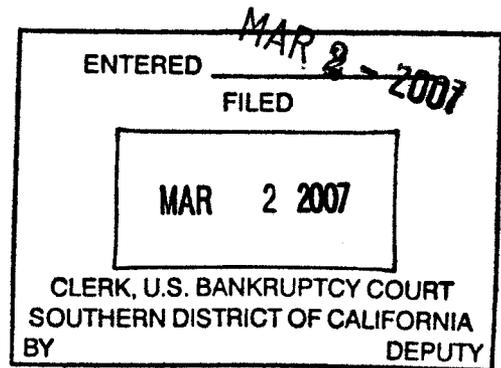


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 06-03868-B11

12)

13 FOOTE DEVELOPMENT COMPANY,) ORDER ON DEBTOR'S MOTION

14 INC.,) FOR ORDER DETERMINING CASE NOT

15) SINGLE ASSET REAL ESTATE CASE

16)

17)

18 Debtor.)

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16 The debtor in this case owns a parcel of undeveloped real

17 property. It also owns an interest in a limited liability

18 company which is the process of attempting to acquire a

19 leasehold interest in another real estate development. Debtor

20 has filed a motion seeking a determination that "this case is

21 not a single asset real estate case under 11 U.S.C. § 101(51B)

22 and is therefore, not subject to the provisions of 11 U.S.C.

23 § 362(d)(3). The Court finds that for the purposes of section

24 101(51B) the only property interest Debtor has qualifies as

25 single asset real estate. Therefore, Debtor's motion is

26 denied.

1 This Court has subject matter jurisdiction pursuant to
2 28 U.S.C. § 1334 and General Order No. 312-D of the United States
3 District Court for the Southern District of California. This is a
4 core proceeding under 28 U.S.C. § 157(b)(2)(A).

5 **BACKGROUND**

6 Foote Development Company, Inc., ("Debtor") is the owner of 80
7 acres of undeveloped land located in Escondido, California known as
8 Rancho Mirador, Tract 761 (the "Rancho Mirador Project"). The
9 Rancho Mirador Project has a "tentative map" which expires in April
10 2008. The Debtor places the current value at \$7.5 million. Debtor
11 suggests that the value would go up to \$8 million if the map is
12 finalized and to \$45 million if the project is fully developed with
13 completed homes. At present, though, the Rancho Mirador Project
14 generates no income.

15 Debtor also has, as managing member, a 60% interest in an
16 Oregon limited liability company Waterford at Johns Landing, LLC
17 ("Waterford"). Waterford currently owns nothing. However,
18 Waterford is in escrow to purchase a leasehold interest in
19 commercial property in Oregon which would last through the year
20 2075. The plan is to build town homes and a condominium/apartment
21 complex on the property. Debtor estimates that once completed the
22 development will be worth \$33 million and that Debtor will receive
23 a monthly management fee and an equity interest in the property.
24 Escrow on this planned acquisition is scheduled to close in
25 approximately six months. Waterford has retained a mortgage
26 banking firm to obtain equity and debt financing. Debtor's

1 president and 50% shareholder, Michael Foote, declares that he, his
2 wife and Debtor have invested approximately \$366,678.94 in the
3 Waterford project to date.

4 Debtor has no other assets or business interests.

5 Debtor seeks a determination from the Court that this case
6 does not involve "single asset real estate" as that term is used in
7 Bankruptcy Code § 101(51B) and is thus not subject to the
8 provisions of Code § 362(d)(3). Secured creditor Essel
9 Enterprises, LLC, opposes the motion.

10 **DISCUSSION**

11 Bankruptcy Code § 101(51B) provides:

12 The term "single asset real estate" means real property
13 constituting a single property or project, other than
14 residential real property with fewer than 4 residential
15 units, which generates substantially all of the gross
16 income of a debtor who is not a family farmer and on
which no substantial business is being conducted by a
debtor other than the business of operating the real
property and activities incidental.

17 As to the Rancho Mirador Project, this Court has previously ruled
18 that "single asset real estate" includes undeveloped real property
19 which generates no income. See In re Oceanside Mission Assoc., 192
20 B.R. 232, 236 (Bankr.S.D.Cal. 1996). Thus, the issue before the
21 Court is whether Debtor's interest in the Waterford limited
22 liability company which anticipates having an interest in real
23 estate within the year means that Debtor has more than a single
24 property or project.

25 The Debtor relies on two cases for the proposition that its
26 interest in Waterford renders this case other than a single asset

1 real estate case -- In re Philmont Development Co., 181 B.R. 220
2 (Bankr.E.D.Pa. 1995) and In re The McGreals, 201 B.R. 736
3 (Bankr.E.D.Pa. 1996). However, the Court finds both cases
4 distinguishable from Debtor's situation.

5 In Philmont the assets of the primary debtor in that case,
6 Philmont Development Company, were comprised of partnership
7 interests in three limited partnerships (each of which owned semi-
8 detached houses) and two undeveloped lots. The court held that
9 "for this reason, and because Philmont Developments's purpose is
10 not the operation of real property nor is rental income its direct
11 source of income, Philmont Development's bankruptcy case is clearly
12 not a single asset real estate case." 181 B.R. at 223, n. 1.

13 The present case is different in two ways. First, our Debtor
14 owns a piece of undeveloped land of the type which this Court in
15 Oceanside Mission Associates has ruled single asset real estate.
16 Second, the limited liability company, in which Debtor asserts an
17 interest, owns nothing. As of the petition date Waterford's sole
18 interest was an anticipation of acquiring a leasehold. The Court
19 finds that this interest does not alter the nature of Debtor's sole
20 actual property interest - it's ownership of the Mirador real
21 property which is single asset real estate.

22 The other case, McGreals, involved a debtor which owned two
23 parcels of real estate which, though adjacent, were operated
24 completely separately:

25 The undisputed facts principally revealed only that the
26 Debtor owns two parcels of real property that share a
partially adjacent border, and that one parcel was

1 rented, while the other parcel, raw land, was not.
2 Moreover, McGreals credibly testified that the Debtor had
3 no plans to combine the Properties in any way. His
4 testimony established that after the Debtor abandoned its
5 plans to develop the Shoemaker Property into a "warehouse
6 condominium", it sought to sell that parcel in order to
7 concentrate its efforts on the operation of its income
8 producing property, Glasgow. Finally, his testimony
9 established that the Debtor decided to sell the Glasgow
10 Property only after its tenant left the property. At
11 bottom, the facts presented failed to reveal any common
12 link in usage between the Properties as had been the case
13 in Philmont. Since the Properties were not used together
14 in a manner that would comprise a single project, the
15 requirements of Code § 101(51B) have not been met.

9 201 B.R. 736 at 743. Thus, the court found that debtor owned and
10 operated two distinct parcels of real property.

11 As noted above, Debtor owns one parcel of undeveloped real
12 property and an interest in a limited liability company which owns
13 in turn nothing to alter the analysis.

14 In Philmont and McGreals the courts observed that Code
15 § 101(51B) enumerates four criteria that must exist before real
16 property will be considered single asset real estate for purposes
17 of Code § 362(d)(3): (1) the subject real property must constitute
18 a "single property or project", other than residential real
19 property with fewer than four residential units; (2) the real
20 property must generate substantially all of the income of the
21 debtor; (3) the debtor must not be involved in any substantial
22 business on the real property other than the operation of such
23 property; and (4) the debtor's aggregate non-contingent, liquidated
24 secured debt must be less than \$4,000,000 in amount. 181 B.R. at
25 223; 201 B.R. at 741. For the reasons discussed above the Court
26 finds that all of the criteria are met in this case. The Court

1 further finds Debtor's attempts to analogize to Philmont and
2 McGreals unpersuasive.

3 **CONCLUSION**

4 For the reasons set forth above, the Debtor's motion for an
5 order determining this case is not a single asset real estate case
6 is denied.

7 IT IS SO ORDERED.

8 DATE: MAR - 2 2007

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10 
11 PETER W. BOWIE, Judge
12 United States Bankruptcy Court
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