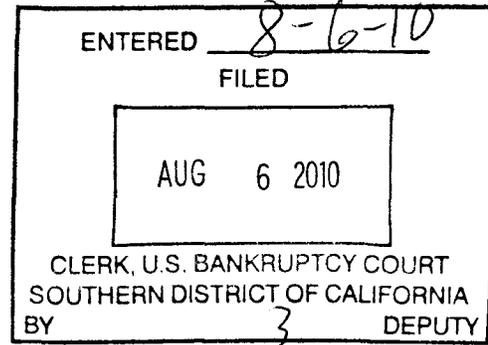


WRITTEN DECISION - NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

11	In re)	Case No. 10-00046-PB11
)	
12	SARGENT RANCH, LLC,)	ORDER ON MOTION FOR ORDER
)	DETERMINING THAT DEBTOR IS A
13)	"SINGLE ASSET REAL ESTATE"
)	ENTITY
14	Debtor.)	

The primary secured creditor in this case has moved for an order determining that the debtor's property, which is the collateral securing its claims, is "single asset real estate," as defined in Bankruptcy Code 101(51B) and is subject to the provisions of Code § 362(d)(3). For the reasons set forth below, the Court has determined that Debtor's property is a "single asset real estate."

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

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1 In its original "Schedule A - Real Property," the debtor-in-
2 possession, Sargent Ranch, LLC, (Debtor), listed "2755 US Highway
3 101, Gilroy, CA Property approximately 6,400 acres on 14 separate
4 legal parcels, including various rights and credits," followed by
5 the Tax Parcel Numbers for each of the 14 parcels. Debtor
6 valued the entire Property at \$716,100,000.00. In its amended
7 "Schedule A - Real Property" Debtor listed the same Property but
8 attached a list of "Individual Parcel Values."

9 Debtor has owned the Property for several years. Initially,
10 Debtor's primary plan for the Property was to develop a large
11 residential development. Currently, Debtor's plans also include
12 sand excavation, wildlife habitat mitigation, liquid asphalt
13 extraction, solar energy production and others. However, as of
14 the commencement of this case, the Property remained undeveloped,
15 and the Debtor's sole source of income was rent (which was
16 prepaid) from three leases for a cell tower, cattle grazing and
17 hunting totaling \$56,500 annually. As of the date of Debtor's
18 opposition to this motion no development had been started - the
19 opposition promises the projects "will be developed shortly."

20 Movant, Energy Research & Generation, Inc., and ERG, Inc.,
21 Retirement Trust (collectively "ERG"), is the beneficiary of
22 various promissory notes of the Debtor reflecting principal
23 obligations totaling \$40,000,000.00 (Notes). The obligations
24 under the Notes are secured in part by deeds of trust on the
25 Property.

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1 Movants request a determination that the Debtor is subject
2 to the provisions of 11 U.S.C. § 362(d)(3) which provides that:

3 (d) On request of a party in interest and after notice
4 and a hearing, the court shall grant relief from the
5 stay provided under subsection (a) of this section,
such as by terminating, annulling, modifying, or
conditioning such stay-

6

7 (3) with respect to a stay of an act against single
8 asset real estate under subsection (a), by a creditor
9 whose claim is secured by an interest in such real
10 estate, unless, not later than the date that is 90 days
11 after the entry of the order for relief (or such later
12 date as the court may determine for cause by order
13 entered within that 90-day period) or 30 days after the
14 court determines that the debtor is subject to this
15 paragraph, whichever is later-

16 (A) the debtor has filed a plan of reorganization that
17 has a reasonable possibility of being confirmed within
18 a reasonable time; or

19 (B) the debtor has commenced monthly payments that-

20 (I) may, in the debtor's sole discretion,
21 notwithstanding section 363(c)(2), be made from rents
22 or other income generated before, on, or after the date
23 of the commencement of the case by or from the property
24 to each creditor whose claim is secured by such real
25 estate (other than a claim secured by a judgment lien
26 or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then
applicable nondefault contract rate of interest on the
value of the creditor's interest in the real estate[.]

11 U.S.C. § 362(d)(3). For a debtor to be subject to the
hastened program of § 362(d)(3), a debtor's assets must
constitute "single asset real estate" as that term is defined by
Bankruptcy Code § 101(51B):

The term "single asset real estate" means real property
constituting a single property or project, other than
residential real property with fewer than 4 residential

1 units, which generates substantially all of the gross
2 income of a debtor who is not a family farmer and on
3 which no substantial business is being conducted by a
debtor other than the business of operating the real
property and activities incidental.

4 11 U.S.C. § 101(51B).

5 The parties agree on the basic elements of "single asset
6 real estate":

7 This statutory definition requires three criteria be
8 met in order to be deemed "single asset real estate":
9 (1) the real property in question constitutes a single
10 property or project other than residential real
11 property with fewer than four residential units; (2)
12 the real property in question generates substantially
all of the debtor's gross income; and (3) the debtor is
not a family farmer and is not engaged in any
substantial business other than operation of the real
property in question and activities incidental thereto.

13 In re Webb MTN, LLC, 2008 WL 656271 (Bankr.E.D.Tenn. 2008). Not
14 surprisingly, the disagreement is found in the application of
15 these elements to the Debtor's situation.

16 **Single Property or Project**

17 Debtor owns 6,400 acres of contiguous parcels. Debtor
18 argues that this is not a single property, since it is made up
19 of numerous parcels in different counties. Courts have indeed
20 respected separate parcels as separate properties. See e.g.,
21 In re The McGreals, 201 B.R. 736 (Bankr.E.D.Pa.1996). However,
22 separate properties can still constitute single asset real
23 property if they are part of the same project. See In re Webb
24 MTN, 2008 WL 656271 (Bankr.E.D.Tenn. 2008).

25 In In re The McGreals, the debtor owned two pieces of real
26 property, one developed and rented and one not, and had no plans

1 to combine the properties. In that case the court held that the
2 property was not single asset real estate. 201 B.R. at 744. In
3 our case, Debtor has developed none of the Property - it is all
4 one large undeveloped piece of real property, no matter how many
5 parcels.

6 Long ago this Court held that single asset real estate
7 included raw, undeveloped land. See In re Oceanside Mission
8 Associates, 192 B.R. 232 (Bankr.S.D.Cal. 1996) (relying on In re
9 Humble Place Joint Venture, 936 F.2d 814 (5th Cir.1991)
10 (partially developed land but referred to by the bankruptcy court
11 as "raw land" generating no income); In re Nattchase Associates
12 Limited Partnership, 178 B.R. 409 (Bankr.E.D.Va.1994); In re Lake
13 Ridge Associates, 169 B.R. 576 (Bankr.E.D.Va.1994); In re Clinton
14 Fields, Inc., 168 B.R. 265 (Bankr.M.D.Ga.1994); and In re Monica
15 Road Associates, 147 B.R. 385 (Bankr.E.D.Va.1992). The Court
16 remains of the same mind and is aware of no court since holding
17 to the contrary.

18 Debtor attempts to avoid the single asset real estate label
19 by trotting out the numerous plans it has for developing the
20 Property. However, intentions do not constitute projects. There
21 is no disputing the fact that at the time the case was filed, as
22 well as at the time of the hearing, every inch of every parcel of
23 the Property, with the exception of a small portion being leased
24 to third parties, is part of the same operation -- namely waiting
25 and planning for future development.

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1 The case most closely on point is In re Webb MTN, 2008 WL
2 656271 (Bankr.E.D.Tenn. 2008). In that case debtor owned 1,865
3 acres of real property upon which the debtor intended to build
4 two golf courses, a resort, convention center, retail center,
5 single family homes and condos. Had the debtor's intentions been
6 carried out, that is, had the multi-use development been
7 completed, it would likely not have been considered single asset
8 real estate. See e.g., In re Whispering Pines Estates, Inc.,
9 341 B.R. 134, 136 (Bankr.D.N.H. 2006); In re CBJ Dev., Inc.,
10 202 B.R. 467 473-74 (9th Cir.BAP 1996). However, as in the case
11 at hand, the debtor had not made progress on the development.
12 Accordingly, the court held that the separate tracts constituted
13 a single project. Id. at *5.

14 This seems precisely the situation of the Debtor in this
15 case. Debtor has future plans for the Property which, if they
16 were completed, would likely constitute separate projects. At
17 current, however, Debtor, like the debtor in Webb MTN, owns
18 undeveloped real property upon which no substantial business is
19 being conducted. At present Debtor has a single project.

20 **The Property Generates Substantially all Debtor's Gross Income**

21 It cannot be gainsaid that to the extent Debtor has any
22 income, it is generated by the Property. In fact, it appears
23 Debtor is currently generating no income - the few leases it
24 does have having been prepaid. In its opposition Debtor concedes
25 "[a]t this point in time, the Debtor's operations are not
26 generating income." (Opp. at 15:25).

1 **Substantial Business**

2 This third element has been called "the heart of the
3 definition" of "single asset real estate." In re Club Golf
4 Partners, L.P., 2007 WL 1176010, at *5 (E.D.Tex. 2007). In that
5 case the court explained:

6 [T]he revenues received by the owner must be passive in
7 nature; the owner must not be conducting any active
8 business, other than merely "operating the real
9 property and activities incidental thereto." Under the
10 prior jurisprudence, those passive types of activities
11 are the mere receipt of rent and truly incidental
12 activities such as arranging for maintenance or perhaps
13 some marketing activity, or in the Fifth Circuit's
14 memorable phrase, "mowing the grass and waiting for the
15 market to turn." In contrast, a variety of business
16 ventures that own a tract of improved real estate on
17 which active entrepreneurship is underway--such as the
18 golf course of the Debtor--should fall outside the
19 ambit of the § 101(51B) definition.

20 Id. (Citations omitted).

21 There is no question but that Debtor is not currently
22 engaged in any business, let alone substantial business, other
23 than the very limited operation of renting a small portion of the
24 Property. As noted above, the Court is aware of no case in which
25 a debtor holding vacant land was held to be other than a single
26 asset real estate entity. In each of the cases in which the
27 court found that the debtor was not a single asset real estate
28 entity, the debtor was engaged in some business on the property.

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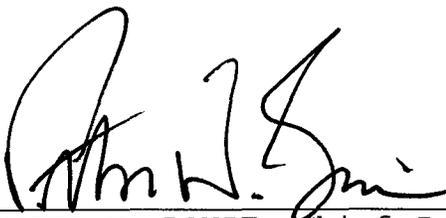
1 **Conclusion**

2 Debtor owns only undeveloped real property. As it sits at
3 present, the Property constitutes a single project. To the
4 extent Debtor generates any income, it is generated by leasing
5 the Property. Finally, Debtor is conducting no substantial
6 business on the Property, other than the operation of the
7 Property. Accordingly, the Court finds that Debtor's Property
8 is single asset real estate and Debtor is a single asset real
9 estate entity.

10 ERG shall lodge and serve an order consistent herewith and
11 with Code § 362(d)(3) within ten (10) days of the entry of this
12 order. The thirty (30) day period of § 362(d)(3) shall begin to
13 run upon entry of said lodged order.

14 IT IS SO ORDERED.

15 DATED: AUG -6 2010

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18 PETER W. BOWIE, Chief Judge
19 United States Bankruptcy Court
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