full and complete payoff of Sunwest's loan within 120 days of execution of the Forbearance Agreement. Calkin Declaration, ¶ 12. In addition, K3B did not pay property taxes on the Sunset Residence, which constituted a default under Sunwest's deed of trust. *Id.*, ¶ 13.

On June 6, 2023, Sunwest filed a judicial foreclosure action in Orange County Superior Court against, among others, Encino Towers and K3B, initiating case no. 30-2023-01325901-CU-BC-CJC (the "Foreclosure Action"). *Id.*, ¶ 14. On June 23, 2023, notices of default were recorded against the Encino Office Building and the Sunset Residence. *Id.*, ¶ 15 and Exh. I thereto.

C. Bankruptcy Case of Encino Towers

On July 10, 2023, Encino Towers filed a chapter 11 petition, initiating case no. 1:23-bk-10965-VK. Kaysan signed the voluntary petition as Encino Towers' managing member. In its list of equity security holders, Encino Towers identified Kaysan as a 100% equity interest holder. In its statement of financial affairs, Encino Towers also identified Kaysan as its sole managing member with 100% interest. Encino Towers further identified Behnam Ghasseminejad ("Behnam") as an individual who manages Encino Towers, with no ownership interest [Encino Towers Case, doc. 13].

In October 2023, Encino Towers filed a status report in its chapter 11 case. In its status report, Encino Towers represented:

The Plan seeks to sell...the [Encino Office Building] to an entity that is unrelated to [Encino Towers], for the sum of no less than \$14,000,000.

Since that time, [Encino Towers] has determined that it is more appropriate to proceed with the sale of the [Encino Office Building] outside of this bankruptcy case. [Encino Towers] has unsecured debts of less than \$100,000 and proceeding with the sale outside of the bankruptcy context will avoid significant administrative claims,

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allowing the sale proceeds to flow directly to prepetition creditors.

To that end, [Encino Towers] is in discussions with [Sunwest], the first and second lienholder on the [Encino Office Building], to dismiss the case. This case was filed to prevent [Sunwest's] foreclosure sale and to allow the [Encino Office Building] to be marketed for sale to the benefit of all creditors. The offer provides for additional time to allow the escrow to close in exchange for a bar to re-filing. Accordingly, [Encino Towers] filed voluntary dismissals of its Disclosure Statement and Plan on October 17, 2023.

Encino Towers Case, doc. 96. *See also* March 18 Behnam Declaration, ¶ 15 [doc. 57].

On November 3, 2023, the Court entered an order dismissing the Encino Towers Case with a 180-day bar to refiling (the "Encino Towers Dismissal Order"). The Encino Towers Dismissal Order provides, in relevant part:

[Encino Towers] having consented to dismissal of its chapter 11 bankruptcy case with a 180- day bar to refiling, such dismissal being in the best interests of creditors and the estate, for the other reasons set forth on the record at the hearing, and for good cause appearing, it is hereby

ORDERED, that [Encino Towers'] case is dismissed for cause pursuant to 11 U.S.C. § 1112(b)(1) and (4)(B) and (F); and it is further

ORDERED, that [Encino Towers] may not be a debtor under any chapter of 11 U.S.C. §§ 101 et seq. for 180 days from the date of entry of this order.

Encino Towers Case, doc. 100.

D. Post-Dismissal Activity

After the dismissal of the first case, on November 20, 2023, Preferred Bank recorded notices of default on its two senior deeds of trust against the Sunset Residence. *See*

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Calkin Declaration, ¶ 25 and Exh. P thereto. Similarly, on January 11, 2024, Sunwest resumed its nonjudicial foreclosure proceedings against the Sunset Residence, and a notice of trustee's sale against the Sunset Residence was recorded. Calkin Declaration, ¶ 19 and Exh. L thereto.

Encino Towers' anticipated sale of the Encino Office Building did not take place. *Creditor Sunwest Bank's Opposition to Debtor K3B Enterprises, LLC's Motion for Reconsideration of or Vacating Order Imposing 180-Day Bar to Refiling*, p. 19 n.11 [doc. 69]; March 18 Behnam Declaration, ¶ 17 [doc. 57].

As of February 1, 2024, Sunwest was owed about \$5,765,431.35 on the Second Loan, which consisted of: (i) \$4,919,000 in unpaid principal, (ii) \$734,729.34 in accrued unpaid interest, (iii) \$5,475 in appraisal and review fees; (iii) \$24,158.04 in insurance premium advance; (iv) \$82,068.97 in attorney fees and costs, and (v) \$729 in miscellaneous fees. Calkin Declaration, ¶ 22.

As of February 1, 2024, the outstanding property taxes on the Sunset Residence totaled approximately \$773,329.27, as set forth on the following chart:

Description	Amount
2021 taxes	\$392,682.52
2021 penalty (\$4832.84 per month after 8/11/223)	\$24,164.2
11/1/22 tax plus 10% penalty	\$89,896.27
2-1-2023 tax plus 10% penalty	\$89,896.24
11/1/23 tax plus 10% penalty	\$92,551.921
2/1/2024 tax	\$84,138.11
TOTAL	\$773,329.27

Calkin Declaration, ¶ 23 and Exh. N thereto.

On February 9, 2024, Sunwest purchased the Encino Office Building at a trustee sale for a credit bid of \$1,225,000. Calkin Declaration, ¶¶ 18 and 22 and Ex. J thereto. [FN 3]

1. K3B's Cross-Complaint in the Foreclosure Action

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On January 29, 2024, K3B and Encino Towers filed a verified cross-complaint against Sunwest and others, in the Foreclosure Action. Exh. 1 to the March 18 Behnam Declaration. The same day, K3B and Encino Towers filed an ex parte application for a temporary restraining order to enjoin a nonjudicial foreclosure by Sunwest of the Sunset Residence. Exh. 2 to the March 18 Behnam Declaration.

On February 2, 2024, the state court entered a temporary restraining order (the "TRO"). Declaration of Adam Apollo (the "Apollo Declaration"), ¶¶ 2 and 3 and Exh. A thereto [doc. 57]. The TRO stated, in pertinent part:

IT IS HEREBY ORDERED:

...

Cross-Defendants [Sunwest]...shall be enjoined from foreclosing upon, selling, transferring, or executing any Trustee Deed's Upon sale for the "subject real property," (residential) located at 9996 Sunset Blvd., Beverly Hills, CA 90210 until a determination of the order to show cause regarding a preliminary injunction.

An Order to Show Cause hearing regarding issuance of a preliminary injunction for the same shall be set for hearing 2/23/24 at 10:00 a.m...

TRO, Exh. A to the Apollo Declaration, p. 2 (emphasis omitted). The TRO did not enjoin Sunwest from foreclosing on the Encino Office Building. March 18 Behnam Declaration, ¶ 21.

On March 1, 2024, the state court entered a preliminary injunction (the "Preliminary Injunction"). Apollo Declaration, ¶ 3 and Exh. B thereto. The Preliminary Injunction provided, in relevant part:

The Court's order to show cause hearing regarding issuance of an injunction came for hearing on February 3, 2024....IT IS HEREBY ORDERED:

Cross-Defendants [SUNWEST]; and its employees, agents and trustees, and those acting on its behalf, shall be enjoined from foreclosing upon, selling, transferring, or executing any Trustee Deed's

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Upon sale for the "subject real property," (residential) located at 9996 Sunset Blvd., Beverly Hills, CA 90210 until further order of this Court.

IT IS FURTHER ORDERED THAT within 6 court days, Cross-Complainant [Debtor] shall procure a bond in the amount of \$4,515,431 to protect Cross-Defendant [Sunwest's] risks of loss in this case in the event Cross-Complainant's do not prevail at trial, and cause proof of the same to be filed with the Court.

Preliminary Injunction, Exh. B to the Apollo Declaration, p. 2.

K3B did not timely post the bond. *See* Calkin Declaration, ¶ 21¶ 10; March 18 Behnam Declaration, ¶ 24. On March 13, 2024, Sunwest filed an ex parte motion to dissolve the Preliminary Injunction. Calkin Declaration, ¶ 21.

2. *K3B's Second Bankruptcy Case*

On March 14, 2024, before the expiration of the 180-day bar imposed by the K3B Dismissal Order, K3B filed another chapter 11 petition, initiating case no. 1:24-bk-10406-VK (the "Second Case"). In its Statement of Financial Affairs filed in the Second Case, K3B identified Behnam as its managing member, with a 100% interest in K3B, and Kaysan as K3B's managing member from 2019 to 2023. Behnam signed the voluntary petition as K3B's managing member.

In its schedule A/B filed in the Second Case, K3B identified an interest in the Sunset Property, with an approximate value of \$17.6 million (i.e., an increase of \$2.6 million from the \$15 million value which K3B provided in its schedule A/B, filed in the First Case, less than one year earlier). In addition, K3B identified: (1) an interest in a checking account with Strategic Banking Partner, valued at \$0; and (2) a cause of action against Sunwest, with a value of \$0. K3B did not identify an interest in any other assets [Second Case, doc. 20].

3. *The Motion, the Oppositions, the Reply and the Declarations in Support Thereof*

On March 18, 2024, K3B filed a motion to reopen the First Case, so that it could file a

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motion to reconsider the K3B Dismissal Order. On March 20, 2024, the Court entered its order reopening the First Case.

On March 19, 2024, K3B filed the *Motion Under FRBP 9024 for Reconsideration of or Vacating Order Imposing 180-Day Bar to Refiling* (the "Motion to Reconsider"). In the Motion to Reconsider, K3B requests that the Court reconsider or vacate the K3B Dismissal Order pursuant to Fed. R. Civ. P. 60(b)(2) and (6).

K3B asserts that newly discovered evidence exists which demonstrates that Sunwest deceived it into adding the Sunset Residence as collateral to the Second Loan, and that it interfered with the sale of the Encino Office Building so that it could eventually foreclose on both properties. K3B contends that the new evidence of Sunwest's impropriety could not have been discovered before it consented to the entry of the K3B Dismissal Order and that the Court should reconsider or vacate the K3B Dismissal Order based on the equities of the case.

In support of the Motion to Reconsider, K3B includes, among other things: (1) the March 18 Behnam Declaration; (2) another declaration of Behnam, dated March 27, 2024 (the "March 27 Behnam Declaration") [doc. 63]; and (3) the Apollo Declaration. In the March 18 Behnam Declaration, Behnam states:

I am...the Managing Member of the debtor in the [First] Bankruptcy case...

...

[Kaysan] is my son and, since I am already 65 years old, I had him hold legal title to the membership of [K3B] and [Encino Towers]. However, he has transferred back the membership in such entities to me since I have always been the beneficial owner of the membership interests in such entities and have always been a custodian of records of both of such entities.

...

On or about July 8, 2021 [Encino Towers] executed promissory notes in favor of [Sunwest], and encumbered [the Encino Office Building] with two commercial loans thereon in the alleged amount of \$6.869 million (first loan), and \$4.939 million (second loan) dollars respectively...

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[O]n or about Friday March 10, 2023, [Sunwest]...indicated to me that I would only be able to avoid foreclosure on the [Encino Office Building] by executing a forbearance agreement, and cross-collateralizing three of the principal's other properties, including the [Sunset Residence] via a Deed of Trust, but only for what Sunwest claimed was the past due amount of the second loan, totaling approximately \$547,790.95....My family and I live in the [Sunset Residence].

...[Sunwest], via a phone call and then text message, informed me that he [sic] would need the forbearance agreement signed that day, or that [Sunwest] would immediately foreclose. Sunwest, via its agent Mr. Chavez, responded via telephone that he would not afford [Encino Towers] time to review the agreement with counsel, and that it had to be returned by March 13, 2023, or [Sunwest] would foreclose on the [Encino Office Building].

Mr. Chavez assured me that the cross-collateralization on [the Sunset Residence] was merely a corporate formality, and that it would never have any effect, much less would my home ever be in danger...

[Encino Towers] was operating its business on the [Encino Office Building] and drew its income in large part therefrom....For fear of losing this source of income, this place of business, and based solely on the representations of Sunwest's agents, Mr. Garcia and Mr. Chavez, that Sunwest would never foreclose against my residence, and that the cross-collateralization was simply a corporate formality, K3B [sic] I... **executed the forbearance agreement thereby giving [the Sunset Residence] as collateral.**

...

On October 18, 2023, Preferred Bank, which held two loans against the [Sunset Residence] that were senior to [Sunwest], filed a motion for relief from stay....However, as [K3B] explained in a status report it filed [on] October 19, 2023, [Encino Towers] had accepted an offer of \$14,000,000 for the sale of the [Encino] Property to an unrelated entity.

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The sale of the [Encino] Property not only would resolve the secured debt to Preferred Bank but also the junior [Sunwest] lien cross-collateralized against the [Sunset] Property. Confident in this transaction, [K3B] agreed to a 180-day bar to re-filing in exchange for additional time for escrow to close. The Court entered its order with the 180-day bar on November 3, 2023 (Docket No. 48)...I caused the [K3B]'s principal to agree likewise in the Encino Case, which was dismissed with the same bar ([Encino Case, doc. 100]).

...

When the sale of the [Encino Office Building] did not close...Sunwest asserted that it was entitled to \$13.3 million (about \$2 million more than anticipated), and asked for permission to appoint a receiver to "sell" both the [Encino Office Building] and the [Sunset Residence] ...

...

In light of the threatened foreclosures, [K3B] filed [the Cross-Complaint]...and...an Ex Parte Application for a Temporary Restraining Order to enjoin the sale of the [Sunset Residence].... The [state court]...granted the [TRO]...and scheduled briefing on an Order to Show Cause re Preliminary Injunction.

[The state court] did not grant the temporary restraining order as to the [Encino Office Building] and Sunwest...foreclose[d] on the [Encino Office Building] but it chose to credit bid \$1.225 Million on its second-position deed of trust subject to its own firstposition deed of trust thereby leaving unresolved the debts it had cross-collateralized against the [Sunset Residence].

March 18 Behnam Declaration, ¶¶ 1, 3, 5-9, 15, 17, and 20-21 (emphasis added). In the March 27 Behnam Declaration, Behnam asserts that he "plan[s] to rent the [Sunset Residence] for approximately no less than \$100,000 per month in the next few weeks." March 27 Behnam Declaration, ¶ 5.

On April 4, 2024, 9996 Sunset Loan Acquisition, LLC ("SLA") and Sunwest filed oppositions to the Motion to Reconsider. In its opposition, SLA (which acquired from Premier Bank the loans secured by the first and second deeds of trust against the Sunset Residence) contends that K3B is not entitled to reconsideration of the K3B

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Dismissal Order because: (1) K3B does not present newly discovery evidence that it could not have, with reasonable diligence, previously presented to the Court; and (2) the equities do not favor the relief K3B seeks. In support of its opposition, SLA filed the Jurich Declaration and a request for judicial notice.

In its opposition, Sunwest states that the Motion to Reconsider should be denied because, among other reasons, K3B has not presented newly discovered evidence. In support of its opposition, Sunwest filed the declaration of its attorney Robert S. McWhorter (the "McWhorter Declaration") [doc. 69] and the Calkin Declaration.

On April 11, 2024, K3B filed an omnibus reply to the Sunset Loan Acquisition Opposition and the Sunwest Opposition (the "Reply"). In the Reply, K3B asserts that it could not have obtained its new evidence of Sunwest's impropriety previously because Sunwest's conduct occurred after the K3B Dismissal Order was entered.

In support of the Reply, K3B filed another declaration of Behnam (the "April Behnam Declaration") [doc. 72]. In his declaration, Behnam states:

...Although the Verified Cross-Complaint attaches evidence of the coercion by the bank, attached hereto as Exhibit "5" is a true and correct copy of a text from Thomas Sanchez convincing me to sign the Forbearance Agreement because only the \$547,790.95 interest on the junior loan was being secured.

April Behnam Declaration, ¶¶ 24-25.

II. RELEVANT AUTHORITY

A. 11 U.S.C. § 105

Pursuant to 11 U.S.C. § 105(a):

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action

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or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

However, "[d]espite the broad grant of equitable powers, bankruptcy courts cannot use them 'to defeat clear statutory language, nor to reach results inconsistent with the statutory scheme established by the Code.'" *In re Reinertson*, 241 B.R. 451, 455–56 (B.A.P. 9th Cir. 1999) (quoting *In re Powerine Oil Co.*, 59 F.3d 969, 973 (9th Cir. 1995)).

[T]he bankruptcy court's inherent power to reconsider orders has been merged into the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure. Accordingly, final orders may be set aside only under FRCP 60(b) applicable via Rule 9024; the bankruptcy court may not use its inherent power to circumvent the limitations of those rules.

Id. at 456.

B. Relief Pursuant to Federal Rule of Civil Procedure ("Rule") 60(b)

A motion for reconsideration may be construed as a motion for relief from judgment under Fed. R. Bankr. P. 9024, which incorporates Rule 60(b). *In re 7590 La Jolla, LLC*, 2022 Bankr. LEXIS 3423, at *9 (Bankr. C.D. Cal. Dec. 5, 2022). Rule 60(b) permits relief from:

[A] final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud... misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or

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vacated; or applying it prospectively is no longer equitable;
or
(6) any other reason justifying relief from the operation of the
judgment.

Rule 60(b).

With respect to Rule 60(b), "there is a compelling interest in the finality of judgments which should not lightly be disregarded." *In re Williams*, 287 B.R. 787, 793 (9th Cir. BAP 2002). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the [bankruptcy] court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009).

The movant "bears the burden of proving the existence of a justification for Rule 60(b) relief[.]" *In re Solano*, 2017 U.S. Dist. LEXIS 222595, *3 (Bankr. C.D. Cal. Aug. 21, 2017) (citing *Cassidy v. Tenorio*, 856 F.2d 1412, 1415 (9th Cir. 1988)). *See also In re Hammer*, 112 B.R. 341, 345 (B.A.P. 9th Cir. 1990) ("The burden is on the moving party to bring himself within the purviews of Rule 60(b)(6)."). "The disposition of a Rule 60(b) motion for relief from judgment is within 'the sound discretion' of the court." *Solano*, 2017 U.S. Dist. LEXIS 222595 at *3 (quoting *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004)).

1. Rule 60(b)(2)

Relief from judgment on the basis of newly discovered evidence is warranted if:

(1) the moving party can show the evidence relied on in fact constitutes "newly discovered evidence" within the meaning of Rule 60(b); (2) the moving party exercised due diligence to discover this evidence; and (3) the newly discovered evidence must be of "such magnitude that production of it earlier would have been likely to change the disposition of the case."

Feature Realty, Inc. v. City of Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003).

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“Evidence is not ‘newly discovered’ under the Federal Rules if it was in the moving party's possession at the time of trial or could have been discovered with reasonable diligence.” *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A., Inc.*, 833 F.2d 208, 212 (9th Cir. 1987). Evidence which refers to new information or facts that developed after an order was entered “may not be the basis of relief pursuant to Rule 60(b)(2).” *Tribe v. United States Bureau of Reclamation*, 319 F.Supp.3d 1168, 1176 (N.D. Cal. 2018).

2. Rule 60(b)(6)

Rule 60(b)(6) states that relief may be granted for "any other reason justifying relief from the operation of the judgment." "Judgments are not often set aside under Rule 60(b)(6)." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006). "Rather, the Rule is ‘used sparingly as an equitable remedy to prevent manifest injustice’ and ‘is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment.’" *Id.* A party who moves for relief under Rule 60(b)(6) "must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with the prosecution or defense of the action in a proper fashion." *Community Dental Services v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002).

III. ANALYSIS

For the Court to grant the requested relief, K3B must prove: (1) that newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial exists; or (2) that there are other grounds justifying relief from the K3B Dismissal Order. K3B has not met this burden.

A. Rule 60(b)(2)

K3B has not demonstrated the existence of sufficient evidence, that is "newly discovered" under Rule 60(b)(2), that Sunwest deceived K3B into executing the Forbearance Agreement or dismissing the First Case with a 180-day bar.

1. Execution of the Forbearance Agreement

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Under the Forbearance Agreement, Encino Towers promised to pledge the Sunset Residence as additional collateral to secure repayment of the Second Loan. Calkin Declaration, ¶ 11 and Exh. G thereto [doc. 69]. Behnam alleges that Sunwest deceived him into signing the Forbearance Agreement. However, Behnam did not execute the Forbearance Agreement; Kaysan did. Forbearance Agreement, p. 8, Exh. G to the Calkin Declaration. Moreover, Kaysan's testimony belies Behnam's representations. *See* September 2023 Kaysan Declaration, ¶¶ 11-15 [Encino Case, doc. 80]. Rather, it is apparent that Kaysan, reluctantly but willingly, executed the Forbearance Agreement to prevent a notice of default from being recorded against the Encino Office Building, which could have affected its potential sale price. *See id.*

2. The First Case

a. Events Preceding the First Case

The Loan Documents were executed well before K3B filed its first chapter 11 petition. *See* Exhs. A-F to the Calkin Declaration. The Forbearance Agreement, which also was executed before K3B filed its first chapter 11 petition, provided that Sunwest could, in the event of a default, foreclose on either the Encino Office Building or the Sunset Residence, or both. *See* Forbearance Agreement, pp. 3-5.

K3B knew, or should have known, that Sunwest could foreclose on the Encino Office Building and/or the Sunset Residence after the dismissal of the First Case and the Encino Towers Case. Kaysan, as K3B's managing member, expressly agreed in the Loan Documents that Sunwest may foreclose on the Encino Office Building upon an event of default. Exhs. E and F to the Calkin Declaration. Moreover, Kaysan, as K3B's managing member, expressly agreed in the Forbearance Agreement that Sunwest may foreclose on the Sunset Residence upon an event of default. Exh. G to the Calkin Declaration.

The evidence demonstrates that multiple events of default occurred: Encino Towers did not payoff the Second Loan when it matured on December 1, 2021. Calkin Declaration, ¶ 10 and Exh. D thereto. Encino Towers did not timely accept the highest offer submitted to purchase the Encino Office Building. *Id.*, ¶ 12. Neither Encino Towers nor K3B paid property taxes on the Sunset Residence. *See* Transcript, Exh. 9 to the Jurich Declaration, pp. 12-13 and 17-18 [doc. 70]; *see also* Calkin Declaration,

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¶¶ 13 and 23. In June 2023, Sunwest filed the Foreclosure Action, and notices of default were recorded against the Encino Property and the Sunset Property. Calkin Declaration, ¶¶ 14-15 and Exh. I thereto.

This evidence does not constitute facts or information that was unknown or inaccessible when K3B consented to the entry of the K3B Dismissal Order. Moreover, when it consented to entry of the K3B Dismissal Order, K3B was represented by counsel.

Behnam's contention that he believed Sunwest would not exercise a remedy explicitly provided for in the Forbearance Agreement, namely, that it could foreclose on the Encino Office Building and/or the Sunset Residence in the event of a default, is not credible. Also, contrary to K3B's contention, the copies of text messages included as exhibits to the April Benham Declaration do not demonstrate any intent by Sunwest to deceive Benham or Kaysan regarding the legal impact of the prepetition Forbearance Agreement.

b. Events After the First Case Was Dismissed

To the extent that K3B seeks relief based on events which arose after the Court entered the K3B Dismissal Order, i.e., that: (1) K3B was unable to come current on its obligations to Sunwest; (2) Sunwest subsequently foreclosed on the Encino Office Building; and (3) Sunwest later sought to foreclose on the Sunset Residence, in accordance with the Forbearance Agreement, these events cannot be the basis of relief under Rule 60(b)(2). *See Yurok Tribe*, 319 F.Supp. 3d at 1176. [FN 4].

Furthermore, Behnam's representation that he believed Sunwest would not exercise a remedy set forth in the Forbearance Agreement, namely, that it could foreclose on the Encino Office Building and/or the Sunset Residence in the event of a default, is not credible. Also, contrary to K3B's contention, the copies of text messages included as exhibits to the April Benham Declaration do not demonstrate any intent by Sunwest to deceive Benham or Kaysan regarding the legal impact of the prepetition Forbearance Agreement.

B. Rule 60(b)(6)

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K3B has not shown any other reason justifying relief from the K3B Dismissal Order. In addition, K3B has not demonstrated extraordinary circumstances beyond its control which prevented it from challenging the K3B Dismissal Order, to which it consented, or from protecting its interest in the Encino Office Building or the Sunset Residence.

As discussed above, after the K3B Dismissal Order was entered and the First Case was dismissed, K3B did not cure the defaults under the Second Loan to Sunwest. K3B's contentions that Sunwest's exercise of its contractual rights under the Loan Documents and the Forbearance Agreement is inequitable and in contravention of the Bankruptcy Code are unconvincing. Moreover, the TRO and the Preliminary Injunction do not demonstrate a finding by the state court that K3B was likely to prevail on the merits; the Preliminary Injunction required K3B to post a bond by March 11, 2024. K3B did not do so. *See* Exh. B to the Apollo Declaration; Calkin Declaration, ¶ 21.

After K3B did not timely post the bond, on March 13, 2024, Sunwest requested that the state court dissolve the Preliminary Injunction. Calkin Declaration, ¶ 21. The next day, K3B filed the Second Case. On March 18, 2024, K3B filed the Motion to Reconsider. It is apparent that K3B filed the Second Case and the Motion to Reconsider because, as a result of K3B's failure to post the required bond, the state court was likely to dissolve the Preliminary Injunction. These circumstances do not justify relief from the K3B Dismissal Order under Rule 60(b)(6).

IV. CONCLUSION

The Court will deny the Motion to Reconsider.

Sunwest must submit the order within seven (7) days.

FOOTNOTES

FN 1: When K3B filed its chapter 11 petition, the Encino Office Building was owned by K3B's affiliate, Encino Towers, LLC. Concurrently with K3B, Encino Towers, LLC also filed a chapter 11 petition, initiating case no. 1:23-bk-10965-VK. Kaysan signed the voluntary petition as the managing member of Encino Towers, LLC. In its list of equity security holders, Encino Towers,

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LLC also identified Kaysan as a 100% equity interest holder [Case No. 1:23-bk-10965-VK, doc. 1]. *See also* Declaration of Kaysan Ghasseminejad, filed August 9, 2023, ¶¶ 4-5 [doc. 22].

- FN 2: 9996 Sunset Loan Acquisition, LLC has acquired Preferred Bank's two loans, secured by the first and second deeds of trust against the Sunset Residence. *See* Declaration of Adam Phillips, Second Case, doc. 21-2, ¶¶ 28-31.
- FN 3: On February 2, 2024, in an apparent attempt to prevent Sunwest's foreclosure of the Encino Office Building, Behnam apparently executed a grant deed conveying title to that property from Encino Towers to 20 E. Mariposa St., LLC ("Mariposa"). *See* Exh. 13 to McWhorter Declaration [doc. 69]. That day, Mariposa filed a chapter 11 petition, initiating case no. 2:24-bk-10833-SK (the "Mariposa Case"). Exh. 14 to McWhorter Declaration. Behnam executed the voluntary petition for Mariposa as its member. *Id.* On February 5, 2024, notice of the Mariposa Case was sent to Sunwest's attorney with a request to "stop the Trustee Sale." McWhorter Declaration, ¶ 6 and Exh. 13 thereto. Despite Benham's efforts to preclude the foreclosure sale through a transfer of the Encino Office Building and another bankruptcy filing, on February 5, 2024, the Court entered an order dismissing the Mariposa Case. Exh. 15 to McWhorter Declaration.
- FN 4: K3B's contention that Sunwest made an improperly low credit bid to obtain title to the Encino Office Building is unpersuasive. Under California law, a creditor can bid for real property "at a nonjudicial foreclosure sale in an amount less than the total amount due." *Dreyfuss v. Union Bank of Cal.*, 24 Cal.4th 400, 411 (2000). Because Sunwest bid its debt under the Second Loan, following the foreclosure sale, the Encino Office Building remains subject to any debt secured by the First Loan, as well as any other senior secured obligations, e.g., any unpaid property taxes.

Party Information

Debtor(s):

K3B Enterprises LLC

Represented By
Matthew D. Resnik

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Roksana D. Moradi-Brovia
Katherine Bunker
Giovanni Orantes

Movant(s):

K3B Enterprises LLC

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia
Katherine Bunker
Giovanni Orantes

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1:24-10171 Vanessa Francesca Pattillo

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#3.02 Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees

Docket 0

Tentative Ruling:

The Court will order attorney Isaac G. Dillon disgorge \$2,000 to the debtor.

I. BACKGROUND

On February 1, 2024, Vanessa Francesca Pattillo ("Debtor") filed a chapter 13 petition. Debtor's section 341(a) meeting of creditors was scheduled for March 27, 2024 at 11:00 a.m. *See* doc. 2.

On February 28, 2024, Debtor filed her schedules and statement of financial affairs, including a disclosure of compensation of attorney for debtor (the "Disclosure of Compensation") [doc. 13]. The Disclosure of Compensation was signed and certified by the debtor's counsel, Isaac G. Dillon.

In the Disclosure of Compensation, Mr. Dillon stated that: (1) he agreed to accept \$5,000.00 for legal services in connection with this case; (2) he received \$2,000.00 prior to the filing of the Disclosure of Compensation; and (3) Debtor owes a remaining balance of \$3,000.00. In addition, in the Disclosure of Compensation, Mr. Dillon stated that, in return for the agreed-upon legal fee, Mr. Dillon agreed to render legal service for all aspects of the bankruptcy case, including "[r]epresentation of the debtor at the meeting of creditors and confirmation hearing[.]"

On March 27, 2024, Debtor attended the meeting of creditors. Mr. Dillon did not appear. *See* Declaration of Vanessa Pattillo (the "Pattillo Declaration") [doc. 30].

On April 9, 2024 at 9:30 a.m., the Court conducted a chapter 13 plan confirmation hearing in this case. Debtor appeared at the confirmation hearing; Mr. Dillon did not. *See* Pattillo Declaration. At the confirmation hearing, Debtor stated that she has provided payments to Mr. Dillon, as of April 1, 2024, in an aggregate amount greater than that set forth in the Disclosure of Compensation.[FN 1] In addition, Debtor

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represented that Mr. Dillon did not advise her as to what her obligations were to maintain a chapter 13 bankruptcy case.

On April 10, 2024, the Court converted this case to case under chapter 7 [doc. 22]. The same day, the Court issued its *Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees* [doc. 24], for Mr. Dillon's failure to appear at Debtor's meeting of creditors and the chapter 13 plan confirmation hearing.

On April 14, 2024, Mr. Dillon filed his declaration (the "Dillon Declaration") [doc. 33]. In his declaration, Mr. Dillon states:

I was retained in this matter. I was paid \$2,000 by Ms. Pattillo.

...

I was 15 minutes late to the first hearing and I did mix up the second 11 a.m. and 1 p.m. on my calendar for the second hearing.

...

I acknowledge my failure to timely appear in two consecutive hearings is highly unprofessional and I humbly apologize to the Trustee, Creditors, the Court, and Ms. Pattillo.

Dillon Declaration, ¶¶ 1, 13 and 17.

II. APPLICABLE AUTHORITY

Pursuant to 11 U.S.C. § 329—

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

- (b) If such compensation exceeds the reasonable value of any such

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services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

(1) the estate, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

Pursuant to 11 U.S.C. § 330(a)(3)—

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary

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compensation charged by comparably skilled practitioners in cases other than cases under this title.

"[A] bankruptcy court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements of [§§ 327, 329, 330, 331]." *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997). Aside from ordering disgorgement as a result of counsel's failure to comply with the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, the Court also has discretion to order the return of excess compensation when compensation received by the debtor's counsel exceeds the reasonable value of services rendered. 11 U.S.C. § 329(b); *see also In re Spickelmier*, 469 B.R. 903, 914 (Bankr. D. Nev. 2012) (finding that counsel for the debtor demonstrated "a lack of competence and diligence" which did "not deserve to be compensated").

"Services charged by a debtor's attorney which are of poor quality and/or which do not comply with the attorney's ethical duties are not reasonable and provide grounds for disgorgement of fees for purposes of § 329(b)." *In re Smith*, 436 B.R. 476, 483 (Bankr. N.D. Ohio 2010). "Improper conduct on the part of...attorneys has frequently been penalized by withholding compensation or reimbursement or both." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 844 (Bankr. C.D. Cal. 1991) (citing *In re Rancho Motor Inn, Inc.*, 527 F.2d 1044, 1047 (9th Cir. 1975)).

III. ANALYSIS

In the Disclosure of Compensation, Mr. Dillon agreed to render legal service for all aspects of Debtor's chapter 13 case, including representation of Debtor at the meeting of creditors and the plan confirmation hearing. Mr. Dillon has admitted that he did not attend Debtor's meeting of creditors or the plan confirmation hearing. Moreover, Mr. Dillon apparently did not advise Debtor as to what her obligations were in a chapter 13 bankruptcy case, and she did not make the required payments under her chapter 13 plan. After the confirmation hearing, Debtor's case was converted to one under chapter 7.

Mr. Dillon's services were not necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, this case. Consequently, the compensation in the amount of \$2,000 that Mr. Dillon received

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exceeds the reasonable value of services rendered. *See* 11 U.S.C. §§ 329(b) and 330(a) (3)(C); *see also Spickelmier*, 469 B.R. at 914). In addition, by not attending the meeting of creditors or the confirmation hearing, the services Mr. Dillon are not reasonable and provide grounds for disgorgement of his fees. *See Smith*, 436 B.R. at 483.

IV. CONCLUSION

The Court will order Mr. Dillon to: (1) disgorge \$2,000 to Debtor; and (2) file a declaration, signed under penalty of perjury, stating that he has returned the \$2,000 to Debtor, with documentary evidence in support thereof, within fourteen (14) days of the entry of the order.

The Court will prepare the order.

FOOTNOTES

FN 1: **No later than May 9, 2024**, if Debtor paid more than \$2,000 to Mr. Dillon or his associates for services rendered or to be rendered in contemplation of or in connection with this bankruptcy case, Debtor must file and serve on Mr. Dillon a declaration, **signed under penalty of perjury** and supported by any documentary evidence, stating how much Debtor paid to Mr. Dillon, in total, when and to whom Debtor made each payment (if Debtor made such payments in installments) and the amount of each payment Debtor made.

Party Information

Debtor(s):

Vanessa Francesca Pattillo

Represented By
Isaac Dillon

Trustee(s):

Amy L Goldman (TR)

Pro Se

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#3.03 Isaac Dillon's Motion to Withdraw as Counsel For Debtor;
Request to Designate Address For Authorized Agent Pursuant to FRBP 2002(g)

Docket 33

Tentative Ruling:

The Court will deny the motion as moot. Pursuant to Local Bankruptcy Rule ("LBR") 2091-1(b)(1):

A consensual substitution of attorneys may be filed and served to substitute counsel without filing a motion when:

- (A) Replacing an Attorney with a Different Attorney. An entity or individual on whose behalf an attorney has appeared in any matter concerning the administration of the case, in one or more proceedings, or both, desires to substitute a different attorney in place of the former attorney; or
- (B) Unrepresented/Self-Represented Party Adding an Attorney. A previously unrepresented entity or self-represented individual desires to substitute an attorney employed to represent the entity or individual.

LBR 2091-1(b)(1). On April 16, 2024, the debtor filed a *Substitution of Attorney* [doc. 29], in which the debtor and Mr. Dillon agreed that the debtor would represent herself in pro per moving forward.

The Court will prepare the order.

Party Information

Debtor(s):

Vanessa Francesca Pattillo

Represented By
Isaac Dillon

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Movant(s):

Vanessa Francesca Pattillo

Represented By
Isaac Dillon
Isaac Dillon

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:24-10406 K3B Enterprises, LLC

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#4.00 Motion of 9996 Sunset Loan Acquisition, LLC for Appointment of a Chapter 11 Trustee

Docket 33

Tentative Ruling:

Deny. For the reasons stated in the U.S. Trustee's *Opposition to Motion of 9996 Sunset Loan Acquisition, LLC for Appointment of Chapter 11 Trustee* [doc. 45], the Court intends to dismiss this case with a 1-year bar. *See also* cal. no. 3.01.

The United States Trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

K3B Enterprises, LLC

Represented By
Giovanni Orantes

Movant(s):

9996 Sunset Loan Acquisition, LLC

Represented By
Lance N Jurich

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Chapter 11

#5.00 Emergency Motion Of Debtor For Interim And Final Orders To Borrow Money And To Grant Administrative Priority To Lender As Described Herein

Docket 66

Tentative Ruling:

The Court will deny the motion.

I. BACKGROUND

On March 6, 2024, Philmar Studios Inc ("Debtor") filed a chapter 11 petition. In its schedule G, Debtor does not disclose any executory contracts or unexpired leases. As of April 23, 2024, Debtor has not filed a monthly operating report.

In March 2024, 1032 N. Sycamore Owner, (LA), LLC ("Sycamore") filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 33], requesting relief to proceed with an unlawful detainer action against Debtor. The unlawful detainer proceeding was commenced in October 2023; at that time, Debtor's lease was in default, after Debtor had failed to pay monthly rent. Declaration of Markley Lumpkins, ¶¶ 5-6 [doc. 33].

In September 2023, Sycamore served on Debtor a Five-Day Notice to Pay Rent or Quit ("Notice to Quit"), which stated that the amount of due and unpaid rent from Debtor was approximately \$123,000. Exh. B to the RFS. On April 16, 2024, the Court entered its order granting the RFS Motion [docs. 65 and 76].

On April 10, 2024, Debtor filed the *Amended Emergency Motion of Debtor for Interim and Final Orders to Borrow Money and to Grant Administrative Priority to Lender as Described Herein* (the "Motion") [doc. 66]. The United States Trustee and creditor Patrizio Moi have opposed the Motion [docs. 85 and 86].

In the Motion, Debtor requests authority to borrow up to \$130,000 on a revolving basis to pay rent, payroll, and maintenance expenses. According to Debtor, it needs

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financing to pay its expenses, i.e., rent, payroll and maintenance. In particular, Debtor asserts that it needs financing to meet the deadline of having its post-petition rent current within 60 days of the petition.

The alleged terms of the proposed unsecured loan (the "Loan") are set forth in a document attached to the Motion as Exh. A. In support of the Motion, Debtor filed an amended declaration of its president Jeffrey Barnes ("Barnes Decl.") [doc. 67]. In his declaration, Mr. Barnes states, in relevant part:

Debtor now turns to a private lender (DJAMINN, B.V.) who is not an insider for the purpose of augmenting its cash position. DJAMINN, B.V. also sent money through LASE Enterprises, LLC. ("LASE") LASE is not an insider; rather it is owned by attorney Steven Burt. In the past Mr. Burt has represented Jabari McDavid.

Barnes Decl., ¶ 10.

Debtor contends that the Court should grant the Motion because: (1) Debtor will have working capital to fund its business; (2) the 7% proposed interest rate is favorable; (3) Debtor, in its reasonable exercise of business judgment recommends that the transaction be approved; and (4) Debtor can afford the monthly payments on the Loan, which would be approximately \$759. In addition, Debtor requests that a good faith finding be made as to the alleged lender DJAMINN B.V. (the "Lender").

II. DISCUSSION

Under Local Bankruptcy Rule ("LBR") 4001-2(a):

Each motion to obtain credit or to approve the use of cash collateral, debtor in possession financing, and/or cash management under 11 U.S.C. §§ 363 or 364, or related stipulation (collectively, "Financing Motion") must be accompanied by mandatory court-approved form F 4001-2.STMT.FINANCE.

The Motion is not accompanied by the mandatory court-approved form F 4001-2.STMT.FINANCE, as set forth in LBR 4001-2(a).

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"A trustee or DIP in a chapter 11 case may incur unsecured debt in the ordinary course of business that is allowable under § 503(b)(1)." *In re Villalobos*, 2011 WL 4485793, *6 (B.A.P. 9th Cir. Aug. 19, 2011); *see also* 11 U.S.C. § 364(a). "However, in order to incur unsecured debt outside the ordinary course of business, the trustee or DIP must seek bankruptcy court authorization after notice and a hearing." *Villalobos*, 2011 WL 4485793, at *6; *see also* 11 U.S.C. §§ 364(b), 1107(a).

Pursuant to 11 U.S.C. § 364(b), "[t]he court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense."

The standards for authorizing a [debtor-in-possession] to incur debt under section 364(b) so that it is allowable as an expense of administration under section 503(b)(1) are found in the latter section. Other than certain taxes and tax-related debt, 11 U.S.C. § 503(b)(1)(B), (C), only the 'actual, necessary costs and expenses of preserving the estate' are allowable as administrative expenses. 11 U.S.C. § 503(b)(1) (A).

In re Club Dev. & Management Corp., 27 B.R. 610, 611-12 (B.A.P. 9th Cir. 1982).

Here, the Motion does not contain include a budget regarding Debtor's anticipated costs associated with rent, payroll and maintenance. In addition, the Motion does not include information about Debtor's current cash on hand or future projected income. Without more information, the Court cannot determine whether the proposed expenses for which Debtor anticipates using the proceeds of the Loan represent actual, necessary costs and expenses needed to preserve the estate.

Moreover, Debtor has not provided any evidence that the Lender is agreeable to providing the Loan on the terms described in the Motion. Debtor has not provided any signed loan document, or other document, by the Lender. The document attached as Exh. A to the Motion has not been signed by Debtor or the alleged Lender.

Lastly, Debtor has not presented adequate evidence for the Court to determine the

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good faith of the alleged Lender. Mr. Barnes' statement in his declaration that the Lender "is not an insider for the purpose of augmenting its cash position" is insufficient. *See* Barnes Decl., ¶ 10. Given the lack of sufficient evidence about all of the Debtor's connections to the alleged Lender and to any insiders affiliated with the alleged Lender, the Court cannot make a good faith finding. Consequently, the Motion will be denied.

III. CONCLUSION

The Court will deny the Motion.

The United States Trustee must submit the order within seven (7) days.

FOOTNOTES

FN 1: 11 U.S.C. § 101(31)(B), if the debtor is a corporation, "[t]he term "insider" includes—(i) director of the debtor; (ii) officer of the debtor[.]"

Party Information

Debtor(s):

Philmar Studios Inc

Represented By
Robert M Yaspan

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#6.00 Order To Show Cause Re: Dismissal

Docket 1

Tentative Ruling:

Because the debtor lacks bankruptcy counsel, as required by Local Bankruptcy Rule ("LBR") 9011-2(a), the Court will dismiss this case.

On April 4, 2024, Philmar Studios Inc. ("Debtor") filed its *Application of Debtor-In-Possession for Authority to Retain the Law Offices of Robert M. Yaspan as General Counsel* (the "Application") [doc. 4]. On April 18, 2024, the Court entered its order denying the Application [doc. 78].

On April 19, 2024, the Court entered its *Order to Show Cause Re: Dismissal* (the "OSC") [doc. 80]. The OSC ordered an officer of Debtor and Debtor's counsel, if any, to appear at a hearing on April 25, 2024 at 1:30 p.m to show cause and explain why this case should not be dismissed as a result of Debtor's failure to appear with counsel as required by LBR 9011-2(a).

Pursuant to LBR 9011-2(a):

A corporation, a partnership including a limited liability partnership, a limited liability company, or any other unincorporated association, or a trust may not file a petition or otherwise appear without counsel in any case or proceeding, except that it may file a proof of claim, file or appear in support of an application for professional compensation, or file a reaffirmation agreement, if signed by an authorized representative of the entity.

LBR 9011-2(a). Given that the Court has denied the Application, and that Debtor is a corporation, Debtor cannot appear without counsel in this proceeding. As of April 23, 2024, Debtor has not filed another application to employ general bankruptcy counsel. Consequently, the Court will dismiss this case.

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The Court will prepare the order.

Party Information

Debtor(s):

Philmar Studios Inc

Represented By
Robert M Yaspan

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#7.00 Status conference Re: Chapter 11 case

Docket 1

Tentative Ruling:

See cal. no. 6.

Party Information

Debtor(s):

Philmar Studios Inc

Represented By
Robert M Yaspan