



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 22, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:

LV OPPORTUNITY ZONE LLC, SERIES 5,

Debtor.

Case No.: 22-14100-MKN
Chapter 11

Date: September 20, 2023
Time: 9:30 a.m.

**ORDER REGARDING SECURED CREDITOR BANK OF AMERICA’S MOTION FOR
ORDER DISMISSING BANKRUPTCY CASE AS A BAD FAITH FILING PURSUANT
TO 11 U.S.C. §1112(b)¹**

On September 20, 2023, the court heard the Secured Creditor Bank of America’s Motion for Order Dismissing Bankruptcy Case as a Bad Faith Filing Pursuant to 11 U.S.C. §1112(b) (“Dismissal Motion”). Concurrently with the Dismissal Motion, the court heard the Objection to Proof of Claims No. 1 (“Claim Objection”) filed by the above-captioned debtor. The appearance of counsel were noted on the record. After oral arguments were presented, both matters were taken under submission.

BACKGROUND

On November 16, 2022, LV Opportunity Zone LLC, Series 5 (“Debtor”) filed a voluntary Chapter 11 petition. (ECF No. 1). The petition is signed under penalty of perjury by Shawn R. Love (“Love”) as managing member. Attached to the petition is a Corporate Ownership

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. 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.

1 Statement signed by Debtor's counsel, certifying that Love is the only party who owns more than
2 a 10% ownership interest in the Debtor. On the same date, a Notice of Chapter 11 Bankruptcy
3 Case was issued, setting a meeting of creditors ("341 Meeting") for December 22, 2022. (ECF
4 No. 2). The same notice also set a deadline of March 22, 2023, for non-governmental parties to
5 file proofs of claim and of May 15, 2023, for governmental entities to file proofs of claim.

6 On November 30, 2022, Debtor filed its schedules of assets and liabilities ("Schedules")
7 and statement of financial affairs ("SOFA"), signed under penalty of perjury by Love as
8 managing member. (ECF No. 8). Property Schedule "A/B" attests that the Debtor has a fee
9 simple interest in real property located at 2849 Botticelli Drive, Henderson, Nevada 89052
10 ("Property") valued at \$616,500.00. No other real or personal property is listed. Secured
11 creditor Schedule "D" lists three entities having claims secured by liens against the Property, the
12 majority of which is to JP Morgan Chase Bank NA under a first mortgage securing a claim in the
13 amount of \$825,000. The remaining claims are liens totaling \$10,275.00 for unpaid homeowners
14 association assessments and garbage service. Bank of America NA ("BOA") also is identified as
15 the party notified with respect to the first mortgage.

16 Unsecured creditor Schedule "E/F" lists one non-priority unsecured claim in the amount
17 of \$3,500 for "Construction/Building Materials" in favor of CimentArt Las Vegas, with an
18 address of 6825 Speedway Blvd, B102, Las Vegas, NV 89115. Schedule "G" lists no executory
19 contracts or unexpired leases. Schedule "H" lists Love as a co-debtor but does not identify the
20 creditor or the Schedule where the creditor information can be found. Part 1 of the SOFA attests
21 that from January 1, 2022, to November 16, 2022, the Debtor's gross revenues from business
22 operations were \$15,000 and that it had no non-business income. Part 2 attests it made no
23 payments to creditors within 90 days of filing the case, nor any payments to insiders within one
24 year. Part 6 attests that Love paid Debtor's counsel \$5,000 within one year from the
25 commencement of the case. Part 10 attests that the Debtor held no financial accounts that were
26 closed within one year. Part 13 attests that Love holds 100% of the interest in the Debtor. The
27 latter is confirmed by a List of Equity Security Holders appended to the SOFA signed under
28 penalty of perjury by Love.

1 On December 22, 2022, Debtor filed a “Statement Regarding Authority to Sign and File
2 Petition” (“Statement”) signed under penalty of perjury by Love. (ECF No. 13). The Statement
3 attests that a meeting of the members of the limited liability company was held on November 16,
4 2022, at which a decision to commence the Chapter 11 proceeding was made.

5 On December 22, 2022, the 341 Meeting was continued to January 31, 2023.

6 On December 28, 2022, Debtor filed a proposed disclosure statement and proposed
7 Chapter 11 plan of reorganization. (ECF Nos. 16 and 17).

8 On December 29, 2022, Debtor filed an ex parte application for conditional approval of
9 the disclosure statement. (ECF No. 21).

10 On January 3, 2023, an order was entered denying the ex parte application for conditional
11 disclosure statement approval without prejudice to re-filing after completion of the meeting of
12 creditors. (ECF No. 23).

13 On January 19, 2023, BOA filed proof of claim 1-1 (“POC-1”) in the amount of \$824,
14 966.77, of which \$305,148.94 is shown as the amount necessary to cure a default existing on the
15 petition date.

16 On January 21, 2023, Debtor filed an objection to POC-1. (ECF No. 28).

17 On February 10, 2023, Debtor noticed the hearing on the Claim Objection to be held on
18 March 15, 2023. (ECF No. 36).

19 On February 17, 2023, an order was entered approving a stipulation to continue the Claim
20 Objection hearing to April 26, 2023. (ECF No. 43).

21 On March 20, 2023, an order was entered authorizing BOA to take an examination of the
22 Debtor’s principal under FRBP 2004(a) (“2004 Examination”). (ECF No. 50).

23 On March 30, 2023, the 341 Meeting concluded. (ECF No. 52).

24 On April 7, 2023, an order was entered approving a stipulation to continue the Claim
25 Objection hearing to June 14, 2023. (ECF No. 59).

26 On May 16, 2023, an order was entered approving a stipulation to continue the Claim
27 Objection hearing to July 26, 2023. (ECF No. 64).

28 On July 26, 2023, the Claim Objection hearing was continued to August 30, 2023.

1 On August 16, 2023, BOA filed a response to the Claim Objection, along with numerous
2 exhibits. (ECF Nos. 74 and 75).

3 On August 18, 2023, BOA filed the instant Dismissal Motion, along with numerous
4 exhibits. (ECF Nos. 76 and 77). The Dismissal Motion was noticed to be heard on September
5 20, 2023. (ECF No. 78).

6 On August 23, 2023, Debtor filed a response in support of the Claim Objection along
7 with an affidavit of Shawn Love. (ECF Nos. 80 and 81).

8 On September 5, 2023, Debtor filed an amended proposed disclosure statement along
9 with an amended proposed Chapter 11 plan. (ECF No. 85 and 86).

10 On September 7, 2023, Debtor filed an ex parte application for conditional approval of
11 the amended disclosure statement along with a supporting declaration of its counsel (ECF Nos.
12 87 and 88).

13 On September 7, 2023, Debtor also filed an opposition to the Dismissal Motion. (ECF
14 No. 89)

15 On September 13, 2023, BOA filed a reply in support of the Dismissal Motion. (ECF
16 No. 90).

17 DISCUSSION

18 BOA seeks to dismiss this Chapter 11 proceeding for cause under Section 1112(b)(1)
19 because of bad faith. The examples of “cause” described in Section 1112(b)(4) does not include
20 filing a petition in bad faith, but a dismissal for bad faith is a permissible exercise of discretion.
21 See Marsch v. Marsch (In re Marsch), 36 F.3d 825, 828-29 (9th Cir. 1994); Homesite Holdings
22 LLC v. Stadtmueller (In re Homesite Holdings LLC), 2023 WL 3918405, at *5 (B.A.P. 9th Cir.
23 June 6, 2023). A well-established basis for dismissal of a Chapter 11 proceeding is when a new
24 entity is created for the purpose of obtaining bankruptcy protection. See Duvar Apt., Inc. v.
25 F.D.I.C. (In re Duvar Apt., Inc.), 205 B.R. 196, 200 (B.A.P. 9th Cir. 1996) (“new debtor
26 syndrome”); In re John V. Gally Family Protective Trust, 2022 WL 18715956, at *7 n. 99
27 (Bankr. D. Ariz. Dec. 21, 2022) (“New debtor syndrome is a factor that courts have considered
28 in § 1112(b) dismissals for bad faith....New debtor syndrome is implicated when an entity is

1 created on the eve of bankruptcy and may be an improper attempt to abuse the bankruptcy laws’
2 protections.”).

3 In this instance, there is no meaningful dispute that a foreclosure sale of the subject
4 Property was scheduled for November 16, 2022, at 9:00 a.m. There is no apparent dispute that
5 Love conveyed title to the Property to the Debtor by recording a deed at 8:39 a.m., and then the
6 Debtor filed the Chapter 11 petition at 8:59 a.m.

7 There is no dispute that the Debtor has scheduled only three secured creditors and only
8 creditors having liens against the same Property. There is no dispute that the primary creditor is
9 BOA, whose foreclosure sale scheduled minutes before the commencement of the Chapter 11
10 proceeding was the primary object of this Chapter 11 proceeding. There is no dispute that the
11 Debtor scheduled only one creditor holding a nonpriority unsecured claim, and that evidence has
12 been offered suggesting that the claimant does not exist.² There is no dispute that only two
13 proofs of claim have been filed in this proceeding, both of them timely and both with respect to
14 the Property: BOA and the homeowners association.

15 There is no dispute that Love testified at his 2004 Examination that there are no other
16 assets of the Debtor, that it has no employees, and has never filed a tax return. There is no
17 dispute that during the course of this Chapter 11 proceeding, Debtor has filed operating reports
18 for November and December 2022 (ECF Nos. 34, 35, 54, and 55), as well as for January through
19 June, 2023 (ECF Nos. 56, 57, 70, 71, 72, and 73). There is no dispute that all of the operating
20 reports are signed by Love under penalty of perjury. There is no dispute that none of the
21 operating reports identify any assets of the Debtor other than the Property received from Love.
22 There is no dispute that all of the operating reports from November 2022 through April 2023
23 attest that the Debtor has no income or expenses. There is no dispute that, beginning in May
24 2023 through June 2023, Debtor attests that it receives \$4,000 in rent and incurs \$350 in
25 expenses, but does not identify the tenant who makes the rent payments.

27 ² Even more troubling is that BOA has provided evidence that the alleged unsecured
28 creditor, Ciment Art of Las Vegas, has a relationship with an individual affiliated with the
Debtor’s counsel. See Dismissal Motion at ¶31(I - iv).

1 On its face, all of the evidence before the court compel a conclusion that the Chapter 11
2 proceeding was commenced in objective bad faith solely for the purpose of preventing the
3 scheduled foreclosure of the Debtor's sole asset. At the hearing on the Dismissal Motion,
4 counsel for the Debtor also represented that Love transferred the Property to the Debtor so that
5 the Debtor could seek Chapter 11 protection for another purpose: to avoid damage to Love's
6 credit score if he were forced to file personally. While Love may believe bad faith cannot be
7 inferred from his desire to protect his personal credit history, narcissism is not what Congress
8 had in mind when authorizing parties to seek Chapter 11 reorganization. At its core, Chapter 11
9 reorganization is designed to preserve jobs, facilitate the payment of creditor claims, and
10 preserve the equity of the bankrupt debtor's investors. See generally U.S. v. Whiting Pools, Inc.
11 (In re Whiting Pools), 462 U.S. 198, 203 (1983); In re CWNevada LLC, 602 B.R. 717, 726
12 (Bankr. D. Nev. 2019). None of those purposes are served in this proceeding, and it appears that
13 it was never Love's intention to do so.³ Under the circumstances, the court concludes that this
14 Chapter 11 proceeding must be dismissed due to objective bad faith as well as subjective bad
15 faith.⁴

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19 ³ As mentioned above, after the Dismissal Motion was filed, Debtor did file an amended
20 proposed disclosure statement along with an amended proposed Chapter 11 plan of
21 reorganization. Debtor apparently requests a finding under Section 1112(b)(2) that there are
22 "unusual circumstances establishing that... dismissing the case is not in the best interests of
23 creditors and the estate, and that the debtor... establishes that (A) there is a reasonable likelihood
24 that a plan will be confirmed...; and (B) the grounds for... dismissing the case include an act or
25 omission of the debtor... (i) for which there exists a reasonable justification for the act or
26 omission; and (ii) that will be cured within a reasonable period of time..." 11 U.S.C.
§1112(b)(2)(A and B). Based on the record previously discussed, the court cannot find the
required unusual circumstance, nor can it find a reasonable likelihood that the proposed Chapter
11 plan will be confirmed. As a result, the "defense" set forth in Section 1112(b)(2) does not
apply.

27 ⁴ Subjective bad faith is not sufficient alone to warrant dismissal of a Chapter 11 case, see
28 In re Marsch, 36 F.3d at 828, but Love's stated purpose of transferring the Property on the eve of
foreclosure to avoid impacting his personal credit history is merely an additional indicium that
the instant proceeding is not consistent with the purposes of Chapter 11 reorganization.

1 **IT IS THEREFORE ORDERED** that Secured Creditor Bank of America's Motion for
2 Order Dismissing Bankruptcy Case as a Bad Faith Filing Pursuant to 11 U.S.C. §1112(b),
3 Docket No. 76, be, and the same hereby is, **GRANTED**.

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5 Copies sent via CM/ECF ELECTRONIC FILING

6 Copies sent to all parties via BNC

7 Copies sent via BNC to:

8 LV OPPORTUNITY ZONE LLC, SERIES 5
9 ATTN: OFFICER OR MANAGING AGENT
10 11484 PARKERSBURG AVE
11 LAS VEGAS, NV 89138

12 KARL L. NIELSON
13 SMITH LARSEN & WIXOM
14 1935 VILLAGE CENTER CIRCLE
15 LAS VEGAS, NV 89134

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