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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re:

12 Korean Western Presbyterian
13 Church of Los Angeles,

18 Debtor.

Case No: 2:20-bk-11675-NB

Chapter: 11

14 **MEMORANDUM DECISION TO APPOINT**
15 **CHAPTER 11 TRUSTEE**

16 Hearings:

Date: February 28, 2020 and
March 31, 2020

Time: 10:00 a.m. and 1:00 p.m.

Ctrm: 1545

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20 For the reasons set forth below, and on the record at the above-captioned
21 hearings, the “Emergency Motion to Dismiss Chapter 11 Case or, Alternatively, Appoint
22 a Chapter 11 Trustee, Deny First Day Motions, and Confirm That the Automatic Stay
23 Does not Apply to the State Court Action” (dkt. 29, the “Dismissal/Trustee Motion”) will
24 be granted in part by separate order. That order will direct the United States Trustee
25 (the “UST”) to select a chapter 11 trustee for appointment.

26 **1. BACKGROUND**

27 On February 14, 2020, persons purporting to act for the above-captioned Debtor
28 (the “Ko Faction”) filed this voluntary Chapter 11 bankruptcy case. On February 21,

1 2020, the Ko Faction filed applications to employ bankruptcy counsel (dkt. 13) and a
2 chief restructuring officer (“CRO”) (dkt. 15), a motion to establish procedures for the
3 submission of a combined hearing on disclosure statement approval and confirmation of
4 a plan of reorganization (dkt. 16), and a request for hearings on shortened time on
5 these motions (dkt. 17). Thereafter the Ko Faction filed an application to employ a real
6 estate broker (dkt. 25) (collectively, the “First Day Motions”).

7 The First Day Motions focused on attempting to sell Debtor’s sole material asset,
8 real property located at 1218 South Fairfax Avenue, Los Angeles, California 90019 (the
9 “Property”). On February 24, 2020, this Bankruptcy Court issued an order shortening
10 time and setting the hearings for February 28, 2020 at 10:00 a.m. (dkt. 19).

11 On February 26, 2020, Nathanael Yun and Jong Suk Choi (the “Choi Faction”)
12 filed the Dismissal/Trustee Motion (dkt. 29) and requested that motion be heard at the
13 same time as the Ko Faction’s First Day Motions. On February 26, 2020, this
14 Bankruptcy Court issued an order shortening time and setting the hearing for February
15 28, 2020 at 9:00 a.m. (dkt. 33).

16 The Dismissal/Trustee Motion asserts that the individual who signed the petition,
17 Rev. Joo Mo Ko, lacked authority to cause the Debtor to file this bankruptcy case, and
18 filed this case in bad faith. Dkt. 29. The Dismissal/Trustee Motion requests that this
19 Bankruptcy Court (a) dismiss this case or alternatively (b) appoint a chapter 11 trustee,
20 (c) deny the Ko Faction’s First Day Motions, and (d) rule that the automatic stay does
21 not apply to an action pending in the Los Angeles Superior Court bearing the caption
22 *Korean Western Presbyterian Church of Los Angeles v. Jong Suk Choi et. al* (Case No.
23 19STCV40062) (the “State Court Action”) (*id.*), and related matters.

24 **a. Terminology, and scope of discussion**

25 To better understand the discussion below, this Bankruptcy Court addresses
26 certain terminology relevant to the parties’ dispute.

27 One terminology issue has to do with Debtor’s corporate structure. Debtor is a
28 California nonprofit religious corporation. This Bankruptcy Court understands that

1 Debtor has no "equity interest holders" *per se*. But in discussing the issues presented
2 in the Dismissal/Trustee Motion, it is helpful to distinguish between persons who might
3 be in a debtor-creditor relationship with Debtor (*e.g.*, arising a lease of Debtor's
4 property) and persons who assert the sort of control typically exercised by equity
5 interest holders. The following discussion sometimes refers to the latter as "equity"
6 interests.

7 Another issue of terminology is the distinction between Debtor as an entity and
8 the factions that seek to control Debtor and its property. There appear to be essentially
9 two factions in the present disputes: one led by Rev. Joo Mo Ko (the Ko Faction) and
10 another led by Rev. Jong Suk Choi aka Olaf Choi (the Choi Faction). The latter appears
11 to include Nathanael Yun, and appears to be allied with and/or include the LA Open
12 Door Presbyterian Church ("LA Open Door"), and The Western Presbytery of the
13 Hapdong ("Hapdong"). This memorandum decision attempts to distinguish among the
14 factions, Debtor itself, and the entities who might or might not be allied with the factions.

15 On a related issue, the factions' governance dispute appears to include not just
16 control of Debtor itself, but also which church organization governs Debtor's structure.
17 These disputes include whether Debtor and LA Open Door did or did not merge, and
18 whether the local church (*i.e.*, Debtor, either as a separate entity or merged with LA
19 Open Door) is affiliated with/part of Hapdong, or the LA Presbytery of the World Korean
20 Presbyterian Church ("World Church"), or both. See *dk*t.71, pp.3:13-4:4, 4:25-5:16,
21 6:13-9:24.

22 **b. Proceedings on the Dismissal Motion**

23 This Bankruptcy Court held an initial hearing on the Dismissal/Trustee Motion
24 (and other matters) on February 28, 2020, but continued the matter to March 31, 2020
25 and directed the Choi Faction to give further notice of the continued hearing. On March
26 9, 2020, the Choi Faction filed and served notice of the continued hearing (*dk*t. 74, the
27 "Supplemental Notice"). On March 31, 2020 at 1:00 p.m., this Bankruptcy Court held a
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1 further hearing on the Dismissal/Trustee Motion, among other motions. Appearances
2 were as noted on the record.

3 At the conclusion of that hearing this Bankruptcy Court took under submission a
4 number of issues, including whether to grant the Dismissal/Trustee Motion, and directed
5 the Choi Faction to file a supplemental declaration addressing whether they would
6 consent to Debtor's payment of a chapter 11 trustee's fees, or would pay those fees
7 themselves, notwithstanding any future determination that the Ko Faction lacked the
8 requisite authority to sign and file the petition. On April 3, 2020, the Choi Faction
9 submitted the "Declaration of Timothy J. Yoo re Appointment of a Chapter 11 Trustee"
10 (dkt. 105, the "Yoo Declaration") stating, as counsel for Nathanael Yun and Jong Suk
11 Choi (the Choi Faction), that those persons "agree that the fees and costs of a Chapter
12 11 trustee will be paid even if it is later determined that the party/ies that filed this
13 bankruptcy cases did not have authority to do so." Dkt. 105, p. 1:26-28 (emphasis
14 added). The declaration does not state who will pay those fees and costs, or when, but
15 at a minimum this Bankruptcy Court interprets the Yoo Declaration to mean that the
16 Choi Faction has no objection to Debtor paying those fees and costs as such amounts
17 normally would be authorized and paid in a chapter 11 case.

18 **2. DISCUSSION**

19 For the reasons stated below, this Bankruptcy Court is persuaded that "cause"
20 exists to appoint a chapter 11 trustee.

21 **a. There is "cause" to appoint a chapter 11 trustee**

22 **(i) Legal Standards**

23 Section 1112(b)¹ provides that the bankruptcy court shall convert or dismiss a
24 case "for cause," whichever is in the best interests of creditors and the estate, unless
25 the court determines that appointment of a chapter 11 trustee or examiner is in the best
26 interests of the estate. Section 1112(b)(4) provides a nonexclusive list of sixteen factors

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28 ¹ Unless the context suggests otherwise, a "chapter" or "section" ("§") refers to the United States Bankruptcy Code,
11 U.S.C. § 101 et seq. (the "Code"), a "Rule" means the Federal Rules of Bankruptcy Procedure or other federal or
local rule, and other terms have the meanings provided in the Code, Rules, and the parties' filed papers.

1 that constitute “cause,” but cause is a flexible standard, subject to the court’s discretion.
2 *In re YBA Nineteen, LLC*, 505 B.R. 289, 302 (S.D. Cal. 2014).

3 Section 1104 provides that on request of a party in interest, and after notice and
4 a hearing, the court “shall” order the appointment of a trustee “for cause, including
5 fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor
6 by current management, or before or after the commencement of the case, or similar
7 cause.” Alternatively, the court “shall” order the appointment of a trustee “if such
8 appointment is in the interests of creditors, any equity security holders, and other
9 interests of the estate.” § 1104.

10 The bad faith filing of a bankruptcy petition constitutes “cause” for dismissal
11 under § 1112(b). *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). The bad faith analysis
12 focuses on whether a debtor is attempting “to effect a speedy, efficient reorganization
13 on a feasible basis” or “to unreasonably deter and harass creditors.” *Id.* A petition is
14 filed in bad faith if a debtor seeks to “achieve objectives outside the legitimate scope of
15 the bankruptcy laws.” *Id.* A filing may also be in bad faith if it is “an apparent two-party
16 dispute that can be resolved outside of the Bankruptcy Court’s jurisdiction.” *In re*
17 *Sullivan*, 522 B.R. 604, 616 (9th Cir. BAP 2014).

18 Bad faith depends on an amalgam of factors and no specific factor is
19 determinative. *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). A bankruptcy court may
20 consider any factor which demonstrates an abuse of the bankruptcy process and the
21 purpose of reorganization. *In re Marshall*, 721 F.3d 1032, 1048 (9th Cir. 2013). A
22 finding of bad faith is made on a case by case basis, there is no list of factors which
23 must be present in each case to make the finding, and the weight given to any particular
24 factor depends on the circumstances of the individual case. *In re Can-Alta Props., Ltd.*,
25 87 B.R. 89, 91 (9th Cir. BAP 1988); *In re Thirtieth Place*, 30 B.R. 504, 506 (9th Cir. BAP
26 1983).

1 **(ii) Application of the legal standards**

2 Based on the record presented, this Bankruptcy Court finds and concludes
3 (A) that the Ko Faction filed this bankruptcy case in bad faith, and alternatively (B) that
4 there is other “cause” for relief under § 1112, and (C) that appointment of a chapter 11
5 trustee is in the best interests of the estate, or alternatively (D) that there is “cause” for
6 appointment of a chapter 11 trustee under § 1104. Cause for all such relief is based on
7 the disputes over governance of Debtor and control of Debtor’s property, and the
8 actions taken by the Ko Faction, as further described below.

9 The indicia of bad faith include the following. Since the commencement of this
10 bankruptcy case, the Ko Faction has engaged in very questionable tactics, including
11 that (A) they did not serve the First Day Motions on any of the other parties involved in
12 governance disputes, including, but not limited to, Rev. Jong Suk Choi, Nathanael Yun,
13 LA Open Door, Hapdong, and the World Church, (B) the First Day Motions did not
14 adequately apprise this Bankruptcy Court about the facts and circumstances
15 surrounding the governance dispute, and (C) the First Day Motions sought expedited
16 relief on an “emergency” basis with no discernable emergency. Additionally, even after
17 this Bankruptcy Court raised these concerns, and related concerns about granting any
18 further relief in this case until the governance disputes have been resolved, the Ko
19 Faction continued to make oral representations that they intend to press forward with a
20 proposed § 363 sale of the Property, despite the lack of any stated reasons or evidence
21 why such a sale is necessary or appropriate at this time.

22 Not only has the Ko Faction not supported their requested relief, but the record
23 before this Bankruptcy Court only reinforces this Bankruptcy Court’s concerns about
24 that request. There is no evidence of any emergency or grounds to press forward with
25 a sale of Debtor’s Property. Based on the Ko Faction’s own filed papers, there appears
26 to be enormous equity in Debtor’s primary asset, the Property. Debtor’s Summary of
27 Assets and Liabilities (dkt. 114, p.2) lists \$17,046,007.00 in assets and only
28 \$1,525,809.93 in liabilities. There is no indication that Debtor is in default of its

1 mortgage obligations or otherwise has not been paying its bills on time. *Id.* The only
2 need to sell the Property appears to be to fund the Ko Faction's governance disputes, or
3 to disrupt the Choi Faction's ability to conduct services on the Property and obtain
4 collections from worshipers.

5 There is also substantial uncertainty about whether all parties in interest and this
6 Bankruptcy Court are receiving reliable and complete information. The Ko Faction and
7 the Choi Faction have each accused the other of hiding books and records. Bankruptcy
8 schedules and other information has only belatedly been filed, on March 12, 2020 (dkt.
9 83) and April 9, 2020 (dkt. 114) and, as of the preparation of this Memorandum
10 Decision, Debtor has not filed Monthly Operating Reports for February or March 2020.

11 The only creditor who has appeared in this case, the Evangelical Christian Credit
12 Union ("Credit Union"), has questioned whether the purported governance disputes and
13 prepetition transactions are a shell game to prevent it from collecting its judgment
14 against LA Open Door. The receiver appointed by the State Court at the Credit Union's
15 request has reported being frustrated in attempting to obtain books and records, or to
16 collect funds that are received from worshipers at services being conducted at the
17 Property.

18 There is a very substantial danger if Debtor is left with either faction in control, or
19 no faction in control. In that situation the risks are enormous that the disputes between
20 the Ko Faction, the Choi Faction, and others including LA Open Door, Hapdong, and
21 World Church, will result in the dissipation of assets or other irreparable harm to Debtor,
22 its property, and the interests of creditors, equity holders, and other interests, including
23 worshipers. Appointment of a chapter 11 trustee will alleviate these dangers by placing
24 a neutral party in control of Debtor's property while the governance disputes can play
25 out in State Court – this Bankruptcy Court is concurrently issuing a Memorandum
26 Decision granting the Choi Faction's motion for relief from the automatic stay (dkt. 79,
27 80, 81) to let the State Court determine the governance dispute.

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1 Dismissal of this case is not an appropriate alternative. It would entail even
2 greater risks of such dissipation of assets or other harm, without the protections of the
3 automatic stay of § 362(a) and § 549. In addition, dismissal of this case would mean a
4 loss of the Bankruptcy Code's avoidance actions, and that loss might be irreparable
5 given the limitations periods for bringing such actions. See §§ 544-551.

6 Conversion of this case is not a good alternative. There is no need for a
7 liquidation proceeding, and a chapter 7 trustee would not be as well suited as a chapter
8 11 trustee to operate Debtor while the governance dispute plays out.

9 For all of these reasons, this Bankruptcy Court is persuaded that appointment of
10 a chapter 11 trustee is required.

11 **3. CONCLUSION**

12 For all of the foregoing reasons, the Dismissal/Trustee Motion will be granted to
13 the extent set forth above. This Bankruptcy Court will issue a separate order granting
14 the motion and directing the UST to select a chapter 11 trustee for appointment. The
15 Choi Faction is directed to lodge a proposed order within seven days after entry of this
16 Memorandum Decision on the docket.

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24 Date: April 21, 2020



Neil W. Bason
United States Bankruptcy Judge