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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 17-25335-B-7
)
RAJPAL SINGH CHATHA and) DC No. NOS-014
TARANJIT KAUR CHATHA,)
)
)
)
Debtor(s).)

MEMORANDUM DECISION DENYING MOTION TO TRANSFER
HOTEL TO BANKRUPTCY ESTATEI.
Prefatory Comment

Although its origins are generally unknown, there is an old adage that one should never wrestle with a pig because you both get dirty and the pig enjoys it. See <https://quoteinvestigator.com/2017/07/08/pig/>. The court found this to be particularly appropriate and applicable during oral argument held on August 30, 2022. From bloviating lectures to the court on "basic American jurisprudence" to literal finger-pointing at the bench to verbally elevated oration, the court had the great misfortune of witnessing, with regret and disappointment, the generally belligerent, aggressive, and disrespectful courtroom demeanor by the Sacramento attorney who appeared and argued on behalf of Simmons Bank, an Arkansas state-chartered bank ("Simmons Bank"). These unfortunate traits place the Sacramento attorney below the standard this court expects from all attorneys who practice before it. They also

1 remind the court of the importance of judicial restraint and the
2 need to sometimes be overly-patient with some attorneys.

3 There is another old adage that every dog has its day. This
4 one is generally attributed to William Shakespeare's *Hamlet*. See
5 [https://stuntdog.wordpress.com/2009/02/27/origin-of-the-saying-ev](https://stuntdog.wordpress.com/2009/02/27/origin-of-the-saying-every-dog-has-its-day/)
6 [ery-dog-has-its-day/](https://stuntdog.wordpress.com/2009/02/27/origin-of-the-saying-every-dog-has-its-day/). This one applies here as well. The
7 Sacramento attorney who appeared and argued for Simmons Bank had
8 his day before this court on August 30, 2022. The attorney is
9 now on notice that similar belligerent, aggressive, and
10 disrespectful courtroom demeanor in another appearance before
11 this court will result in the immediate cessation of the matter
12 before it and an immediate commencement of contempt proceedings.
13

14 That said, the court now addresses the motion.

15
16 II.
 Introduction

17 Before the court is the *Trustee's Motion and Memorandum of*
18 *Points and Authorities to Approve Transfer of Texas Hotel to the*
19 *Chapter 7 Estate* filed by Douglas Whatley, in his capacity as the
20 chapter 7 trustee appointed in the above-captioned bankruptcy
21 case. Debtors Rajpal and Taranjit Chatha filed an opposition to
22 the motion.¹ Simmons Bank also filed an opposition to the
23 motion. The chapter 7 trustee filed replies.
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25 The court has reviewed the motion, oppositions, replies, and
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27 ¹Numerous individuals share the surname "Chatha." For
28 purposes of clarity, the court will refer to these individuals by
their first names. No disrespect is intended.

1 all related declarations and exhibits. The court has also
2 reviewed and takes judicial notice of the docket in the chapter 7
3 case and the dockets in the related adversary proceedings of
4 Whatley v. Chatha, et al., Adv. No. 18-02102 ("Whatley AP") and
5 Westates Holdings, LLC v. Chatha, et al, Adv. No. 17-02205
6 ("Westates AP"). See Fed. R. Evid. 201(c)(1). This specifically
7 includes judicial notice of the *First Amended & Restated Company*
8 *Agreement of March On Hospitality LLC*, dated June 2, 2015, which
9 the chapter 7 trustee filed as an additional Exhibit on August 9,
10 2022.² See Bankr. Docket 283, Ex. 6 at 36-70. Simmons Bank
11 concedes the exhibit is the governing operating agreement. See
12 Bankr. Docket 291 at 32:4-7 ("In response to this Court's Order
13 (Docket # 278), the Trustee produced Supplemental Exhibits which
14 confirm that the operative operating agreement for March On is
15 the First Amended & Restated Company Agreement of March On
16 Hospitality LLC dated June 2, 2015 ('MOH Operating Agreement').
17 Docket #283, pp. 36-70.")). Simmons Bank also relies on the
18 exhibit for a number of its arguments in the opposition. See Id.
19 at 32:2-33:28.³

21 The court heard oral argument on August 30, 2022.
22 Appearances were noted on the record.

23 This memorandum decision supplements the court's statements
24 made on the record in open court and constitutes the court's

26 ²References to "Article" throughout this memorandum decision
27 are references to the provisions of this operating agreement.

28 ³The parties' request for judicial notice is also granted.
See Bankr. Dockets 296, 327.

1 findings of fact and conclusions of law. See Fed. R. Civ. P.
2 52(a); Fed. R. Bankr. P. 7052, 9014(c). To the extent there are
3 any conflicts between the court's statements on the record and
4 this memorandum decision, this memorandum decision controls. See
5 Playmakers, LLC v. ESPN, Inc., 376 F.3d 894, 896 (9th Cir. 2004).
6 For the reasons explained below, the motion will be denied.⁴

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III.
General Background

The motion before the court concerns a La Quinta Inn and Suites located at 1503 Breckenridge Road, Mansfield, Texas, and its related personal property (collectively, the "Hotel"). The Hotel - and the interest in the entity that owns it - have been entangled in litigation in California and Texas since almost immediately after Rajpal and Taranjit filed this chapter 7 case on August 11, 2017. Over five years later, this court once again addresses issues arising out of and related to the Hotel and the entity that owns it.

As an initial matter, nobody disputes that the Hotel is currently owned by March On Hospitality, LLC, a Texas Limited Liability Company ("MOH"). According to the chapter 7 trustee, the Hotel is MOH's sole asset. See Bankr. Docket 265 at 6:24-26.

Additionally, nobody disputes that the chapter 7 trustee

⁴The evidentiary objections filed by Simmons Bank are overruled as moot and its motion to strike evidence is denied as moot. See Bankr. Docket 317. The evidentiary objections filed by the chapter 7 trustee are overruled and the motion to strike evidence is denied. See Bankr. Docket 328.

owns a 100% interest in MOH, that the chapter 7 trustee's interest in MOH is property of the bankruptcy estate, that the chapter 7 trustee is the Manager and sole member MOH, or that the chapter 7 trustee controls MOH and its assets through ownership of the 100% interest. Simmons Bank conceded these points in documents it filed earlier in the bankruptcy case and the court acknowledged the concession in an April 1, 2022, order which reads as follows:

As an initial matter, 'Simmons Bank does not dispute that the 100% membership interests [sic] in [MOH], now owned by [the chapter 7 t]rustee, is property of the bankruptcy estate, nor does Simmons Bank dispute that [the chapter 7 t]rustee, as the managing member of [MOH], controls [MOH].' Docket 223 at 9:20-22; see also Docket 226 at 3:12-13 ('Trustee now owns the 100% membership interest in [MOH], and now controls [MOH.]'). Simmons Bank also concedes that the chapter 7 '[t]rustee is already the Manager of non-debtor [MOH] and, acting in that capacity, is free to continue to operate [MOH] and its assets including the Hotel.' Dockets 223 at 12:19-20, 226 at 3:25-26.

Bankr. Docket 244 at 4:17-5:2. Simmons Bank makes similar concessions in its opposition. See Bankr. Docket 291 at 21:21-22, 28:19-29:4.

On these undisputed facts alone, nothing prevents or prohibits the chapter 7 trustee from causing MOH to sell the Hotel under Texas law. Indeed, the court previously determined as much in the April 1, 2022, order:

[T]he chapter 7 trustee may: (i) operate the Hotel as a function of his 'sole and exclusive' control and authority over MOH's assets; (ii) control the Hotel's finances as a function of its operation; (iii) determine whether to sell the Hotel; and (iv) sell the Hotel as a function of his 'sole and exclusive' authority to dispose of MOH's assets[.]

1 Bankr. Docket 244 at 7:2-7. Simmons Bank again concedes these
2 points in its opposition, the chapter 7 trustee's authority to
3 cause MOH to sell the Hotel in particular. See Bankr. Docket 291
4 at 12:4-6, 42:23-43:22.

5 The chapter 7 trustee has, however, elected to proceed
6 differently. Rather than cause MOH to sell the Hotel, the
7 chapter 7 trustee requests authorization to use his 100% interest
8 in MOH, and his status as MOH's Manager and sole member, to
9 transfer the Hotel to himself - and thence to the bankruptcy
10 estate - for purposes of selling the Hotel for over \$6.3 million
11 dollars under 11 U.S.C. § 363.⁵ To this end, on August 2, 2022,
12 the chapter 7 trustee adopted the following resolution in *Minutes*
13 *of a Special Meeting of Members & Managers of March On*
14 *Hospitality LLC, a Limited Liability Company*, which he signed as
15 MOH's Manager and sole member:
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17 The Chairman then reported that he received an offer
18 from a third party to purchase the Hotel. He intends
19 to transfer the Hotel to the Bankruptcy Estate and then
20 sell the Hotel, pending approval of the bankruptcy
21 court for the Eastern District of California
22 ("Bankruptcy Court"). The Trustee will use money
23 generated by the operation of the Hotel to pay any
24 non-disputed debts owed to unpaid creditors of the
25 Company and if this is insufficient, to use sale
26 proceeds from the sale of the Hotel to pay any
27 non-disputed debts owed to any unpaid creditors of the
28 Company. All remaining funds will be used to pay
administrative expenses of the Bankruptcy Estate or
distributed to creditors of the bankruptcy estate in
the priority of claims set forth in the Bankruptcy
Code.

27 ⁵The sale of the Hotel is the subject of a separate motion
28 also heard on August 30, 2022. See Bankr. Docket 270. Simmons
Bank also opposes the sale motion. See Bankr. Docket 303.

1 Bankr. Docket 283 at 128-29.

2 Rajpal and Taranjit oppose the transfer of the Hotel to the
3 estate. Notably, their opposition does not provide any argument
4 as to why the Hotel could not be transferred. Instead, it merely
5 speculates as to what might happen if the Hotel is transferred.
6 The opposition, however, is not supported by a declaration or any
7 other admissible evidence and the unsupported and unsubstantiated
8 statements by Rajpal's and Taranjit's attorney in the opposition
9 itself are not evidence of anything, much less any perceived
10 consequences of the transfer. Singh v. INS, 213 F.3d 1050, 1054
11 n.8 (9th Cir. 2000).

12 Simmons Bank also opposes the transfer of the Hotel to the
13 estate. It objects to the transfer on the basis that the Hotel
14 is not property of the estate and therefore cannot be sold under
15 11 U.S.C. § 363. It asserts that the transfer adversely affects
16 a disputed lien it claims on the Hotel notwithstanding that any
17 lien, whatever its extent, would transfer to proceeds from the §
18 363 sale of the Hotel. It also asserts that the transfer of the
19 Hotel from MOH to the estate violates Texas law and the MOH
20 operating agreement.
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23 IV.

24 Factual and Procedural Background

25 Rajpal formed Chatha Hospitality LLC, a Texas Limited
26 Liability Company, as the Manager and sole member, in 2007. The
27 entity was later renamed Brightside Hospitality LLC, a Texas
28 Limited Liability Company ("Brightside"). Brightside acquired

1 the Hotel in 2008. Brightside's name was changed to MOH during
2 its 2014 chapter 11 case filed in the Northern District of Texas.
3 Brightside's chapter 11 case resulted in the confirmation of an
4 amended chapter 11 plan on June 1, 2015.

5 Rajpal initially claimed that he transferred his interest in
6 MOH to Simranjit in 2015 through Brightside's confirmed amended
7 chapter 11 plan. The court determined otherwise after a trial in
8 the Whatley AP. More precisely, the court determined that Rajpal
9 sold his interest in MOH to Simranjit in January 2018 and, thus,
10 Rajpal transferred the interest to Simranjit several months after
11 Rajpal and Taranjit filed their chapter 7 petition on August 11,
12 2017.⁶ See Whatley AP Docket 506 at 22:24-23:15.

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14 As to the Hotel, several months before Rajpal actually sold
15 his interest in MOH to Simranjit, Simranjit apparently
16 transferred it to an entity he owned, Summerfest Hospitality LLC,
17 a Texas Limited Liability Company ("Summerfest"), pursuant to an
18 August 7, 2017, General Warranty Deed which he purported to sign
19 as MOH's Manager. Immediately thereafter, Simranjit caused
20 Summerfest to obtain a \$2.5 million dollar loan from Simmons

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22 ⁶In addition to other overwhelming evidence, Simranjit
23 admitted in his direct testimony declaration that Rajpal did not
24 sell him the interest in MOH until January 2018. More precisely,
25 Simranjit admitted that the documents which transferred Rajpal's
26 interest in MOH to him were prepared at his request by Texas
27 attorney Karen Schroeder in December 2017 and were signed in
28 early January 2018. See Direct Testimony Declaration of
Simranjit Chatha [Rule 9017] signed and dated "July __, 2021," at
¶¶ 30, 31. Rajpal corroborated Simranjit's admissions in his own
direct testimony declaration. See Direct Testimony Declaration
of Rajpal Chatha [Rule 9017] signed and dated "July __, 2021," at
¶ 12.

1 Bank's predecessor and encumbered the Hotel with a deed of trust
2 to secure the loan. Loan proceeds were used to pay approximately
3 \$2 million dollars of then existing debt for which the Hotel then
4 served as collateral.

5 Transfers of the MOH interest and the Hotel were addressed
6 in the Whatley AP. The court entered a decision in the Whatley
7 AP on August 9, 2021.⁷ Among other things, the court avoided the
8 transfer of Rajpal's interest in MOH to Simranjit under 11 U.S.C.
9 § 549 (Whatley AP Docket 506 at ¶ 51, 508 at 1:27-2:4), ordered
10 the chapter 7 trustee to recover Rajpal's interest in MOH and its
11 assets from Simranjit (Whatley AP Docket 506 at ¶ 55, 508 at 2:4-
12 9), ordered the Chapter 7 trustee to recover the Hotel from
13 Summerfest for the benefit of MOH (Whatley AP Docket 506 at ¶ 56,
14 508 at 2:26-3:6), and invalidated the August 7, 2017, General
15 Warranty Deed (Whatley AP Docket 506 at ¶¶ 52-53, 508 at 2:26-
16 3:6).⁸

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19 ⁷The entirety of the decision in the Whatley AP includes the
20 following: (1) a *Findings of Fact and Conclusions of Law After*
21 *Trial*, Whatley AP Docket 506; an *Order on Findings of Fact and*
Conclusions of Law After Trial, Whatley AP Docket 508; and (3) a
Judgment, Whatley AP Docket 510.

22 ⁸Because it was not a party to the action, as it reminds
23 everyone *ad nauseam*, Simmons Bank is critical of the court for
24 invalidating the August 7, 2017, General Warranty Deed on the
25 basis that Rajpal did not transfer his interest in MOH to
26 Simranjit until January 2018 and therefore Simranjit lacked
27 authority to sign the document as MOH's Manager on August 7,
28 2017. At the same time, Simmons Bank recognizes that the MOH
interest transferred from Rajpal to Simranjit postpetition
inasmuch as it acknowledges that avoidance and recovery were
appropriate but, at least in its view, may have gone too far with
regard to the General Warranty Deed. See e.g., Bankr. Docket 291
at 44 & n.13 ("The most that should have happened [under § 549

1 In any event, shortly after the court entered its decision
2 in the Whatley AP, the chapter 7 trustee recovered the interest
3 in MOH from Simranjit. And pursuant to a *Settlement Agreement*
4 which the court approved on November 3, 2021, the chapter 7
5 trustee caused MOH to recover the Hotel from Summerfest. See
6 Bankr. Dockets 148, 151 at Ex. 1,164, 166. With regard to the
7 latter, whether through the *Settlement Agreement* or recovery in
8 the Whatley AP, the Hotel is now owned by MOH.

9
10 V.

11 Jurisdiction and Venue

12 The court has jurisdiction over this matter pursuant to 28
13 U.S.C. §§ 157 and 1334. This is a core proceeding under 11

14
15 and 550] was for the Court to order Rajpal's 100% membership
16 interest in March On be returned to the estate.").

17 Simmons Bank's criticism is also somewhat disingenuous.
18 Southwest Bank apparently merged into Simmons Bank in or around
19 February 2018. See Bankr. Docket 294 at 2:5-7. Sometime in late
20 2018 or early 2019 Southwest Bank, or perhaps Simmons Bank at the
21 time, produced Hotel and Summerfest loan documents, the General
22 Warranty Deed included, in response to a subpoena. See Whatley
23 AP Docket 30 at ¶¶ 25, 29. On notice that significant real
24 property it claims is collateral for a \$2.5 million dollar loan
25 was involved in a bankruptcy case and/or litigation in a
26 bankruptcy court, Simmons Bank apparently did nothing to
27 investigate the proceedings to which the subpoena related. By
28 its overwhelmingly aggressive stance during oral argument that
the subpoena raised no red flags, Simmons Bank appeared to
confirm this. Doing nothing to investigate the subpoena seems to
run contrary to the deed of trust pursuant to which Simmons Bank
claims a lien on the Hotel- a deed of trust which Simmons Bank no
doubt prepared or provided in the loan process. The deed of
trust contemplates that Simmons Bank will take all necessary
steps to protect its interest in the Hotel, including the
prosecution or defense of litigation and the settlement or
compromise of claims made against the interest claimed in the
Hotel. See Bankr. Docket 298 at Ex. 3, ¶ 3.2(j).

1 U.S.C. §§ 157(b)(2)(A), (M), and (O). The court also has full
2 constitutional and statutory authority to determine the extent to
3 which a chapter 7 trustee may use a 100% interest in a debtor's
4 nondebtor limited liability company under 11 U.S.C. § 363(b) and
5 the operating agreement to exercise control over the nondebtor
6 entity and its assets. Ronald Tutor and Zelus, LLC v. Durkin (In
7 re R2D2, LLC), 591 Fed.Appx. 539 (9th Cir. 2015).

8 Venue is proper under 28 U.S.C. §§ 1408 and 1409.

9
10 VI.
11 Analysis

12 Because an entity and its owner(s) are separate and
13 distinct, ownership of an interest in an entity is not ownership
14 of the entity's assets. Dole Food Co. v. Patrickson, 538 U.S.
15 468, 474-75 (2003); U.S. v. Bennett, 621 F.3d 1136-37 (9th Cir.
16 2010). The same applies under Texas law. See Tex. Bus. & Org.
17 § 101.106(b); RLI Ins. Co. v. Caliente Oil, Inc., 469 F. Supp. 3d
18 729, 739-40 (W.D. Tex. 2020); Pajooch v. Royal Western Invest.
19 LLC, Series E, 518 S.W.3d 557, 565 (2017). That means when an
20 individual who owns an interest in an entity files a bankruptcy
21 petition only the interest in the entity, and not the entity's
22 assets, become part of the individual's bankruptcy estate under
23 11 U.S.C. § 541(a)(1). Fursman v. Ulrich (In re First
24 Protection, Inc.), 440 B.R. 821, 830 (9th Cir. BAP 2010); In re
25 Shapow, 599 B.R. 51, 71 (Bankr. C.D. Cal. 2019); see also In re
26 DeVries, 2014 WL 4294540 at *12 (Bankr. N.D. Tex. Aug. 27, 2014).

27 Applying the foregoing principles here leads to the
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1 unremarkable conclusion that the chapter 7 trustee, as the
2 successor to Rajpal's interest in MOH, and MOH, a Texas limited
3 liability company, are separate and distinct. That distinction
4 means the chapter 7 trustee owns the interest in MOH but not the
5 Hotel. That distinction also means the interest in MOH that the
6 chapter 7 trustee owns is property of the bankruptcy estate and
7 the Hotel is not.⁹ In reaching these conclusions, the court
8 rejects the chapter 7 trustee's argument that the Hotel is
9 already property of the estate for three reasons.

10 First, the chapter 7 trustee acknowledges that the Hotel is
11 not currently property of the estate. In the reply to Simmons
12 Bank's opposition to the sale motion, the chapter 7 trustee
13 states that "[o]nce the Hotel is property of the Estate, the
14 Trustee intends to offer adequate protection to Simmons[.]"
15 Bankr. Docket 334 at 4:17-18. The inference is that adequate
16 protection was not previously offered because the Hotel is not
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18 ⁹The court does not need an adversary proceeding to conclude
19 that the Hotel is not property of the estate. Whether property
20 is estate property may be determined in a contested matter when
21 the determination involves undisputed facts which the parties
22 have had multiple opportunities to address and the determination
23 results in no prejudice. See Starky v. Birdsell (In re Starky),
24 522 B.R. 220, 228-29 (9th Cir. BAP 2014). The determination here
25 is based on the undisputed fact that the Hotel is owned by a
26 nondebtor entity. In addition to the present motion, the issue
27 has been raised and argued four times. See also DCN NOS-12, DCN
28 NOS-13, and DCN BJ-1. The chapter 7 trustee raises the issue in
the present motion and also notes that the court will
dispositively decide the issue in the context of the present
motion. See Bankr. Docket 334 at 5:26-28 ("The outcome of the
Transfer Motion will determine dispositively, whether the Hotel is
property of the Estate[.]"). The court's decision obviously
benefits Simmons Bank. The court is therefore hard-pressed to
find that either party is prejudiced under these circumstances.

1 property of the estate and adequate protection is necessary only
2 when the Hotel becomes estate property. See 11 U.S.C. § 363(e)
3 (adequate protection required for use or sale of property of the
4 estate).

5 Second, if the Hotel was already property of the estate
6 there would be no need for the chapter 7 trustee to request
7 authorization to use his 100% interest in MOH to transfer it to
8 the estate. Viewed in this context, the present motion is either
9 a request for an advisory opinion or a so-called "comfort order."
10 See Bankr. Docket 265 at 8:13 ("This is a situation where it is
11 better to ask permission rather than forgiveness."). The former
12 are constitutionally prohibited. See Coalition for a Healthy
13 California v. F.C.C., 87 F.3d 383, 386 (9th Cir. 1996). And this
14 court does not issue the latter. See e.g., In re NIR West Coast,
15 Inc., dba Northern California Roofing, 2021 WL 27407 at *2
16 (Bankr. E.D. Cal. Jan. 4, 2021); see also Bankr. Docket 229.

17 Third, the chapter 7 trustee's reliance on 11 U.S.C. §
18 541(a)(3) to capture the Hotel as estate property through the
19 Whatley AP is misplaced. See Docket 265 at 7:15-17. Section
20 541(a)(3) provides that property recovered by the estate through
21 a transfer avoided under 11 U.S.C. § 549(a) becomes property of
22 the estate. See 11 U.S.C. § 541(a)(3). The flaw in the chapter
23 7 trustee's analysis is the assumption that the court ordered the
24 Hotel recovered by the estate or for the estate's benefit in the
25 Whatley AP. It did not. The court ordered the chapter 7 trustee
26 to recover the Hotel for the benefit of MOH.
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1 The court addressed the recovery of the Hotel in paragraph
2 56 of the findings of fact and conclusions of law which states
3 that "[t]o the extent the Hotel is in the possession, custody, or
4 control of Summerfest, or Summerfest exerts dominion over the
5 Hotel, plaintiff, in his capacity as the trustee appointed in the
6 parent chapter 7 case, will recover the Hotel from Summerfest[.]"
7 Whatley AP Docket 506 at 25:2-6. But paragraph 56 of the
8 findings of fact and conclusions of law must be read in
9 conjunction with the order entered on the findings of fact and
10 conclusions of law which, with regard to recovery of the Hotel,
11 expressly states that "plaintiff, on Brightside's behalf, will
12 recover the Hotel from Summerfest[.]" Whatley AP Docket 508 at
13 3:2-3 (emphasis added).
14

15 Equally misplaced is the chapter 7 trustee's reliance on
16 paragraph 55 of the findings of fact and conclusions of law which
17 states that "[p]laintiff, in his capacity as the trustee
18 appointed in the parent chapter 7 case, will recover Rajpal's
19 interest in Brightside and its assets . . . from Simranjit[.]"
20 Whatley AP Docket 506 at 24:15-17. Not only are paragraph 56 of
21 the findings of fact and conclusions of law and the corresponding
22 order more specific as to the recovery of the Hotel, but the
23 Hotel could not be recovered from Simranjit because Simranjit
24 never owned it. Nor, for that matter, did Rajpal ever own it.
25 And to the extent the recovery is of the interest and its assets,
26 the assets recoverable from Simranjit can only be understood to
27 mean those associated with the MOH interest, i.e., the managerial
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1 and economic rights associated with the interest which are assets
2 of the bankruptcy estate.

3 In any case, this all may be largely academic because at the
4 end of the day the chapter 7 trustee did not appeal any aspect of
5 the decision entered in the Whatley AP. In fact, he effectively
6 ratified the recovery of the Hotel for MOH's benefit as was
7 ordered by implementing the recovery through the *Settlement*
8 *Agreement* pursuant to which Summerfest transferred the Hotel to
9 MOH. See Bankr. Docket 265 at 5:27-6:2 ("In compliance with the
10 Court's decision in the Adversary Proceeding, on or about August
11 26, 2021, Simranjit Chatha executed documents whereby Summerfest
12 transferred title to the Texas Hotel to March On.").

13 The point of all this is that MOH owns the Hotel. And while
14 the chapter 7 trustee owns 100% of the interest in MOH, ownership
15 of that interest does not give the estate ownership of assets
16 that MOH owns- the Hotel in particular. For these reasons, the
17 court reiterates its conclusion stated hereinabove that the Hotel
18 is not property of the estate in the bankruptcy case. That means
19 there is no basis to sell the Hotel under 11 U.S.C. § 363 which
20 limits the chapter 7 trustee's ability to sell property to
21 property of the estate. See 11 U.S.C. § 363(b). And without a
22 basis to sell the Hotel under § 363, the reason for transferring
23 the Hotel to the estate vanishes.
24

25 But the analysis does not end there because the chapter 7
26 trustee seeks to make the Hotel estate property under 11 U.S.C. §
27 541(a)(7) through the transfer of the Hotel to himself and thence
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1 the estate. See Bankr. Docket 334 at 5:21-23 (citing §
2 547(a)(7)); see also Id. at 4:17 ("Once the Hotel is property of
3 the estate[.]"). The fundamental question then is whether the
4 chapter 7 trustee can use the 100% interest in MOH, and his
5 status as MOH's Manager and sole member, to acquire the Hotel for
6 the estate through the transfer. Although the concept is not
7 implausible, the requirements to do so are not satisfied here.

8 By virtue of his 100% interest in the entity, the chapter 7
9 trustee has complete control over MOH and its assets. Fursman,
10 440 B.R. at 830. Indeed, as the district court explained in
11 Schwartz v. Cleveland (In re Cleveland), 519 B.R. 304 (D. Nev.
12 2014):

13 Numerous bankruptcy courts have held, and the Court
14 agrees, that where a debtor has a membership interest
15 in a single-member LLC and files a petition for
16 bankruptcy under Chapter 7, the Chapter 7 trustee
17 succeeds to all of the debtor's rights, including the
18 right to control that entity, and a trustee need not
19 take any further action to comply with state law before
20 exercising such control.

21 Id. at 306. As noted above, Simmons Bank does not dispute these
22 points.

23 There is also authority for the proposition that a chapter 7
24 trustee who controls a debtor's nondebtor limited liability
25 company through the ownership of a 100% interest in the entity
26 may use the interest to transfer the entity's assets to the
27 estate. For example, in In re Albright, 291 B.R. 538 (Bankr. D.
28 Col. 2003), the bankruptcy court concluded that a chapter 7
trustee could use his 100% interest as the Manager and sole
member of the debtor's nondebtor entity to sell the entity's

1 property and distribute the net proceeds or, alternatively,
2 distribute the entity's property to the bankruptcy estate and, in
3 turn, liquidate the property himself. Id. at 541-42.

4 The district court reached a similar conclusion in Cleveland
5 which arose in the context of the chapter 7 trustee's objection
6 to the debtors' claim of an exemption in two limited liability
7 companies owned 100% by the debtors. Although the bankruptcy
8 court ruled that the debtors' membership and managerial interest
9 in their nondebtor limited liability companies were property of
10 the estate, it also concluded that "the trustee has no right to
11 sell or otherwise take ownership of any assets of [the limited
12 liability] companies[.]" Cleveland, 519 B.R. at 306. The
13 chapter 7 trustee appealed. Id. On appeal, the Nevada district
14 court reversed and remanded, concluding that "the Bankruptcy
15 Court erred in holding that [the chapter 7 trustee] 'has no right
16 to sell or otherwise take ownership of any assets of '[the
17 debtors]' LLCs. Appellant, as the trustee of the bankruptcy
18 estate, has the right to sell or otherwise take ownership of any
19 assets of [the debtors'] LLCs.". Id. at 307.

21 Albright and Cleveland are not helpful here. And they are
22 not persuasive.

23 The problem with Albright is that the distribution of
24 property owned by the debtor's nondebtor entity so that the
25 chapter 7 trustee could sell it in the individual's bankruptcy
26 case suggested as an alternative to a distribution of net
27 proceeds from a sale of the property by the debtor's nondebtor
28

1 entity is referenced in the context of a "dissolution." In other
2 words, distribution could only occur through a process that
3 complied with state law. As discussed below, this is not the
4 case here.

5 The bigger problem with Albright and Cleveland is that
6 neither considered nor analyzed the respective trustee's
7 authority to control the debtors' nondebtor entities or their
8 assets under the applicable operating agreements. Review of an
9 operating agreement is critical because even if a trustee owns a
10 100% interest in a debtor's nondebtor entity the extent of the
11 trustee's authority over the entity and its assets is defined and
12 limited by the operating agreement. Davis v. Ogletree (In re
13 Ogletree), 2020 WL 6557434 at *4 (9th Cir. BAP Nov. 4, 2020)
14 ("But the rights to which the trustee succeeds are defined and
15 limited by the LLC's operating agreement. A chapter 7 trustee
16 would step into [the debtor's] shoes and assume only the rights
17 she had under the operating agreement."); see also DeVries, 2014
18 WL 4294540 at *12 ("Thus, when a member of a limited liability
19 company files for bankruptcy, his or her interest in the LLC, and
20 *any rights he or she has under the LLC's operating agreement,*
21 *become property of the estate.*" (Emphasis added)). The Ninth
22 Circuit's decision in In re R2D2, supra, illustrates this point.

24 In R2D2, the Ninth Circuit concluded that a bankruptcy court
25 has full constitutional and statutory authority to determine and
26 delineate the extent to which a bankruptcy trustee vested with a
27 100% interest in the debtor's nondebtor limited liability company
28

1 may use the interest as property of the estate under 11 U.S.C. §
2 363 consistent with the entity's operating agreement. R2D2, 591
3 Fed.Appx. at 542. The Ninth Circuit also concluded that the
4 bankruptcy court properly looked to the entity's operating
5 agreement to determine whether the chapter 11 trustee who owned
6 the 100% interest in the debtor's limited liability company could
7 use the interest to exercise control over the entity and its
8 assets by removing the manager and placing the entity into its
9 own bankruptcy case. Id.

10 Article 6.01 gives the chapter 7 trustee, as Manager, "sole
11 and exclusive" authority over MOH and its assets. In an attempt
12 to reconcile the transfer of the Hotel to the estate with that
13 authority, the chapter 7 trustee asserts that the transfer is
14 merely a transfer of the Hotel from one entity, i.e., MOH, to
15 another entity, i.e., the bankruptcy estate, under Article
16 6.01(f). See Bankr. Docket 326 at 4:1-8, 9:2-6. It is true that
17 Article 6.01(f) gives the chapter 7 trustee, as Manager,
18 authority to acquire, utilize, and dispose of MOH's assets. And
19 it is also true that under a common understanding of the term a
20 disposition could include a transfer. But that is not what is
21 happening here.

22
23 The transaction here is a transfer of property owned by MOH
24 by the chapter 7 trustee, acting as MOH's Manager, to the chapter
25 7 trustee, as MOH's sole member. Viewed in this context the
26 transfer more closely resembles, and is more persuasively
27 interpreted as, an in kind distribution of the entity's property
28

1 by the Manager to a member. The attorney for the chapter 7
2 trustee agreed with this characterization during oral argument.
3 It is also noteworthy that Article 5.02(b) of the MOH operating
4 agreement describes the transaction whereby the Manager provides
5 members with the entity's property as an in kind "Distribution."¹⁰
6 See also Tex. Bus. & Org. § 101.203 (describing cash or other
7 company assets that a member receives from the limited liability
8 company as distributions). But again, the analysis does not end
9 there.

10 Although Article 5.02(b) and Texas law permit the Manager to
11 make in kind distributions of the entity's property to members,
12 the court must examine that authority under Article 16 when an in
13 kind distribution occurs in the context of an "Event Requiring
14 Termination." Article 16.01(a) defines the term to include "the
15 execution of an instrument approving the termination of the
16 Company by a Simple Majority of the Members[.]"

17 Upon the occurrence of an "Event Requiring Termination,"
18 Article 16.04 requires the Manager, acting as liquidator, to
19 "proceed diligently" and begin the process of winding up. That
20 process implicates the distribution provisions of the Texas
21 Business and Organizations Code, id., and (paraphrased) describes
22 the following procedural "steps to be accomplished[:]"
23
24

25 ¹⁰Article 5.02(b) is consistent with Texas law. Generally,
26 distributions from a limited liability company to its members are
27 limited to cash. See Tex. Bus. & Org. § 101.202. However, that
28 limitation is waivable which means an operating agreement may
provide otherwise and permit in-kind distributions of property to
members. See Tex. Bus. & Org. §§ 101.054(a)(2), 101.052(c).

1 (a) cause a proper accounting to be made by a
2 recognized CPA firm of the entity's assets,
3 liabilities, and operations through the last day of the
month in which the termination event occurs, Article
16.04(a);

4 (b) cause the notice required by Tex. Bus. & Org. §
5 11.052 to be delivered to each known claimant against
the company, Article 16.04(b);

6 (c) pay, satisfy, or discharge all of the entity's
7 debts, liabilities and obligations or otherwise make
adequate provision for the payment and discharge
8 thereof, Article 16.04(c); and

9 (d) distribute the entity's remaining assets to the
members, Article 16.04(d):

10 i. by selling any or all of the entity's
11 property, Article 16.04(d)(4)(i);

12 ii. adjusting members' capital accounts for
13 unsold property, Article 16.04(d)(4)(ii); and

14 iii. distributing company property to
15 members in accordance with positive capital
account balances, Article 16.04(d)(4)(iii).

16 The resolution adopted in the special meeting minutes of
17 August 2, 2022, meets the definition of an "Event Requiring
18 Termination" under Article 16.01(a). Signed by the chapter 7
19 trustee as Manager and sole member, the resolution is an executed
20 instrument that effectively approves the termination of MOH. It
21 strips MOH of the Hotel and, thus, of its sole asset. It
22 provides for final payment to MOH's creditors. And except for
23 the passive collection of revenue not sold with the Hotel as was
24 explained during oral argument, which itself is part of the wind
25 up process under Tex. Bus. & Org. § 11.052(4), it renders MOH
26 functionally and operationally defunct once the \$ 363 sale
27 closes. In short, there is nothing more for MOH to do - or that
28

1 it can do - operationally after the Hotel is transferred, sold,
2 and the sale closes as contemplated by the resolution and
3 explained during oral argument.

4 The resolution in the special meeting minutes as a
5 terminating event also triggers the obligations imposed under
6 Article 16.04(a)-(d) and implicates Texas law applicable to the
7 wind up and distribution process. The problem is, to the extent
8 the chapter 7 trustee proposes to make an in kind distribution of
9 the Hotel under these circumstances as Article 16.04(d)
10 contemplates, the chapter 7 trustee has not obtained the
11 accounting required by Article 16.04(a), demonstrated that the
12 statutorily-required notice required by Article 16.04(b) has been
13 given, or satisfied or discharged - or made adequate provision
14 for the satisfaction or discharge of - MOH's liabilities as
15 required by Article 16.04(c). The timing provisions of
16 distributions under the Texas Business and Organizations Code,
17 made applicable to the Article 16.04(c) and (d) obligations
18 through Article 16.04, is also of special concern.

19 Although disputed and perhaps even contingent, the lien that
20 Simmons Bank claims on the Hotel is a liability as the term is
21 broadly construed and applied to domestic entities under Texas
22 law. See Burnett v. Chase Oil & Gas, Inc., 700 S.W.3d 737, 745
23 (Tex.App. 1985); Hurt v. Federal National Mortgage Assn. (In re
24 Homeowners Mortgage and Equity, Inc.), 354 F.3d 372, 375-76 (5th
25 Cir. 2003). Texas law provides that only "after a domestic
26 entity has discharged, or made adequate provision for the
27
28

1 discharge of, all of its liabilities and obligations, the
2 domestic entity shall distribute the remainder of its property,
3 in cash or in kind, to the domestic entity's owners according to
4 their respective rights and interests." Tex. Bus. & Org. §
5 11.053(c) (emphasis added). That is not what occurs here.

6 To the extent the lien that Simmons Bank claims on the Hotel
7 is paid from or attaches to proceeds from a § 363 sale, and to
8 the extent that a § 363 sale can occur only after the Hotel is
9 transferred from MOH to the estate, the process here is in
10 reverse of what Texas law and the MOH operating agreement
11 require. In other words, because the Hotel must be transferred
12 to the estate before it can be sold under § 363 and because
13 Simmons Bank is either paid from or its lien attaches to sale
14 proceeds, the in kind distribution of the Hotel that occurs as a
15 result of the transfer precedes rather than follows the discharge
16 of liabilities or an adequate provision for the discharge of
17 liabilities. Under these circumstances, the court can not
18 authorize the chapter 7 trustee to use his 100% interest in MOH,
19 and his status as the Manager and sole member of MOH, to transfer
20 the Hotel to the bankruptcy estate for the purpose of selling the
21 Hotel under 11 U.S.C. § 363.¹¹

23
24 ¹¹The attorney who argued for the chapter 7 trustee
25 mentioned during oral argument the possibility of simply amending
26 the MOH operating agreement to permit the Hotel to be transferred
27 to the estate. Problem is, to the extent chapter 7 trustee needs
28 § 363 sale proceeds to pay - or as a substitute for - the lien
that Simmons Bank claims on the Hotel and to the extent a § 363
sale can only occur after a transfer the Hotel would still be
distributed before - rather than after - liabilities are

VII.
Conclusion

For all the foregoing reasons, the chapter 7 trustee's motion will be DENIED.

A separate order will issue.

Dated: September 6, 2022.



UNITED STATES BANKRUPTCY JUDGE

discharged or there is an adequate provision for the discharge of liabilities. And under those circumstances, and amendment would not pass muster.

**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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