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**A Hotel Does not Meet the Definition of “Single Asset Real Estate” and may Reorganize
Under Subchapter V of Chapter 11 of the Bankruptcy Code**

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INTRODUCTION

Enacted via the Small Business Reorganization Act (“SBRA”) in 2019, Subchapter V streamlines the reorganization process, allowing small business debtors to file bankruptcy in a timely and cost-effective manner.¹ The goal behind the legislation is to encourage reorganizations, which will generally result in creditors receiving a higher distribution than in a liquidation and more small businesses surviving.² Section 1182(1) of title 11 of the United States Code (the “Bankruptcy Code”) limits those who can file a Subchapter V case to a “small business debtor” who does not own a “single asset real estate” project (“SARE”).³ Thus, if the debtor is determined to be a SARE project, the debtor cannot reorganize under Subchapter V.⁴

¹ *In re Ventura*, 615 B.R. 1, 12 (Bankr. E.D.N.Y. 2020).

² *In re ENKOGS1, LLC*, 626 B.R. 860, 862 (Bankr. M.D. Fla. 2021).

³ *Id.*

⁴ *In re Caribbean Motel Corp.*, No. 21-01831 (EAG), 2022 Bankr. LEXIS 25, at *8 (Bankr. D.P.R. Jan. 5, 2022).

This memorandum explores whether ownership of a single hotel constitutes a SARE project and therefore whether an owner of such hotel is eligible for reorganization under Subchapter V of Chapter 11 of the Bankruptcy Code.

DISCUSSION

I. The Legal Standard for Determination of a “Single Asset Real Estate” Project

Section 101(51B) of the Bankruptcy Code defines the term “single asset real estate” and stipulates that a debtor must meet the following three prongs in order for a case to satisfy the definition: (1) the real property must constitute a single property or project, other than residential real property with fewer than four residential units; (2) which generates substantially all of the gross income of the debtor and (3) on which no substantial business is conducted other than the business of operating the real property and activities incidental thereto.⁵ When a court analyzes these factors, they “must look to current facts, not to those existing in the past, nor to Debtor’s aborted plans for the future.”⁶ If the debtor does not satisfy one of the elements, they are removed from the categorization as a SARE project and therefore may be eligible for reorganization under Subchapter V.⁷

The analysis of whether a hotel is a “single asset real estate” project typically revolves around the third element and whether the hotel provides services *other* than those incidental to renting rooms. “A property falls within the third element of the definition of single asset real estate where a debtor’s revenues are passive in nature (i.e. collection of rent) and the debtor is not

⁵ *In re Iowa Hotel Invs., LLC*, 464 B.R. 848, 851 (Bankr. N.D. Iowa 2011).

⁶ *In re Alvion Properties, Inc.*, 538 B.R. 527, 532 (Bankr. S.D. Ill. 2015).

⁷ *In re ENKOGS1, LLC*, 626 B.R. at 863.

conducting any active business, other than merely operating the real estate and conducting incidental activities such as arranging for maintenance.”⁸ In other words, the statute requires that in order to be eligible for reorganization under Subchapter V, a debtor who owns only one real estate project must show that it provides additional value or activities other than just property management.⁹

II. A Hotel Offers Sufficient *Other* Services to Remove it From the Definition of “Single Asset Real Estate”

The term SARE, as defined by Section 101(51B), is not a new concept and existed long before the enactment of Subchapter V in 2019.¹⁰ Through the years, courts have been clear that where a debtor’s business is more akin to operating an apartment complex, merely labeling the building as a hotel is insufficient to remove it from the definition of SARE.¹¹ However, generally a hotel’s operations constitute something more than “operating the real property and activities incidental thereto.”¹² For example, hotels often provide many services other than renting rooms, including operating a bar, restaurant and gift shop. In these situations, a hotel will not meet the definition of a “single asset real estate” project.¹³

Courts have since applied this test to the newly enacted Subchapter V, ruling that a hotel will be removed from the definition of “single asset real estate” rendering the owner eligible for Subchapter V reorganization so long as it is found to offer sufficient *other* services.¹⁴ Generally, a hotel offers room cleaning services, maintains a 24-hour reception desk, operates a swimming pool

⁸ *In re* MTM Realty Tr., 2009 Bankr. LEXIS 580, at *8-9 (Bankr. D. N.H. Mar. 9, 2009).

⁹ *In re* ENKOGS1, LLC, 626 B.R. at 862.

¹⁰ *In re* CBJ Dev., Inc., 202 B.R. 467, 470 (B.A.P. 9th Cir. 1996).

¹¹ *Id.* at 472.

¹² *In re* ENKOGS1, LLC, 626 B.R. at 863.

¹³ *In re* CBJ Dev., Inc., 202 B.R. at 473.

¹⁴ *In re* ENKOGS1, LLC, 626 B.R. at 865.

and fitness center, and serves complimentary breakfast, all of which differentiate a debtor's hotel from a "single asset real estate" project.¹⁵

Even in "economy" motels that offer fewer amenities at no additional cost, the services provided are sufficient to distinguish them from a "single asset real estate" project.¹⁶ For example, a recent decision stemming from the United States Bankruptcy Court in Puerto Rico held that a motel which operated a "by the hour" rental model and did not have a pool, common area, business center, gift shop, convenient store or liquor license, still offered enough to constitute sufficient *other* services.¹⁷ Economy motels need to staff employees to assist guests in checking-in, answering requests, making routine maintenance repairs, and cleaning and replenishing linens.¹⁸ Further, Section 101(51B) of the Bankruptcy Code does not require the debtor to earn extra income from the additional services, but only requires that the debtor engage in additional services other than overseeing real property.¹⁹ Thus, even "economy" motels that offer bare minimum services are still distinguishable from a "single asset real estate project," as such operations require "more effort than companies managing vacant land or even an apartment complex."²⁰

CONCLUSION

A hotel, by its very nature, provides services *other* than those incidental to renting rooms. Hotels must clean rooms, change linens on a daily basis, offer a 24-hour reception desk, and most hotels offer much more. Therefore, a hotel will rarely, if ever, fit the definition of a "single asset real estate" project and as such, a hotel debtor is eligible for relief under Subchapter V of Chapter 11 of the Bankruptcy Code.

¹⁵ *Id.* at 863.

¹⁶ *In re* Caribbean Motel Corp. No. 21-01831 (EAG) at *8.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *In re* ENKOGS1, LLC, 626 B.R. at 865.

²⁰ *Id.*