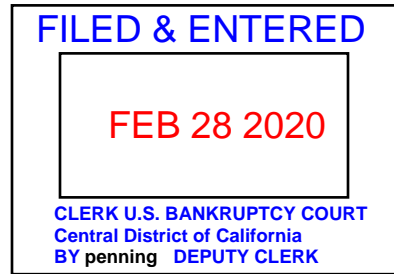


FOR PUBLICATION



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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**
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13 In re:

14 2034 Sunset Plaza Drive, LLC,

15
16
17
18 Debtor(s).

Case No.: 2:19-bk-24652-BB

CHAPTER 11

**MEMORANDUM DECISION DENYING
MOTION OF PIVOTAL CAPITAL FOR
ORDER DETERMINING THAT DEBTOR'S
REAL PROPERTY IS SINGLE ASSET REAL
ESTATE**

19 Date: February 26, 2020
20 Time: 10:00 AM
Courtroom: 1539

21
22 On February 5, 2020, secured creditor Pivotal Capital Group II, LLC ("Pivotal")
23 moved for entry of an order determining that the debtor's real property is "single asset
24 real estate" within the meaning of Bankruptcy Code section 101(51B). For the reasons
25 set forth below, the Court will enter an order concurrently herewith denying the
26 foregoing motion (the "Motion").¹

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28 ¹ At the request of counsel for Pivotal, the Court notes for the record that Pivotal agreed to submit on the Court's tentative ruling on the Motion and did not attempt to persuade the Court to alter its tentative ruling solely because he considered the Motion moot in light of the Court's February 26, 2020 decision to dismiss the above-entitled chapter 11 case in 14 days.

1 The relevant facts are not in dispute. Debtor and debtor in possession 2034
2 Sunset Plaza Drive LLC ("Debtor") filed a chapter 11 petition commencing the above
3 chapter 11 case (the "Case") on December 15, 2019 to prevent the loss of its only asset
4 through foreclosure.² According to the Debtor's schedules, that asset is a single parcel
5 of vacant land located at 2034 Sunset Plaza Drive in Los Angeles, California (the
6 "Property"). The Property is zoned only for use as a single family residence, and,
7 according to the Debtor's initial status report [docket no. 30, ¶ 13], the Debtor's
8 business plan is to build a single, high-end custom luxury home with all manner of
9 custom and special buildouts on the Property. The Property is over-encumbered by a
10 deed of trust in favor of Pivotal that is in default, and the Debtor is not generating any
11 income. The only "business" being conducted by the Debtor is that it is attempting to
12 obtain financing so that it can construct a single family dwelling on the Property.

13 In order for the Property to be "single asset real estate" within the meaning of 11
14 U.S.C. § 101(51B), all of the following requirements must be met:

- 15 1. The Debtor must not be a family farmer;
- 16 2. The Debtor must own a single piece of real property or a single project;
- 17 3. The Property cannot be residential real property with fewer than 4
18 residential units on it;
- 19 4. The Property must generate substantially all of the Debtor's gross income;
20 and
- 21 5. The Debtor must not be conducting any substantial business on the
22 Property other than the business of operating the Property and activities
23 incidental thereto.

24 11 U.S.C. § 101(51B).

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28 ² As of the petition date, there was also approximately \$376,500 in cash in the debtor's prepetition bank account at Bank of America, but the Debtor contends that these funds are not property of the Debtor or its bankruptcy estate. According to the Debtor, these funds belong to Tomas Nioac De Salles, who owns a one-third interest in the Debtor.

1 In the view of this Court, the first, second, fourth and fifth of the above
2 requirements have been met. The Debtor is not a family farmer. The Debtor owns a
3 single piece of real property. The Debtor has no income at this time, but, if it ever
4 obtains any income, that income will be generated from a sale, lease or rental of the
5 Property. And the Debtor is not conducting any business other than trying to develop
6 the Property, so, if the debtor can be said to be conducting business at all, it is a
7 business incidental to operating the Property.

8 The issue, therefore, is the third requirement -- whether the Property should be
9 characterized as residential real property with fewer than 4 residential units. Clearly, it
10 is real property and there are fewer than 4 units on the Property. In fact, there are zero
11 units on the Property, and zero is less than four. But is it *residential* real property?

12 In support of its Motion, Movant has directed the Court's attention to In re
13 Kachina Vill., LLC, 538 B.R. 124 (Bankr. D.N.M. 2015) and the cases cited therein as
14 support for the proposition that Congress meant for courts to include undeveloped land
15 in the definition of single asset real estate. But all of these cases involve projects that,
16 once developed, would qualify as single asset real estate – with the exception of one,
17 Kkemko, infra, which has nothing whatsoever to do with undeveloped land.

18 In the Kachina Village case itself, the property in question was real property on
19 which the debtor planned to build four or more residential units. The property was
20 zoned for mixed use and the debtor had obtained a conditional use permit that allowed
21 both commercial and residential development. Although the specific details of its plan
22 were not clear, the Court specifically noted that the plan “included the construction of
23 more than four residential units” and that “The Court is not convinced that a developer
24 holding 100 unimproved residential lots could avoid the SARE designation because it
25 had not commenced construction on the petition date.”

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1 The Court in Kachina Village went on to cite a number of cases that it described
2 as support for the general proposition that raw land intended for development
3 constitutes single asset real estate:

4 See, e.g. *In re Mountain Edge LLC*, 2012 Bankr. LEXIS 4784, 2012 WL 4839784,
5 at *3 (Bankr. D.N.M. 2012) (generally accepted that raw land acquired or held for
6 development is SARE); *In re Kkemko, Inc.*, 181 B.R. 47, 51 (Bankr. S.D. Ohio
7 1995) (applying concepts of real estate law to conclude that "single asset real
8 estate" includes raw land); *In re Light Foot Group, LLC*, 2011 Bankr. LEXIS 4399,
9 2011 WL 5509025 at *4 (Bankr. D. Md. 2011) (residential development was
10 SARE despite incidental projected income from repairs); *In re Pensignorkay, Inc.*,
11 204 B.R. 676, 683 (Bankr. E.D. Pa. 1997) (undeveloped parcel held for
12 development was SARE); *In re A-1 Management Corp.*, 2011 Bankr. LEXIS
13 4538, 2011 WL 5509262, *1 (Bankr. S.D. Fla. 2011) (finding that the debtor was
14 a SARE entity where "its sole asset is a vacant parcel of mixed use real
15 property....").

16 538 B.R. at 128. But none of the cases cited in Kachina Village involved raw land that
17 would be excluded from the definition of single asset real estate once construction had
18 been completed.

19 In Mountain Edge, the debtor's property was 24 residential lots in the Mountain
20 Ridge subdivision in Otero County, New Mexico. In Kkemko, the debtor's property was
21 an operating marina that the court found was not single asset real estate because there
22 were other business activities being conducted on the property. In Light Foot, the
23 debtor's real property consisted of five tracts of land, on which there were 17 rental
24 units. Some of the rental units were single family homes; others were units within two
25 four-unit buildings, and still others were mobile homes. In Pensignorkay, the debtor
26 owned a tract of undeveloped land consisting of two parcels that the debtor acquired
27 with the intention of creating subdivided parcels for building and development. In A-1
28 Management, the property in question was zoned for mixed use and the debtor planned

1 to develop it into a multi-family residential apartment facility with an associated
2 commercial component.

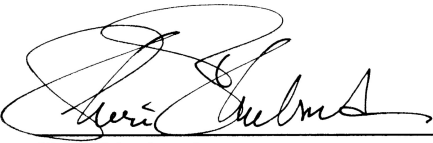
3 A more accurate reading of these cases is that a debtor cannot escape the label
4 "single asset real estate" by pointing to the fact that it has not yet constructed any units
5 on the property (and therefore currently has less than 4 units). Or, stated differently, if
6 the project, once constructed, will qualify as single asset real estate, the project is single
7 asset real estate even if nothing has been built on it yet.

8 None of the authorities cited by Movant has any tendency whatsoever to suggest
9 that, in this Case, the Property should be treated as single asset real estate. The
10 Property cannot be used for anything other than residential purposes, and the Debtor
11 will never be able to build more than a single unit on that Property. And the Debtor
12 does not intend to do anything other than construct a single family residence on the
13 Property.

14 Movant invites the Court to fashion a new, judge-created rule that would
15 automatically include undeveloped land within the definition of single asset real estate,
16 no matter what kind of land it is or what kind of project can or will be built on it. The
17 Court respectfully declines this invitation. If the debtor's only asset is a single piece of
18 property that has a single family dwelling on it or is a vacant piece of land that can never
19 have anything other than a single family dwelling on it, the debtor will not qualify as a
20 single asset real estate debtor within the meaning of bankruptcy code section 101(51B).
21 Therefore, the Motion must be denied, and the Court will enter an order to that effect
22 concurrently herewith.

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25 Date: February 28, 2020

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Sheri Bluebond
United States Bankruptcy Judge