



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
July 17, 2023

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 23-10410-MKN
	)	Chapter 11
TRACY LEE HURST-CASTL,	)	
	)	Date: June 28, 2023
Debtor.	)	Time: 9:30 a.m.
	)	

**ORDER REGARDING MOTION OF THE UNITED STATES TRUSTEE TO DISMISS OR CONVERT CHAPTER 11 CASE PURSUANT TO 11 U.S.C. § 1112(b) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 1017(f) AND 9014<sup>1</sup>**

On June 28, 2023, the court heard the Motion of the United States Trustee<sup>2</sup> to Dismiss or Convert Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b) and Federal Rules of Bankruptcy Procedure 1017(f) and 9014 (“UST Dismissal Motion”), brought in the above-referenced bankruptcy case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On February 4, 2023, a voluntary Chapter 11 petition under Subchapter V was filed by Tracy Lee Hurst-Castl (“Debtor”). (ECF No. 1).<sup>3</sup> On her Chapter 11 petition, Debtor lists her

<sup>1</sup> 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 “NRS” are to provisions of the Nevada Revised Statutes. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

<sup>2</sup> Hereafter, the Office of the United States Trustee shall be referenced as “UST.”

<sup>3</sup> Debtor filed five prior Chapter 11 proceedings in this judicial district. Case No. 01-17674-RCJ (“2001 Case”) was commenced on July 26, 2001, and was dismissed on January 16,

1 living address as 8616 Mirada Del Sol Drive, Las Vegas, Nevada 89128. Brian D. Shapiro was  
2 appointed as the Subchapter V trustee (“Sub V Trustee”). (ECF No. 7). A deadline of April 17,  
3 2023, was set for creditors to file proofs of claim. (ECF No. 3).

4 On February 15, 2023, an Order Setting (A) Status Conference; (B) Claim Bar Date; (C)  
5 Deadline for Election under 11 U.S.C. § 1111(b)(2); and (D) Other Deadlines (For Use Only in  
6 Cases Under Subchapter V of Chapter 11) was entered (“Sub V Scheduling Order”). (ECF No.  
7 14). Among other things, a Subchapter V status hearing was scheduled for March 29, 2023, and  
8 the specific requirements and deadlines for proceeding under Subchapter V were specified in the  
9 Subchapter V Scheduling Order.<sup>4</sup>

10  
11 2002, pursuant to a motion brought by the Office of the United States Trustee (“UST”). Case  
12 No. 02-13985-BAM (“2002 Case”) was commenced on April 15, 2002, a Chapter 11 plan of  
13 reorganization was confirmed on November 6, 2003, and a final decree was entered on January  
14 18, 2006. [At the time the plan confirmation order was entered in the 2002 Case, then-Section  
15 1141(d)(1) provided that “the confirmation of a plan...discharges the debtor from any debt that  
16 arose before the date of such confirmation...” and then-Section 1141(d)(2) provided that the  
17 confirmation of a plan of reorganization does not discharge an individual Chapter 11 debtor of  
18 any debts excepted from discharge under then-Section 523(a).] Case No. 10-20635-BAM  
19 (“2010 Case #1”) was commenced in pro se on June 8, 2010, and was dismissed on August 6,  
20 2010 based on the Debtor’s failure to file a credit counseling certificate. Case No. 10-28140-  
BAM (“2010 Case #2”) was commenced on September 24, 2010, and was dismissed on  
September 14, 2012, pursuant to a motion brought by secured creditor HSBC Bank USA. Case  
No. 12-23874-BTB (“2012 Case”) was commenced on December 21, 2012, and was dismissed  
on May 6, 2014, pursuant to a motion brought by secured creditor Select Portfolio Services.  
Apparently, Debtor did receive a Chapter 11 discharge through her 2002 Case, and then incurred  
new debt, leading to the commencement of the 2010 Cases as well as the 2012 Case. More than  
ten years have elapsed since the 2012 Case was commenced.

21  
22 <sup>4</sup> Section 1189(a) provides that only the debtor may file a proposed Subchapter V plan.  
23 Section 1189(b) requires the Subchapter V debtor to file a proposed Chapter 11 plan no later than  
24 90 days following entry of the order for relief. Section 301(a) provides that a voluntary  
25 bankruptcy case is commenced by the filing of a bankruptcy petition. Section 301(b) provides  
26 that the commencement of a bankruptcy case constitutes an order for relief. Because the Debtor  
27 commenced her case by filing her voluntary Chapter 11 petition on February 4, 2023, the 30-day  
28 period commenced on February 5, and the Debtor was required to file a proposed Subchapter V  
plan no later than May 5, 2023. The Subchapter V Scheduling Order also directed the Debtor to  
file her Pre-Status Conference Report no later than March 15, 2023. It further directed  
compliance with Section 1187(a) and Section 1116(a)(1) no later than February 13, 2023. Those  
provisions required the Debtor to file her most recent balance sheet, statement of operations,  
cash-flow statement, and Federal income tax return, or a sworn statement that those items had  
not been prepared or filed.

1 On February 20, 2023, Debtor filed her schedules of assets and liabilities (“Schedules”)  
2 and statement of financial affairs. (ECF No. 21). On her property Schedule “A/B,” Debtor lists  
3 real property identified as “3910 White Fir Way Mt. Charleston, Las Vegas, Nevada 89124”  
4 (“White Fir Property”) as a rental property valued at \$303,700. On the same Schedule “A/B,”  
5 Debtor lists a single-family home identified as 8616 Mirada Del Sol Drive, Las Vegas, Nevada  
6 89128-0000, valued at \$385,394. On her Schedule “C,” Debtor claims the latter property as  
7 exempt in the amount of \$0.00 under the Nevada homestead statutes. On her secured creditor  
8 Schedule “D,” Debtor lists two separate claims, each in the amount of \$2.5 million, in favor of  
9 creditor Long Term Capital Partnership VI, LLC (“LTCP”). Schedule “D” attests that the two  
10 LTCP claims are secured by one or both properties described as 3910 White Fir Way, Las Vegas,  
11 Nevada 89124, and 123 Rainbow Canyon Blvd., Mt. Charleston, Nevada 89124.<sup>5</sup> Debtor’s  
12 unsecured creditor Schedule “E/F” lists three separate non-priority claims in favor of Law Office  
13 Kristina Wildeveld and Associates (“Wildeveld Law Firm”) in unknown or zero amounts for  
14 judgments for legal fees and related collection proceedings in the United States District Courts  
15 for the Central District of California and District of Nevada, and in the Eighth Judicial District  
16 Court for Clark County, Nevada.

17 On February 22, 2023, the Wildeveld Law Firm filed a motion for relief from the  
18 automatic stay (“RAS Motion”) that was noticed to be heard on March 9, 2023. (ECF Nos. 26  
19 and 28). Relief from stay was sought to permit certain civil contempt proceedings to be pursued  
20 against the Debtor in Case No. 2:21-cv-3122 JAK-AGR, that was pending in the Central District  
21 of California at the time the bankruptcy petition was filed.

22 On February 28, 2023, separate proofs of claim numbers 5-1 and 6-1 (“POC 5-1” and  
23 “POC 6-1”) were filed by the Wildeveld Law Firm.

24 On March 27, 2023, Debtor filed her Status Report as required in a Subchapter V  
25 proceeding. (ECF No. 45). In her Status Report, Debtor represents that her proposed Subchapter  
26 V plan will be filed “on or before May, 2023.”

---

27 <sup>5</sup> Debtor’s Schedule “A/B” does not list an interest in real property with this address. It  
28 appears, however, that this is the same as the White Fir Property.

1 On March 29, 2023, Debtor filed an opposition to the RAS Motion. (ECF No. 52).

2 On April 17, 2023, proof of claim number 11-1 (“POC 11-1”) was filed by LTCP.

3 Attached to that proof of claim are copies of an Adjustable Rate Note (“Promissory Note”) dated  
4 June 1, 2007, in the principal amount of \$2,250,000 executed by the Debtor, as well as a Deed of  
5 Trust of the same date against real property located at 123 Rainbow Canyon Boulevard, Mt.  
6 Charleston, Nevada 89124 (“Deed of Trust”).<sup>6</sup>

7 On April 24, 2023, Debtor filed an “Objection to Proof of Claim No. 11 – Long Term  
8 Capital Partnership VI, LLC” (“Claim Objection”). (ECF No. 72).

9 On April 27, 2023, Debtor noticed the Claim Objection to be heard on June 7, 2023.  
10 (ECF No. 75).

11 On May 8, 2023, Debtor filed her proposed small business Subchapter V plan of  
12 reorganization (“Sub V Plan”). (ECF No. 81).

13 On May 8, 2023, Debtor filed a declaration objecting to POC 6-1 filed by the Wildeveld  
14 Law Firm. (ECF No. 83).

15 On May 8, 2023, Debtor filed a set of materials marked as exhibits that apply to her  
16 objection to POC 6-1. (ECF No. 84).

17 On May 9, 2023, an order was entered pursuant to stipulation granting the RAS Motion.  
18 (ECF No. 86).

19 On May 11, 2023, Debtor noticed a hearing on confirmation of her Sub V Plan to be held  
20 on June 28, 2023. (ECF No. 88).

21 On May 11, 2023, Debtor filed separate objections to POC 5-1 and POC 6-1 and noticed  
22 both to be heard on June 14, 2023. (ECF Nos. 90, 91, 92, and 93).

23 On May 17, 2023, a response to the Claim Objection was filed by the Sub V Trustee.  
24 (ECF No. 97).

25 On May 22, 2023, opposition to the Claim Objection was filed by LTCP. (ECF No. 99).  
26

---

27 <sup>6</sup> As mentioned at note 5, supra, Debtor’s property Schedule “A/B” does not disclose that  
28 she has any interest in the property having this address, but it appears to be the White Fir  
Property.

1 On June 2, 2023, creditor Deutsch National Bank Trust Company, through its loan  
2 servicer Select Portfolio Services (“Select Portfolio”) filed its objection to confirmation of the  
3 proposed Sub V Plan. (ECF No. 105). Deutsch Bank is the lender with respect to the Debtor’s  
4 residence.

5 On June 2, 2023, Debtor filed a reply in support of the Claim Objection. (ECF No. 106).

6 On June 5, 2023, creditor LTCP filed its objection to confirmation of the proposed Sub V  
7 Plan. (ECF No. 107).

8 On June 9, 2023, the Sub V Trustee filed his statement as to confirmation of the proposed  
9 Sub V Plan (“Sub V Trustee Plan Statement”). (ECF No. 109).

10 On June 15, 2023, the UST filed an objection to confirmation of the proposed Sub V  
11 Plan. (ECF No. 116).

12 On June 20, 2023, an order was entered overruling the Claim Objection. (ECF No. 119).

13 On June 21, 2023, the UST filed the instant UST Dismissal Motion, along with a  
14 declaration of Carla K. Cordero (“Cordero Declaration”) in support thereof. (ECF No. 121). On  
15 this same date, a request was made to have the UST Dismissal Motion heard on shortened time.  
16 (ECF Nos. 123-125).

17 On June 22, 2023, an order was entered authorizing the UST Dismissal Motion to be  
18 heard on June 28, 2023, i.e., the same date as the hearing on confirmation of the Debtor’s  
19 proposed Sub V Plan. (ECF No. 126).

20 On June 26, 2023, a Declaration of Alan Carrington (“Carrington Declaration”) was filed  
21 in support of plan confirmation. (ECF No. 133). That declaration suggests that the Debtor may  
22 be able to borrow up to \$1.5 million secured by the White Fir Property for up to a four year term.

23 On June 26, 2023, Debtor filed a written opposition to the UST Dismissal Motion to  
24 which were attached Exhibits A-D. Exhibit A is a declaration of Debtor in support thereof  
25 (“Debtor Declaration”); Exhibit B is a copy of proof of insurance from Liberty Mutual; Exhibit  
26 C is Debtor’s DIP account information from U.S. Bank; and Exhibit D is a “Residential Lease  
27 Agreement” regarding the White Fir Property. (ECF No. 135).

28

1 On June 27, 2023, the Sub V Trustee filed a “statement” as to the UST Dismissal Motion.  
2 (ECF No. 136).

3 On June 27, 2023, Debtor filed amended monthly operating reports (“MORs”) for  
4 February, March, April, and May, 2023. (ECF Nos. 137, 138, 139, and 140).

5 **DISCUSSION<sup>7</sup>**

6 The UST seeks dismissal of the Debtor’s proceeding or, in the alternative, to have the  
7 Chapter 11 case converted to one under Chapter 7. The UST asserts that cause exists under  
8 Section 1112(b) to dismiss the Chapter 11 proceeding or convert it to Chapter 7 for several  
9 reasons: (1) Debtor has failed to maintain insurance on the White Fir Property contrary to  
10 Section 1112(b)(4)(C); (2) Debtor has failed to timely provide information reasonably requested  
11 by the UST contrary to Section 1112(b)(4)(H);<sup>8</sup> (3) Debtor has failed to file a Subchapter V plan  
12 within the deadline set by Section 1189(b); (4) Debtor failed to timely comply with the deadlines  
13 for filing the information required by Section 1116(1)(b) or the Status Report required by Section  
14 1188(c); and (5) Debtor has failed to expeditiously prosecute this case.

15 Although cause for dismissal or conversion under Section 1112(b)(1) allegedly has been  
16 established, the UST acknowledges that under Section 1112(b)(2), the court may not dismiss or  
17 convert the case if it finds specific unusual circumstances demonstrating that dismissal or  
18 conversion is not in the best interests of creditors and the bankruptcy estate. Upon such a  
19 finding, the burden shifts to the debtor in possession to demonstrate a reasonable likelihood of  
20 confirming a Chapter 11 plan within a reasonable time, and that there is a reasonable justification  
21 for the alleged grounds for conversion or dismissal. See 11 U.S.C. §§ 1112(b)(2)(A) and  
22 (b)(2)(B).

23 In response, Debtor maintains that the concerns raised by the UST either have been met  
24 or do not prejudice the rights of parties in interest. She asserts that insurance on the White Fir

---

25 <sup>7</sup> At the hearing on June 28, 2023, further proceedings on confirmation of the Sub V Plan  
26 were continued to August 9, 2023.

27 <sup>8</sup> Those documents included certain information concerning the Debtor’s post-petition  
28 bank accounts and sources of deposit, as well as insurance information on the White Fir  
Property. See Cordero Declaration at ¶ 9-12.

1 Property has been obtained, that the information request by the UST has been provided, that she  
2 was not responsible for any delay in the electronic filing of the Subchapter V Plan, and that the  
3 late-filing of required information or documents was not prejudicial. Because the matters have  
4 been addressed, Debtor concludes that she is expeditiously prosecuting the instant Subchapter V  
5 proceeding.

6 The court has considered the written and oral arguments of counsel, along with the record  
7 provided, and the Debtor's history of seeking bankruptcy relief. Having reviewed all of the  
8 circumstances, the court concludes that the UST Dismissal Motion should be denied based on a  
9 variety of considerations.

10 First, the Debtor is no neophyte to the Chapter 11 reorganization process, and she did  
11 successfully obtain a Chapter 11 discharge in her 2002 Case. See discussion at note 3, supra.  
12 Thereafter, she commenced three additional Chapter 11 cases (one in pro se), but the two cases  
13 in 2010 and the one case in 2012 were dismissed without entry of a Chapter 11 discharge.  
14 Between the discharge in the 2002 Case and the commencement of the 2010 and 2012 cases, she  
15 apparently obtained her interest in the White Fir Property that is the focus of the instant Chapter  
16 11 case. Since 2012, Debtor has not been in a bankruptcy proceeding, at least not one in this  
17 judicial district. In other words, Debtor has repeated bankruptcy experience but does not appear  
18 to be a serial filer with respect to the primary asset addressed in this proceeding.<sup>9</sup>

19 Second, the Debtor's delay in filing her Subchapter V Plan on May 8, 2023, rather than  
20 on May 5, 2023, was sufficiently excusable. On April 21, 2023, a public notice was posted on  
21 this court's website<sup>10</sup> that the Case Management/Electronic Case Filing System (CM/ECF) for  
22 filing documents would be unavailable beginning at 6:00 p.m. on Friday, May 5, 2023, through  
23 11:59 p.m. on Sunday, May 7, 2023. Parties were directed to "have your last transaction

---

24 <sup>9</sup> Moreover, Debtor's Chapter 11 proceeding is brought under Subchapter V, which did  
25 not exist before the Small Business Reorganization Act of 2019 went into effect on February 19,  
26 2020, 11 U.S.C. §§ 1181-1195. For debtors who qualify for Subchapter V relief, various  
27 benefits and burdens apply that are distinct from standard Chapter 11 proceedings. Those  
28 distinctions may result in an outcome different from the Debtor's prior unsuccessful efforts.

<sup>10</sup> [CM/ECF Availability – May 5, 2023 through May 7, 2023 | U.S. Bankruptcy Court,  
District of Nevada \(uscourts.gov\)](https://www.uscourts.gov/cm/ecf-availability-may-5-2023-through-may-7-2023)

1 submitted no later than 5:55 p.m. on Friday, May 5.” Whether or not the Subchapter V Plan was  
2 filed after the close of business on a Friday, May 5, 2023, its filing on the next business day of  
3 Monday, May 8, 2023, does not appear to have had a material impact on the prosecution of the  
4 case.

5 Third, it appears that the Debtor has endeavored to bring her operating reports current.  
6 Those reports appear to provide at least some of the information that she was required to append  
7 to her bankruptcy petition or otherwise provide to the UST. Likewise, it appears that the  
8 insurance information requested by the UST has been provided, see Debtor Declaration and  
9 Exhibit B, and steps have been taken to comply with the requirements for a debtor in possession  
10 account. Id. and Exhibit C.

11 Fourth, the Debtor suggests that she may be able to obtain a loan of up to \$1.5 million  
12 secured by the White Fir Property, and to lease the same property for rental income sufficient to  
13 service the loan. See Carrington Declaration and attached Exhibit; see Debtor Declaration and  
14 Exhibit “D.” It is, of course, uncertain whether these developments ever come to fruition.  
15 Moreover, even if these developments occur, it is uncertain whether the Debtor would ever be  
16 able to meet her burden of proof and persuasion if she must confirm her proposed Sub V Plan on  
17 a nonconsensual basis. See Trustee Plan Statement at 2:3-5, citing Hamilton v. Curiel (In re  
18 Curiel), 651 B.R. 548 (B.A.P. 9th Cir. 2023). Those uncertainties, however, must be addressed  
19 at the time of plan confirmation.

20 On this basis, the court concludes that even if cause for dismissal has been established  
21 under Section 1112(b)(1), the Debtor has sufficiently demonstrated a reasonable likelihood that a  
22 Subchapter V plan will be confirmed within a reasonable amount of time under Section  
23 1112(b)(2)(A) and that the concerns raised by the UST have been or will be cured within a  
24 reasonable time under Section 1112(b)(2)(B).

25 **IT IS THEREFORE ORDERED** that the Motion of the United States Trustee to  
26 Dismiss or Convert Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b) and Federal Rules of  
27 Bankruptcy Procedure 1017(f) and 9014, brought in the above-referenced bankruptcy case,  
28 Docket No. 121, be, and the same hereby is, **DENIED**.



1 Copies sent via CM/ECF ELECTRONIC FILING

2

3 Copies sent via BNC to:

4 TRACY LEE HURST-CASTL

5 P.O BOX 35937

6 LAS VEGAS, NV 89133

7

8

###

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28