



BANKRUPTCY LAW ALERT

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Small Business Bankruptcy Alert: The Hotel that you Operate is Eligible to Reorganize as a Subchapter V Small Business Debtor

In a recent decision, a Florida Bankruptcy Court held that a hotel is a small business, eligible to reorganize under Subchapter V of the Bankruptcy Code.¹

Subchapter V became effective in February 2020, making the bankruptcy process more accessible and less expensive for eligible debtors. Substantive changes include: (i) jettisoning the requirement of drafting and approval of a disclosure statement; (ii) structured timelines to accelerate the process; (iii) permitting the case to proceed without a creditors' committee; and (iv) modifying the absolute priority rule permitting debtors to confirm a plan of reorganization that retains assets without paying unsecured creditors 100% of their allowed claim. Subchapter V was revised in response to the COVID 19 Pandemic to increase its debt limits to \$7.5million.

The Debtor operates a 79 room hotel in Fulton, Texas as Econo Lodge Inn & Suites Fulton Rockport. Creditor State Bank of Texas filed a motion for a declaration that the Debtor was a single asset real estate entity and ineligible to reorganize under Subchapter V.² This critical issue was determinative in the case, as State Bank of Texas held both secured and unsecured claims, and it would have greater leverage in the bankruptcy process if the Bankruptcy Court determined that the Debtor was a single asset real estate entity.

Judge Karen Jennemann held that the Debtor was eligible to reorganize under Subchapter V, stating, "...hotels generally, and this hotel in particular, do not constitute single asset real estate projects."³

First, Judge Jennemann considered the elements of a single asset real estate entity: (1) the ownership of real property constituting a single property or project; (ii) which generates substantially all of the debtor's gross income; and (3) on which no substantial business is conducted aside from operating the real property and activities incidental thereto.⁴

[1] *In re ENKOGS1, LLC* 626 B.R. 860 (Bankr. M.D. Florida, 2021)

[2] 626 B.R. at 862

[3] 626 B.R. at 863

[4] *Ad Hoc Group of Timber Noteholders v. Pacific Lumber Co. (In re Scotia Pac. Co.)*, 508 F.3d 214, 220 (5th Cir. 2007)



Next, Judge Jennemen stated that in addition to owning real estate, the Debtor provided additional services including: cleaning and laundry services, internet/WiFi, complimentary breakfast, a swimming pool and fitness center, parking and other hotel related services.⁵

The Court rejected Texas State Bank's arguments that the Debtor must earn separate and additional income by offering additional amenities, holding that §§ 101(51B) and (51D)(A) do not require the Debtor to earn extra income from supplying extra services, rather that they require that the Debtor do something more than merely rent hotel rooms, and ruled that the Debtor was not a single asset real estate entity, and was eligible to reorganize as a small business debtor.⁶

Judge Jennemen's decision is a boon to the hospitality industry, permitting otherwise eligible debtors to utilize the streamlined, less expensive Subchapter V provisions of the Bankruptcy Code to reorganize. This may permit hotels facing default under the terms of existing credit facilities an opportunity to avoid foreclosure and/or closure of struggling properties.

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[5] 626 B.R. at 864

[6] 626 B.R. at 865