

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

Honorable Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: MONDAY**  
**DATE: JULY 18, 2022**  
**CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 CASES**

**RULINGS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

**ERRORS IN RULINGS**

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

CONFIRMATION OF AMENDED PLAN OF REORGANIZATION  
5-9-2022    [\[233\]](#)

IAIN MACDONALD/ATTY. FOR DBT.

### **Final Ruling**

This matter is continued to August 1, 2022, at 1:30 p.m. to allow the debtor, Subchapter V trustee and all other parties in interest to file briefs and augment the evidentiary record. As drafted, the plan does not appear confirmable; absent a sufficient further showing the court intends to deny confirmation.

At least four problems preclude confirmation. First, priority tax claims are not properly treated under the plan. Priority tax claims are not properly placed in classes. 11 U.S.C. § 1123(a)(1). Here, those claims are placed in Class 3. Plan Art. 2, ECF No. 233. Such an error might be overlooked if each priority tax claim consented to different treatment.

Second, absent agreement to be treated differently, priority tax claims must be paid in full on the effective date or not later than 5 years from the order for relief. 11 U.S.C. § 1129(a)(9)(C); 11 U.S.C. § 1191. Here, priority claims will not be paid in full. Plan Art. 3.02, ECF No. 233. Such claims total \$376,000 approximately. But trustee Dahl is holding only \$306,000 with little hope of further recoveries. Moreover, no tax claimant has consented to a different treatment.

Third, "consumer deposits" are treated as a Class 2 Priority creditor. Plan art. 2.02, ECF No. 233. But the debtor has failed to specify the statutory basis for such a priority treatment. 11 U.S.C. § 507. Without such an appropriate treatment those claims may not be paid as priority claims.

Fourth, the plan does not properly address trustee Dahl's post-confirmation role. The plan provides for Dahl to continue to act on behalf of the reorganized debtor. Plan Art. 7.01, ECF No. 233. The debtor contends that plan confirmation may be achieved consensually. Tabulation 2:10-13, ECF No. 273. This is, of course, not correct. But were it correct, the trustee's service would terminate upon "substantial consummation" of the confirmed plan. Compare, 11 U.S.C. § 1183(c)(1) (consensual confirmation) with 11 U.S.C. § 1194(b) (non-consensual confirmation).

Not later than close of business on Friday, July 22, 2022, the debtor, Subchapter V trustee, and/or any other party in interest may file briefs, consents of the priority tax creditors and/or other matters documents in support of the plan. Failing a timely and satisfactory showing the court may deny plan confirmation without further notice or hearing. A civil minute order will issue.

2. [21-22404](#)-A-11     **IN RE: PAR 5 PROPERTY INVESTMENTS, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
6-29-2021    [[1](#)]

IAIN MACDONALD/ATTY. FOR DBT.

**Final Ruling**

The status conference is continued to August 1, 2022, at 1:30 p.m.  
A civil minute order will issue.

3. [22-20925](#)-A-12     **IN RE: JERRY WATKINS**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
4-13-2022    [[1](#)]

MARK WOLFF/ATTY. FOR DBT.

**Final Ruling**

The status conference is continued to August 29, 2022, at 1:30 p.m.  
to coincide with the confirmation hearing. A civil minute order  
will issue.

4. [22-20925](#)-A-12     **IN RE: JERRY WATKINS**  
[FEC-1](#)

CONTINUED AMENDED ORDER TO SHOW CAUSE  
6-1-2022    [[29](#)]

MARK WOLFF/ATTY. FOR DBT.

**Final Ruling**

The Order to Show Cause is continued to August 29, 2022, at 1:30  
p.m. to coincide with the confirmation hearing. A civil minute  
order will issue.

5. [22-20632](#)-A-11     **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**  
INC.  
[CAG-1](#)

MOTION TO DISMISS CASE AND/OR MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-17-2022    [\[91\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.  
ELISE STOKES/ATTY. FOR MV.  
CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT VS.

### **Final Ruling**

**Motion:** Dismiss Chapter 11 case and/or Stay Relief  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

California Department of Housing and Community Development moves to dismiss debtor Southgate Town and Terrace Homes, Inc.'s Chapter 11 case as a filing "in bad faith" or, in the alternative, for stay relief. Mot. 1:25-2:8, ECF No. 91. The debtor opposes the motion. Because the State of California Department of Housing and Community Development has violated applicable local rules the court need not reach the merits and the motion will be denied without prejudice.

### **DISCUSSION**

Local Rules govern the form of documents filed and the presentation of motions before this court. LBR 9004-1, 9004-2, 9014-1. Here, the State of California has violated multiple provisions of applicable local rules.

#### Joinder of Motions

In most instances, local rules prohibit the joinder of motions.

5)     Joinder.

A)     *Except as otherwise provided herein, every application, motion, contested matter, or other request for an order shall be filed separately from every other request. All requests for relief shall state with particularity the grounds therefor and shall set forth the relief or order sought. Other documents, exhibits, or supporting pleadings shall not be incorporated by reference.*

B)     Notwithstanding the foregoing, the following requests for relief may be joined in a single motion, Fed. R. Civ. P. 18, incorporated by Fed. R. Bankr. P. 7018, 9014(c):

        (i) relief in the alternative based on the same statute or rule;

(ii) authorization for sale of real property and allowance of fees and expenses for a professional authorized by prior order to be employed for the sale of such property, 11 U.S.C. §§ 327, 328, 330, 363, Fed. R. Bankr. P. 6004;

(iii) authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional, 11 U.S.C. §§ 327, 328, 330, 363, Fed. R. Bankr. P. 6004-6005;

(iv) motion for stay relief and/or abandonment of property of the estate, 11 U.S.C. §§ 362, 554, Fed. R. Bankr. P. 4001, 6007;

(v) approval of compromise and compensation of special counsel previously authorized to be employed relating to the underlying compromise, Fed. R. Bankr. P. 9019; 11 U.S.C. §§ 327, 328, 330; and

(vi) as otherwise expressly provided by these Rules.

C) Where a party in interest joins requests for relief that party shall: (1) expressly and separately describe in the title of the motion, and all ancillary pleadings, each relief sought, e.g., Motion for Authorization to Sell Real Property and Motion For Compensation of Real Estate Broker (2/2/22 Employment Order) (2) provide notice to opposing parties consistent with the longest notice period applicable to the relief sought; and (3) at the time of filing tender to the Clerk of the Court the aggregate of all filing fees due each request for relief, notwithstanding the joinder of requests for relief into a single motion.

LBR 9014-1(d)(5) (emphasis added).

Here, the movant has joined relief under 11 U.S.C. § 1112(b) and 11 U.S.C. § 362. No exception is applicable.

### Exhibits

#### *Separate documents*

Exhibits must be filed as a separate single document.

Separate Exhibit Document(s). *Exhibits shall be filed as a separate document from the document to which it relates and identify the document to which it relates (such as "Exhibits to Declaration of Tom Swift in Support of Motion for Relief From Stay"). A separate exhibit document may be filed with the exhibits which relate to another document, or all of the exhibits may*

be filed in one document, which shall be identified as  
"Exhibits to [Motion/Application/Opposition/...]."

LBR 9004-2(d)(1) (emphasis added).

Here, the movant has filed exhibits as attachments to the document to which it relates. See e.g., Request for Judicial Notice, ECF No. 92; Stokes decl. ECF No. 94; Weber decl. ECF No. 95.

#### *Numbering*

Exhibits must be sequentially numbered from the first page of the first document to the last page of the last document.

Numbering of Pages. The exhibit document pages, including the index page, and any separator, cover, or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the first page of each exhibit.

LBR 9004-2(d)(3)

Here, the page number is sequential within each exhibit; this is not in compliance with applicable rules.

#### *Index*

A detailed index must be provided.

Exhibit Index. Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document.

LBR 9004-1(d)(2).

Most exhibits have no index. Stokes decl. ECF No. 94; Weber decl. ECF No. 95. One set of exhibits has a partial index. Request for Judicial Notice, ECF No. 92 (without reference to the page on which the exhibit starts).

For each of these reasons the motion is denied without prejudice. The State of California is cautioned that all future motions must comply with applicable provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Rules and Local Rules.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

California Department of Housing and Community Development's motion has been presented to the court.

Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any, IT IS ORDERED that the motion is denied without prejudice.

6. [22-20632](#)-A-11     **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**  
INC.  
[CAG-2](#)

MOTION TO DESIGNATE DEBTOR AS SINGLE ASSET REAL ESTATE  
DEBTOR  
6-17-2022    [\[97\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.  
ELISE STOKES/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Dismiss Chapter 11 case and/or Stay Relief  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

California Department of Housing and Community Development moves to designate this a single asset real estate case, 11 U.S.C. § 101(51B). Debtor Southgate Town and Terrance Homes, Inc. opposes the motion.

### **DISCUSSION**

#### Single Asset Real Estate

Debtor Southgate Town and Terrance Homes, Inc. operates a 104-unit housing complex for low-income residents. That project is located at 7535 Franklin Blvd., Sacramento, California. The debtor collects rent from its tenants. It conducts no other significant activity.

Chapter 11 debtors, who qualify as single asset real estate debtors (SARES), are subject to unique requirements. Among those are the lift stay provisions. 11 U.S.C. § 362(d)(3). That section provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—  
...

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

—  
(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate.

11 U.S.C. § 362(d)(3) (emphasis added).

“Single asset real estate” is a defined term.

The term “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

11 U.S.C. § 101(51B).



Section 101(51B) has been distilled into three elements: "Single asset real estate" is real property: [1] constituting a single property or project, other than residential real property with fewer than four units, [2] that generates substantially all of the gross income of a debtor who is not a family farmer, [and 3] which the debtor conducts no substantial business (other than the business of operating the property and activities incidental thereto). [11 USC § 101(51B)]

March, Ahart & Shapiro, *California Practice Guide: Bankruptcy* § 8:1336 (Rutter Group December 2021).

The party challenging the designation bears the burden of proof. *In re Hassen Imports Partnership*, 466 B.R. 492, 507 (Bankr. C.D. Cal. 2012). Here, the debtor has made such a designation. Vol. Pet., ECF No. 1. The three elements are easily met. First, this is but a single property. Residential Management Contract, Ex. 1. Second, the project generates substantially all of the debtor's income. Monthly Operating Report, ECF No. 100. Third, the debtor has no other substantial business operations. Tr. Meeting of Creditors, Exh. D to Stokes decl., ECF No. 94. As a result, the debtor is a single asset real estate debtor and this a single asset real estate case.

The debtor's argument that a plan has been filed and, therefore, the matter is moot is not well taken. Filing a plan does not block stay relief unless the plan "has a reasonable possibility of being confirmed within a reasonable time." No such showing has been made here. The California Department of Housing and Community Development filed a motion for stay relief, which was scheduled to be heard simultaneously with this motion to designate. The court denied the motion because the movant committed multiple violations of local rules.

#### Notice of Election for Subchapter V Chapter 11

On Friday, July 8, 2022, the debtor filed a Notice of Subchapter V Election, ECF No. 109. The court believes that the debtor is, in fact, a single asset real estate debtor and is ineligible for relief under Subchapter V. 11 U.S.C. § 1182(1)(A)). The court has issued an order to show cause to strike that election. If the court sustains that order to show cause, the California Department of Housing and Community Development's motion will be well-taken and granted. If not, the court will modify this ruling to be consistent with the ruling on the order to show cause.

## LOCAL RULE VIOLATIONS

### Exhibits

#### *Separate documents*

Exhibits must be filed as a separate single document.

Separate Exhibit Document(s). *Exhibits shall be filed as a separate document from the document to which it relates and identify the document to which it relates* (such as "Exhibits to Declaration of Tom Swift in Support of Motion for Relief From Stay"). A separate exhibit document may be filed with the exhibits which relate to another document, or all of the exhibits may be filed in one document, which shall be identified as "Exhibits to [Motion/Application/Opposition/...]."

LBR 9004-2(d)(1) (emphasis added).

Here, the movant has filed exhibits as attachments to the document to which it relates. See e.g., Request for Judicial Notice, ECF No. 92; Stokes decl. ECF No. 94; Weber decl. ECF No. 95.

#### *Numbering*

Exhibits must be sequentially numbered from the first page of the first document to the last page of the last document.

Numbering of Pages. The exhibit document pages, including the index page, and any separator, cover, or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the first page of each exhibit.

LBR 9004-2(d)(3)

Here, the page number is sequential within each exhibit; this is not in compliance with applicable rules.

#### *Index*

A detailed index must be provided.

Exhibit Index. Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document.

LBR 9004-1(d)(2).

The exhibits have no index. Stokes decl. ECF No. 94; Weber decl. ECF No. 95.

### Docket Control Numbers

Here, the movant has not properly used docket control numbers to designate the documents that comprise support of the motion. Local Rules require that each document offered in support of a motion bear the unique docket control number associated with the motion.

(c) Docket Control Number.

1) In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions.

2) In motions filed in adversary proceedings, the Docket Control Number shall be placed immediately below the adversary number.

3) The Docket Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

Example: The first Docket Control Number assigned to attorney John D. Doe would be DCN JDD-1, the second DCN JDD-2, the third DCN JDD-3, and so on. This sequence would be repeated for each specific bankruptcy case and adversary proceeding in which said attorney or law firm filed motions.

4) *Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number. However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.*

LBR 9014-1(c) (emphasis added).

Here, the movant has filed two declarations in support of the motion to dismiss or, in the alternative, for stay relief and motion to designate the matter a single asset real estate case. The title indicates the documents are filed in support of each motion but the docket control number references only the first motion. For example, one declaration is titled:

Declaration of Elise Stokes in Support of Creditor  
California Department of Housing and Community  
Development's Motion to Dismiss or for Relief from  
Automatic Stay and Motion to Designate Debtor as a Single  
Asset Real Estate [Debtor], CAG-1.

Stokes decl., ECF No. 94.

Similar problems exist with respect to the other supporting declaration. Weber decl., ECF No. 95. These violate LBR 9014-1(c)(4).

The State of California is cautioned that all future motions must comply with applicable provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Rules and Local Rules.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

California Department of Housing and Community Development's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that California Department of Housing and Community Development is a single asset real estate debtor and the case a single assets real estate case within the meaning of 11 U.S.C. § 101(51B).

7. [22-20632](#)-A-11     **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**  
INC.  
[FEC-3](#)

ORDER TO SHOW CAUSE REGARDING DEBTOR'S ELECTION FOR  
SUBCHAPTER V CASE  
7-11-2022     [[110](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

**No Ruling**