



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
May 13, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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In re:) Case No.: 19-16636-MKN
CENSO LLC,) Chapter 11
Debtor.)
Date: May 4, 2022
Time: 9:30 a.m.

ORDER ON MOTION OF THE UNITED STATES TRUSTEE, PURSUANT TO 11 U.S.C. § 1112(b), AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 1017(f) AND 9014, TO DISMISS OR CONVERT CHAPTER 11 CASE AND RESERVATION OF RIGHTS¹

On May 4, 2022, the court heard the Motion of United States Trustee, Pursuant to 11 U.S.C. § 1112(b), and Federal Rules of Bankruptcy Procedure 1017(f) and 9014, to Dismiss or Convert Chapter 11 Case and Reservation of Rights (“Dismissal Motion”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND²

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “AECF No.” will be to the documents filed in Adversary Proceeding No. 20-01077-mkn. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned bankruptcy case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee

On October 11, 2019, a “skeleton” voluntary Chapter 11 petition was filed by Censo LLC (“Debtor”). (ECF No. 1). On the same date, a Notice of Chapter 11 Bankruptcy was entered scheduling a meeting of creditors for November 14, 2019, and setting a deadline of February 12, 2020, for nongovernmental creditors to file proofs of claim (“POC Deadline”). The Chapter 11 petition is signed by Melani Schulte as manager of the Debtor.³

On December 11, 2019, Debtor filed its schedules and summary of assets and liabilities. (ECF No. 22). On its property Schedule “A/B,” Debtor listed three parcels of real estate located at 1161 Dana Maple Court, Las Vegas, Nevada (“Dana Maple Property”), 5900 Negril Avenue, Las Vegas, Nevada (“Negril Property”), and 11441 Allerton Park Drive, #411, Las Vegas, Nevada (“Allerton Property”). Schedule “A/B” lists “potential claims against mortgage servicers and/or lenders from properties purchased through HOA foreclosure sale(s)” but values those potential claims at “\$0.00.” No other property appears on Schedule “A/B.” On secured creditor Schedule “D,” Debtor lists nine creditors holding claims in various amounts secured by the three parcels of real estate, and designates all of the claims as being contingent and disputed.⁴ On unsecured creditor Schedule “E/F,” Debtor listed no priority unsecured creditors and 14 non-priority unsecured creditors. Of the 14 non-priority unsecured creditors, 11 are designated as having contingent and disputed claims. Of the remaining 3 non-priority unsecured claims, none

Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this case, the underlying bankruptcy case and public records.”).

³ Ms. Schulte was an individual debtor, along with her former husband, in a previous voluntary Chapter 11 proceeding denominated Case No. 09-29123. That proceeding was commenced on October 11, 2009, a Chapter 11 plan was confirmed on March 8, 2011, and an individual Chapter 11 discharge was entered on December 15, 2015. Although the individual discharge was entered, the case remains open. Ms. Schulte also is the principal of Schulte Properties LLC, a voluntary Chapter 11 debtor in a proceeding denominated Case No. 18-12734. The parcels of real property involved in the individual Chapter 11 case were transferred to the non-individual debtor in the latter case. The latter Chapter 11 proceeding was commenced on May 10, 2018, and remains pending.

⁴ Although Ms. Schulte is the principal of the Debtor in the instant case, it does not appear that any of the three parcels involved in this Chapter 11 proceeding are related to the other Chapter 11 cases in which she is involved. Some of the lenders or servicing entities appear to overlap, but not the properties.

1 of which are designated as contingent, unliquidated or disputed, one is for attorney's fees in the
2 amount of \$210,000 (Amberlea Davis, Esq.), one is for a loan in the amount of \$25,000 (David
3 Snell Davis), and the other is in the amount of \$0.00 as being for an entity that requested notice
4 of the bankruptcy (RAS Crane, LLC).⁵

5 On January 24, 2020, the Debtor's 341 Meeting was concluded. (ECF No. 28).

6 On January 31, 2020, Debtor filed its monthly operating reports ("MORs") for the
7 months ending October 31, 2019, November 30, 2019, and December 31, 2019. (ECF Nos. 29,
8 30, and 31).⁶

9 On February 3, 2020, Debtor filed a motion to extend the exclusivity period to June 2,
10 2020, for the Debtor to file a proposed disclosure statement and plan of reorganization
11 ("Extension Motion") which would give Debtor and its counsel time to complete further
12 investigation and gather information. On this same date, Debtor filed a motion to have the
13 Extension Motion heard on shortened time. (ECF Nos. 32 and 33).

14 On February 4, 2020, an order granting the Extension Motion to be heard on shortened
15 time was entered and set the hearing to be held on February 12, 2020. (ECF No. 35). On this
16 same date, Debtor filed an amended motion to extend the exclusivity period to file a disclosure
17 statement and plan. (ECF No. 36).

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21 ⁵ Under FRBP 3003(c)(2), a claimant whose claim is scheduled as contingent,
22 unliquidated or disputed is required to timely file a proof of claim ("POC") to be treated as a
23 creditor with respect to the claim for purpose of voting or distribution in a Chapter 11
proceeding.

24 ⁶ Thereafter, on March 6, 2020, Debtor filed its operating report for the month ending
25 January 31, 2020. (ECF No. 43). On March 24, 2020, Debtor filed its operating report for the
26 month ending February 28, 2020. (ECF No. 44). On June 2, 2020, Debtor filed its operating
27 reports for the months ending March 31, 2020, and April 30, 2020. (ECF Nos. 49 and 50). On
28 July 9, 2020, Debtor filed its operating report for the month ending May 31, 2020. (ECF No.
60). On August 6, 2020, Debtor filed its operating report for the month ending June 30, 2020.
(ECF No. 77). On September 1, 2020, Debtor filed its operating report for the month ending
July 31, 2020. (ECF No. 90). On October 20, 2020, Debtor filed its operating report for the
month ending August 31, 2020. (ECF No. 121).

1 On February 12, 2020, the POC Deadline expired for non-governmental claimants.⁷

2 On March 2, 2020, an order was entered granting the Extension Motion to extend the
3 period 120 days to June 2, 2020, for the Debtor to file a proposed disclosure statement and
4 proposed plan of reorganization. (ECF No. 40). Because property Schedule “A/B” identified
5 only three assets of the Chapter 11 estate, subsequent events during the Chapter 11 case revolved
6 around the three parcels of real property.

7 **A. The Negril Property.**

8 On July 28, 2020, NewRez, LLC d/b/a Shellpoint Mortgage Servicing (“Shellpoint”)
9 filed its motion for relief from the automatic stay and motion to account for and sequester rental
10 income and/or for adequate protection regarding the Negril Property (“Negril Adequate
11 Protection Motion”). (ECF No. 69). A hearing was noticed for September 2, 2020. (ECF No.
12 71).

13 On August 20, 2020, Debtor filed a motion to value the Negril Property (“Negril
14 Valuation Motion”). (ECF No. 84). It was scheduled to be heard on September 2, 2020. (ECF
15 No. 85).

16 On August 24, 2020, Debtor filed its opposition to the Negril Adequate Protection
17 Motion. (ECF No. 88).

18 On September 10, 2020, Shellpoint filed a response to the Negril Valuation Motion.
19 (ECF No. 94).

20 On September 15, 2020, Debtor filed a reply in support of its Negril Valuation Motion.
21 (ECF No. 95).

22 On November 17, 2020, Shellpoint filed a supplement to its response to the Negril
23 Valuation Motion. (ECF No. 129).

24 ⁷ As of the POC Deadline, a claim had been filed by secured creditor Selene Finance LP
25 (“Selene”) with respect to the Dana Maple Property (“Selene POC”). After the POC Deadline,
26 secured claims were filed by the Debtor pursuant to FRBP 3004 on behalf of Federal National
27 Mortgage Association (“FNMA”) with respect to the Allerton Property and on behalf of FNMA
28 with respect to the Negril Property. (An amendment to the latter POC was filed on December
15, 2020, by NewRez LLC dba Shellpoint Mortgage Servicing in the amount of \$502,112.94).
Additionally, two separate secured claims were filed by Republic Services for trash and garbage
collection, and one secured claim was filed by All Trades for repairs to the Allerton Property.

1 On December 22, 2020, Debtor filed its supplemental opposition to the Negril Adequate
2 Protection Motion. (ECF No. 137). The hearing on the Negril Adequate Protection Motion was
3 further continued to January 27, 2021.

4 On January 27, 2021, Debtor and Shellpoint entered a stipulation for interim adequate
5 protection payments for the Negril Property and the Negril Adequate Protection Motion was
6 removed from calendar. (ECF No. 146).

7 On January 29, 2021, the court entered an order approving the stipulation for interim
8 adequate protection for the Negril Property (“Negril Adequate Protection Order”). (ECF No.
9 148).⁸

10 On February 2, 2021, notice of entry of the Negril Adequate Protection Order was
11 entered. (ECF No. 149).

12 On May 28, 2021, Debtor filed a motion to impose contempt sanctions against Shellpoint
13 for an alleged violation of the Negril Adequate Protection Order (“Negril Contempt Motion”).
14 (ECF No. 161). The matter was noticed to be heard on June 30, 2021. (ECF No. 162).

15 On June 22, 2021, Debtor and Shellpoint filed a stipulation to continue the hearing on the
16 Negril Contempt Motion from June 30, 2021 to July 16, 2021. (ECF Nos. 168 and 170).

17 On June 24, 2021, the court entered an order granting the stipulation and rescheduling the
18 hearing for the Negril Contempt Motion to July 21, 2021. (ECF No. 171).

19 On July 7, 2021, Shellpoint filed its opposition to the Negril Contempt Motion. (ECF
20 No. 177).

21 On July 19, 2021, Debtor filed its reply to Shellpoint’s opposition. (ECF No. 179).

22 On July 21, 2021, a hearing was held on the Negril Contempt Motion. At the court’s
23 suggestion, the parties attempted to resolve the issues in the Negril Contempt Motion and the
24 hearing was continued. (ECF No. 180).

25 ⁸ The stipulation requires the Debtor to maintain insurance, property tax and homeowners
26 dues on the Negril Property, in addition to making regular monthly loan payments of \$1,733. If
27 the Debtor does not timely cure any default, Shellpoint can obtain an ex parte order terminating
28 the automatic stay allowing it to foreclose on the property. The stipulation does not require
Shellpoint to support any proposal by the Debtor to confirm a plan of reorganization, nor does it
waive any objection to any other actions taken in the case.

1 On September 8, 2021, counsel presented argument at a continued hearing inasmuch as
2 they had not resolved the matter. After arguments were presented the Negril Contempt Motion
3 was taken under submission.

4 On September 30, 2021, an order was entered denying the Negril Contempt Motion.
5 (ECF No. 199).

6 On November 4, 2021, after multiple continuances of the hearing on the Negril Valuation
7 Motion, a scheduling order was entered setting an evidentiary hearing to be conducted on
8 February 8, 2022. (ECF No. 211).

9 On February 8, 2022, counsel for the Debtor and Shellpoint appeared for the evidentiary
10 hearing on the Negril Valuation Motion, along with witnesses and proposed exhibits. At that
11 time, the Negril Adequate Protection Order was in effect, no claim objection or cash collateral
12 proceedings were pending, and no proposed plan of reorganization or propose disclosure
13 statement had been filed.

14 On February 9, 2022, an order was entered denying the Negril Valuation Motion without
15 prejudice inasmuch as there was no apparent purpose for a valuation of the Negril Property under
16 Section 506(a) in absence of a proposed plan of reorganization or any other material issue to
17 resolve. (ECF No. 220).⁹

18 **B. The Allerton Property.**

19 On May 18, 2020, Shellpoint filed a motion for relief from stay as to the Allerton
20 Property (“Allerton RAS Motion”) and noticed it to be heard on June 24, 2020. (ECF Nos. 45
21 and 47). The Allerton RAS Motion sought, *inter alia*, to terminate the automatic stay and to
22 waive the 14-day stay under FRBP 4001(a)(3), as well as attorney’s fees and costs.

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25 ⁹ In its Schedule “A/B,” Debtor attested that the current value of the Negril Property was
26 \$295,966. In its Negril Valuation Motion, Debtor asserted a value of \$363,000. At the
27 evidentiary hearing, Debtor suggested a value of \$520,000, while Shellpoint suggested a value of
28 \$523,000. Shellpoint also alleged that the amount of its secured claim as of July 2020 was
approximately \$517,569.54. If these numbers are correct, Shellpoint would have an allowed
secured claim of \$520,000 or \$523,000, and no allowed unsecured claim. See 11 U.S.C. §
506(a).

1 On June 15, 2020, Debtor filed an opposition to the Allerton RAS Motion. (ECF No.
2 52). Attached to the Debtor's opposition were unauthenticated copies of five documents
3 consisting of three deeds, an order entered by the United States District Court for the District of
4 Nevada on October 31, 2019, and an appraisal of the Allerton Property as of January 12, 2020
5 showing a value of \$369,000.¹⁰

6 On July 7, 2020, Debtor filed a supplement to its opposition. (ECF No. 58).

7 On July 7, 2020, Debtor filed a complaint commencing Adversary Proceeding No. 20-
8 01077-mkn ("Censo Adversary") against Shellpoint, as well as Bank of America, N.A. ("BOA")
9 and FNMA, apparently seeking to determine the extent and validity of liens against the Allerton
10 Property. (AECF No. 1).

11 On July 17, 2020, an order was entered granting the Allerton RAS Motion under Sections
12 362(d)(1) and 362(d)(2) ("Allerton RAS Order"). (ECF No. 65). The order terminated the
13 automatic stay and waived the 14-day stay under FRBP 4001(a)(3), but denied all other relief.

14 On July 31, 2020, Debtor filed a motion seeking relief from the Allerton RAS Order
15 ("Reconsideration Motion"). (ECF No. 73).

16 On September 1, 2020, Shellpoint filed an opposition to the Reconsideration Motion.
17 (ECF No. 91).

18 On September 15, 2020, Debtor filed its reply in support of the Reconsideration Motion.
19 (ECF No. 95).

20 On September 18, 2020, an order was entered denying the Reconsideration Motion
21 ("Reconsideration Order"). (ECF No. 97).

22 On October 2, 2020, Debtor appealed the Reconsideration Order to the Bankruptcy
23 Appellate Panel of the Ninth Circuit ("BAP"). (ECF No. 102).

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26 ¹⁰ In its Schedule "A/B," Debtor attested that the current value of the Allerton Property
27 was \$358,268. In the Allerton RAS Motion, Shellpoint alleged a balance owed of \$601,292.15.
28 In its opposition to the Allerton RAS Motion, Debtor represented that the property had a value of
\$369,000. If these numbers are correct, Shellpoint would have an allowed secured claim of
\$369,000, and an allowed unsecured claim of \$232,292.15. See 11 U.S.C. § 506(a).

On November 18, 2020, Shellpoint filed a motion to dismiss the Censo Adversary. (AECF No. 12). BOA and FNMA joined in the dismissal motion. (AECF Nos. 20 and 29).

On January 27, 2021, Debtor filed its opposition to the dismissal motion. (AECF No. 28).

On March 3, 2021, Shellpoint filed its reply. (AECF No. 30).

On March 10, 2021, Debtor filed a supplemental opposition. (AECF No. 32).

On May 10, 2021, an order was entered granting Shellpoint's motion to dismiss the Censo Adversary ("Adversary Dismissal Order"). (AECF No. 33).

On May 24, 2021, Debtor appealed the Adversary Dismissal Order to the BAP. (AECF No. 37).

On June 29, 2021, the BAP affirmed the Reconsideration Order. (ECF No. 175).

On February 15, 2022, Debtor filed a motion seeking to stay a pending foreclosure sale of the Allerton Property that was scheduled for February 18, 2022 ("Stay Motion"), along with an ex parte request to have the Stay Motion heard on an order shortening time ("OST"). (ECF Nos. 224 and 225).

On February 17, 2022, an order was entered denying the OST request. (ECF No. 229)

On April 29, 2022, the BAP affirmed the Adversary Dismissal Order. (AECF No. 65). On or about April 29, 2022, Debtor apparently appealed the BAP decision to the Ninth Circuit Court of Appeals. (AECF No. 67).

C. The Dana Maple Property.

On July 15, 2020, Debtor filed a motion to value the Dana Maple Property ("Dana Maple Valuation Motion"). (ECF No. 61). The motion was noticed to be heard on August 19, 2020. (ECF No. 62).

On August 6, 2020, Selene filed a response to the Dana Maple Valuation Motion. (ECF No. 78).

On March 8, 2021, after multiple continuances of the hearing, an order was entered approving a stipulation resolving the Dana Maple Valuation Motion. (ECF No. 156).

On September 20, 2021, Selene filed a motion for relief from stay to pursue its remedies against the Dana Maple Property (“Dana Maple RAS Motion”). (ECF No. 193). The hearing was noticed to be held on October 27, 2021. (ECF No. 194).

On October 13, 2021, Debtor filed an opposition to the Dana Maple RAS Motion. (ECF No. 203).

On April 13, 2022, after multiple continuances, the Dana Maple RAS Motion was vacated from the calendar after counsel reported that a stipulation for adequate protection had been reached.¹¹

On May 2, 2022, Selene filed a notice of hearing apparently to renew its Dana Maple RAS Motion. (ECF No. 263).

THE DISMISSAL MOTION

On March 30, 2022, the Office of the United States Trustee (“UST”) filed the instant Dismissal Motion along with the declaration of Teresa Field (“Field Declaration”). (ECF Nos. 233 and 233-1). The matter was noticed to be heard on May 4, 2022. (ECF No. 234).

On March 31, 2022, Debtor filed eighteen MORs for the months ending September 30, 2020 through February 28, 2022. (ECF Nos. 235 through 242, and 244 through 253).¹²

On April 8, 2022, creditor Shellpoint filed a joinder in the Dismissal Motion. (ECF No. 257).

On April 11, 2022, creditor Selene filed a joinder. (ECF No. 258).

On April 22, 2022, Debtor filed an opposition (“Opposition”). (ECF No. 260).

On April 26, 2022, the UST filed a reply. (ECF No. 261).

¹¹ In its Schedule “A/B,” Debtor attested that the value of the Dana Maple Property was \$219,374. In its stipulation resolving the Dana Valuation Motion, the agreed value of the property was \$280,000. According to the Selene POC, \$330,345.25 was owed on the petition date. In the Dana Maple RAS Motion, Selene alleged that a loan balance of \$356,020.29 was owed by the Debtor. If these numbers are correct, Selene may have an allowed secured claim of \$280,000 and an allowed unsecured claim of \$76,020.29. See 11 U.S.C. § 506(a).

¹² According to its latest MOR, the Debtor’s net worth as of February 28, 2022, is \$1,244 and its operations during 28 months of protection in Chapter 11 has resulted in a net loss of \$3,957.

DISCUSSION

The UST seeks dismissal of the Debtor's proceeding, or, in the alternative, to have the Chapter 11 case converted to one under Chapter 7. The joinder filed by Shellpoint requests either alternative. The joinder filed by Selene requests dismissal of the Chapter 11 case with prejudice. The UST asserts that cause exists under Section 1112(b) to dismiss the Chapter 11 proceeding or convert it to Chapter 7 for several reasons: (1) Debtor has failed to file all monthly operating reports contrary to Section 1112(b)(4)(F); (2) Debtor has failed to timely provide information reasonably requested by the UST contrary to Section 1112(b)(4)(H); (3) Debtor has failed to confirm a plan within a reasonable period of time; and (4) Debtor has failed to expeditiously prosecute this case.¹³ Although cause for dismissal or conversion under Section 1112(b)(1) allegedly has been established, the UST acknowledges that under Section 1112(b)(2), the court may not dismiss or convert the case if it finds specific unusual circumstances demonstrating that dismissal or conversion is not in the best interests of creditors and the bankruptcy estate. Upon such a finding, the burden shifts to the debtor in possession to demonstrate the likelihood of confirming a Chapter 11 plan within a reasonable time,¹⁴ and that there is a reasonable justification for the alleged grounds for conversion or dismissal. See 11 U.S.C. §§ 1112(b)(2)(A) and (b)(2)(B).

In response, Debtor has filed two pages of argument to which is attached two exhibits. Exhibit "1" consists of a copy of the docket maintained in the Chapter 11 proceeding. Exhibit

¹³ Debtor's last MOR was filed for the month ending August 31, 2020, and the Debtor has not provided evidence of any insurance coverage for its three parcels of real property. The UST made numerous requests for the MORs and insurance information but the requests were not met. See Field Declaration at ¶¶ 5, 6, 7, 8, and 9.

¹⁴ This obligation is similar but more stringent than that imposed on a party responding to a motion for relief from stay under Section 362(d)(2): if the moving party demonstrates that the Chapter 11 debtor lacks equity in the subject property, the burden shifts to the debtor to demonstrate that the property is necessary to an effective reorganization. See 11 U.S.C. §§ 362(d)(2)(A) and 362(g)(2). The latter requirement requires sufficient proof that there is a reasonable possibility of a successful reorganization within a reasonable amount of time. See United Savings Assoc. of Tex. v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 375-76 (1988). Under Section 1112(b)(2)(A), the Chapter 11 debtor is required to demonstrate a likelihood, rather than just a possibility, of confirming a plan of reorganization.

“2” consists of documents apparently reflecting insurance coverage for the Dana Maple Property, Negril Property, and Allerton Property. Based on these documents, as well as the eighteen MORs that were filed on March 31, 2022, Debtor maintains that it is current on its monthly reporting requirements and that the insurance information has now been provided to the UST. It asserts that it has vigorously prosecuted the Chapter 11 proceeding since October 2019 as evidenced by the many entries on the docket maintained in the case. Moreover, Debtor asserts that it can file a proposed Chapter 11 plan of reorganization and accompanying disclosure statement no later than May 31, 2022. Because the Debtor previously reached adequate protection agreements for the Negril Property and the Dana Maple Property, it maintains that it has a possibility of acceptance of plan treatment by at least one impaired secured class under Section 1129(a)(10) so that it can seek cramdown of any dissenting impaired classes under Section 1129(b).¹⁵

The court has considered the arguments and evidence presented, along with the record in this Chapter 11 proceeding. For the following reasons, the court concludes that the Debtor has failed to meet its burden under Sections 1112(b)(2)(A) and 1112(b)(2)(B), requiring conversion or dismissal of the Chapter 11 proceeding.

First, the UST established by a preponderance of the evidence that the Debtor has failed to timely file MORs during the case, and has failed to timely provide the insurance information reasonably requested by the UST.

Second, there is no dispute that after 28 months, Debtor still has not filed a proposed plan of reorganization or disclosure statement even though there are only three assets of the

¹⁵ As previously mentioned at 2-3, supra, the Debtor scheduled two non-priority unsecured creditors whose claims are not contingent, unliquidated or disputed. Those two creditors were not required to file proofs of claim. See note 5, supra. Those claims total \$235,000. Also as previously discussed at note 7, supra, all of the proofs of claim filed in the case were by secured creditors. The allowed unsecured claims of Shellpoint on the Allerton Property, see note 10, supra, and Selene on the Dana Maple Property, see note 11, supra, would total \$308,312.44. Given that both Shellpoint and Selene have joined in the instant Dismissal Motion, there is no indication that the Debtor could ever obtain acceptance of a nonpriority unsecured class of creditors under Section 1126(c), nor acceptance by any impaired class of secured creditors.

1 bankruptcy estate. Moreover, the MORs filed in the case indicate that the Debtor has no
2 employees, no worker's compensation expenses, and no operations other than management of
3 the three assets.

4 Third, there is no evidence in the record suggesting that specific unusual circumstances
5 exist demonstrating that dismissal or conversion of the Chapter 11 proceeding would not be in
6 the best interests of creditors and the bankruptcy estate. According to the Schedules, the
7 Debtor's primary creditors are secured by the three parcels of real property and there are no other
8 assets of any value to the estate. Debtor has not even suggested, much less proposed, a plan of
9 reorganization that would result in a distribution to any unsecured creditors, nor to the
10 undersecured portion of any secured creditor claims. Moreover, there is no dispute that the
11 allowed professional fees and other administrative expenses of this Chapter 11 proceeding will
12 have priority ahead of all other unsecured claims.¹⁶ In other words, the continued incurrence of
13 additional administrative expense claims increases the likelihood that there will be little or no
14 distribution to nonpriority unsecured creditors.

15 Fourth, the Debtor does not suggest that there is a likelihood of confirming a Chapter 11
16 plan of reorganization even if one is filed by May 31, 2022. Instead, it merely argues that
17 because adequate protection stipulations were reached with Shellpoint for the Negril Property
18 and allegedly with Selene for the Dana Maple Property, there is a possibility of obtaining
19 acceptance by an impaired secured class. A possibility, of course, is not the same as a
20 likelihood. Moreover, both Shellpoint and Selene have joined in the Dismissal Motion. The
21 Negril Adequate Protection stipulation does not include a provision for Shellpoint to accept or
22 support any proposed plan treatment of its secured claim. An adequate protection order on the
23 Dana Maple Property has never been entered and Selene in fact has renewed the Dana Maple
24 RAS Motion. More important, there is no evidence whatsoever by declaration or affidavit

25 ¹⁶ On March 3, 2020, an order was entered authorizing the Debtor to employ bankruptcy
26 counsel. (ECF No. 42). On September 2, 2021, an order was entered authorizing the Debtor to
27 employ special counsel in connection with its appeal of the Adversary Dismissal Order. (ECF
28 No. 191). There is no affidavit, declaration or other indication by bankruptcy counsel or special
counsel that the Debtor is not obligated to compensate them for their legal services provided
during this Chapter 11 proceeding.

1 suggesting that any representative of any possible impaired class would accept any possible plan
2 treatment.

3 Fifth, the Debtor offers no suggestion of how it could confirm a plan of reorganization
4 over the objection of a dissenting class of unsecured claims. As discussed in note 15, supra, the
5 Schedules and other documents in the record suggest that the Debtor may have four separate
6 creditors holding nonpriority unsecured claims in excess of \$543,000. Under Section 1126(c),
7 Shellpoint and Selene could effectively control class acceptance. Under Section 1129(b)(2)(B)(i
8 and ii), the Debtor can confirm a plan through the “cramdown” process only if the unsecured
9 claims in the dissenting class are paid in full, or the equity security holders retain no interest in
10 the Debtor. Debtor has provided no evidence by way of affidavit or declaration indicating that it
11 could pay such a class in full, or, that the Debtor’s sole owner would forego her interest in the
12 Debtor.¹⁷

13 Finally, the Debtor has offered no evidence by way of declaration or affidavit providing
14 any reasonable justification for its failure to timely file its MORs or to timely provide the
15 insurance information sought by the UST on multiple occasions. Debtor’s sudden filing of
16 eighteen belated MORs and its attachment of unauthenticated insurance documents to its
17 Opposition neither explains nor justifies its failure to fulfill its obligations as a Chapter 11 debtor
18 in possession. Those failures are inconsistent with a Chapter 11 debtor in possession’s fiduciary
19 responsibilities to its creditors rather than to its equity holders. See Woodson v. Fireman’s Fund
20 Ins. Co. (In re Woodson), 839 F.2d 610, 614 (9th Cir. 1988). Moreover, these failures are
21 surprising, if not inexcusable, given the multiple Chapter 11 proceedings in which the Debtor’s
22 principal has been involved for more than a decade.

25 ¹⁷ The only option of the Debtor’s sole owner would be to contribute money or money’s
26 worth equal to the value of her interest in the Debtor. In other words, she essentially would have
27 to buy back the value of her interest in the Debtor, and likely would have to allow other
28 interested parties an opportunity to acquire the same interest. See generally Bank of America
Nat. Trust and Sav. Ass’n v. 203 North LaSalle Street Partnership, 526 U.S. 434, 444-458 (1999)
(discussing the “absolute priority rule” and exclusive opportunities of existing owners to acquire
their interest in the debtor).

1 Under these circumstances, the court concludes that cause for dismissal or conversion of
2 this Chapter 11 proceeding has been established under Section 1112(b)(1). Additionally, the
3 court finds and concludes that dismissal or conversion is not precluded under Section 1112(b)(2).

4 **IT IS THEREFORE ORDERED** that the Motion of United States Trustee, Pursuant to
5 11 U.S.C. § 1112(b), and Federal Rules of Bankruptcy Procedure 1017(f) and 9014, to Dismiss
6 or Convert Chapter 11 Case and Reservation of Rights, Docket No. 233, be, and the same hereby
7 is, **GRANTED**.

8 **IT IS FURTHER ORDERED** that the above-captioned Chapter 11 proceeding be, and
9 the same hereby is, **DISMISSED**.

10 **IT IS FURTHER ORDERED** that any hearing or proceeding currently pending in this
11 case is **VACATED** from the court's calendar.

12
13 Copies sent via CM/ECF ELECTRONIC FILING

14 Copies sent via BNC to:

15 CENSO LLC

16 ATTN: OFFICER OR MANAGING AGENT

17 9811 W. CHARLESTON BLVD., SUITE 2-351

LAS VEGAS, NV 89117

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