This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: May 8, 2024

Beth A. Buchanan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	)	
	)	**Case No. 24-10180**
VILLAGE GATE, LLC	)	**Chapter 11**
	)	**Subchapter V**
Debtor and Debtor In Possession	)	**Judge Buchanan**

ORDER SUSTAINING OBJECTIONS TO DEBTOR'S ELECTION TO PROCEED UNDER SUBCHAPTER V OF CHAPTER 11 [Docket Numbers 31 & 42]

[This opinion is not intended for publication.]

This matter is before this Court on Creditor Pioneer Automotive, LLC ("Pioneer")'s *Motion Objecting to Election to Proceed Under Subchapter V* [Docket Number 31]; the United States Trustee ("UST")'s *Objection to Debtor's Designation as Subchapter V Small Business Debtor* [Docket Number 42] (collectively, the "Subchapter V Objections"); Funding Realty, LLC's *Response* to the Subchapter V Objections [Docket Number 58]; Debtor Village Gate, LLC's *Response* to the Subchapter V Objections [Docket Number 60]; the UST's *Reply* [Docket Number 66] and Pioneer's *Reply* [Docket Number 67]. The parties' supplemental briefs [Docket Number

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88, 89, 90, and 91] were also considered.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District and is determined to be a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

Pioneer and the UST filed objections to the election of the Debtor, Village Gate, LLC ("Village Gate") to proceed under Subchapter V of Chapter 11 of the Bankruptcy Code. An evidentiary hearing was held on April 23, 2024 to consider evidence regarding the objections as well as motions to dismiss filed by Pioneer and the UST.

After careful consideration of the parties' arguments and the evidence presented at the hearing, this Court concludes that Village Gate's primary activity is the business of owning "single asset real estate" as defined under 11 U.S.C. § 101(51B) making it ineligible to be a debtor under Subchapter V of Chapter 11. Accordingly, Pioneer and the UST's objections to the Debtor's election to proceed under Subchapter V are sustained.

I. FACTS

Village Gate is a limited liability company that was formed to purchase the real property formerly known as the Green Hills Shopping Center and currently known as the Village Gate Shopping Center sitting on two adjoining parcels of real estate totaling nearly three acres. Village Gate purchased the property in one transaction for $1,015,000 in March of 2016. Village Gate filed its Chapter 11 bankruptcy petition on January 30, 2024 and elected to proceed under Subchapter V. In its schedules, Village Gate lists a total of $1,425,500 in assets and, of that, $1,365,000 is listed as the value of the real property comprising the Village Gate Shopping Center.

At the hearing, Mr. Raymond A. Jackson, a real estate appraiser and consultant who qualified as an expert witness, testified as to the nature of the Village Gate Shopping Center. Mr.

Jackson visited the site three times around the end of January, 2024 to value the two parcels. His inspections included full inspections of both the exterior areas as well as the interior of the buildings. He also researched public records and aerial photos of the site. His appraisal report following these inspections was entered into evidence without objection [Docket Number 75, Debtor Ex. 1].

Mr. Jackson testified that the larger of the two parcels contains the main shopping center building as well as a separate but adjacent building that is being used as a recording studio. The main shopping center is a two level building with a basement although the second floor exists over only a portion of the building. The main shopping center building includes several restaurants or bars including the Back Door Saloon, Boba Tea and Grill, and a sweet shop. On the back side of the shopping center on a lower level is a former bowling alley with about 10,000 square feet that is being renovated for a new use as an event center. Outside of the former bowling alley is a large community parking lot. The recording studio on the same parcel is a one-story building with a partial basement. Mr. Jackson testified that it could be sold off separately from the main shopping center.

On the second parcel adjacent to the recording studio is a former service station that in recent years has been used as an automotive repair garage. Mr. Jackson stated that the repair garage has its own parking lot and that it, like the recording studio, could be sold off separately from the main shopping center.

Mr. Jackson's appraisal report indicates that the "gross building area" totals about 100,000 square feet with about 80,000 of it comprising rentable area. In that gross building area, Mr. Jackson included the square footage of the recording studio and repair garage.

In his valuation of the properties, Mr. Jackson valued the repair garage and recording studio

separately from the main shopping building because he stated that their square foot value was higher than the square foot value of the main shopping center building. He indicated that his valuation included some hypotheticals regarding the best use of these buildings rather than their current use. He determined that, if segregated, the total value of all of the buildings was $1,350,000, including a value of $90,000 for the repair garage and $145,000 for the recording studio [*Id*., Debtor Ex. 1].

Mr. Jackson testified to the land use codes that the Hamilton County Auditor provided for the two parcels. Mr. Jackson testified that the land use code for the larger parcel is "426" which is for a shopping center while the land use code provided for the smaller parcel is "455" which is designated for a commercial garage [*Id*., Debtor Exs. 2 and 3]. Mr. Jackson also concluded that if the recording studio would be broken off from the shopping center on the shared parcel, it would likely receive a different use code such as "other retail."

Steve Rasabi, Village Gate's manager and designated representative, was also called to testify. Mr. Rasabi came to the United States from Israel in 1973 and settled in Florida in 1988. He has a B.A. in Civil Engineering and a background in construction of luxury homes and commercial properties. He is 72 years old and is retired but continues to manage Village Gate. Mr. Rasabi testified that Village Gate has no employees.

At the time Village Gate purchased the Green Hills Shopping Center, it was only 40% occupied and needed major improvements. Mr. Rasabi testified to renovations being made and, particularly, the gutting of the former bowling alley that was to be transformed into an event center. Prior to the COVID pandemic, the HVAC work was being done on the event center but then the contractor became sick and did not finish the job and funding was lost. The renovations are now being completed. Mr. Rasabi testified that he has entered into a joint venture with a tenant who is

operating a restaurant to manage the event center when it is finished. According to Mr. Rasabi, under the terms of the joint venture agreement, Village Gate will not only receive rents but also a portion of the event center's net profits. However, no splitting of the profits has yet occurred because the event center is not completed or open for business.

Mr. Rasabi testified that when Village Gate acquired the Green Hills Shopping Center property, the monthly rental income was about $20,000 to $22,000. However, because of the renovations making unrentable places rentable, Village Gate is now taking in $62,000 per month. Both Mr. Rasabi and Mr. Jackson's testimony support that from the date that Village Gate purchased the Green Hills Shopping Center property, Village Gate's only income has been rental income received from tenants.

II. LEGAL ANALYSIS

A. Background of Subchapter V and Burden of Proving Eligibility

With the Small Business Reorganization Act of 2019 or "SBRA," Congress created a new Subchapter V of Chapter 11 which "broadened the relief available to small businesses and streamlined the existing reorganization processes to improve the ability of small businesses to reorganize and remain in business." *In re Evergreen Site Holdings, Inc.,* 652 B.R. 307, 316-17 (Bankr. S.D. Ohio 2023) (further citation omitted). To be eligible, a person must meet the definition of a Subchapter V "debtor," which the Bankruptcy Code defines as:

> a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and *excluding a person whose primary activity is the business of owning single asset real estate*) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of filing of the petition or the date of the order for relief in an amount not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor . . . .

11 U.S.C. § 1182(1)(A) (emphasis added). In this case, the objecting parties, Pioneer and the UST,

do not question that Village Gate qualifies as a "person" engaged in commercial activities nor do they contest that Village Gate meets the debt limit or commercial debt requirements set forth in § 1182(1)(A). Instead, Pioneer and the UST argue that Village Gate is an entity "whose primary activity is the business of owning single asset real estate" making it explicitly ineligible for relief as a Subchapter V under this definitional provision.

In the Bankruptcy Code, "single asset real estate" or "SARE" is a defined term meaning:

> real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross 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 thereto.

11 U.S.C. § 101(51B). "Three requirements emerge from this definition which must all be met for a debtor to be considered a SARE debtor: (1) the debtor must have real property constituting a single property or project (other than residential real property with fewer than 4 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." *Ad Hoc Group of Timber Noteholders v. Pacific Lumber Co. (In re Scotia Pacific Co., LLC)*, 508 F.3d 214, 220 (5th Cir. 2007). If any one of these prongs is not met, then the entity is not a SARE debtor. *Id*.

The "single asset real estate" provisions of the Bankruptcy Code pre-date the relatively new addition of Subchapter V. The Bankruptcy Reform Act of 1994 added the definition of "single asset real estate" in § 101(51B) and special automatic stay relief provisions in § 362(d)(3) to address perceived abuses by debtors attempting to delay mortgage foreclosures when there is little chance for successful reorganization. *See In re Alvion Props, Inc.*, 538 B.R. 527, 531 (Bankr. S.D. Ill. 2015) (citing 3 Collier on Bankruptcy ¶ 362.07[5][b] at 362-122 (Alan N. Resnick & Henry J.

Sommer es., 16 ed.)); *In re Kkemko, Inc.,* 181 B.R. 47, 51 (Bankr. S.D. Ohio 1995). If a debtor meets the § 101(51B) definition, the debtor must comply with stringent deadlines for commencing certain payments or filing a Chapter 11 plan when faced with a creditor secured by an interest in the real estate attempting to obtain relief from the automatic stay. 11 U.S.C. § 362(d)(3).

As noted by Funding Realty, a creditor supporting Village Gate's position in this case, courts have placed the burden on the moving party to prove, by a preponderance of the evidence, that a debtor is subject to the single asset real estate provisions of the Bankruptcy Code. *See e.g.*, *In re Body Transit, Inc.*, 613 B.R. 400, 409 n.15 (Bankr. E.D. Pa. 2020) (concluding that when the Bankruptcy Code and Rules are silent with respect to the burden of proof, the burden is generally placed on the movant requesting relief from the court); *Alvion Props.,* 538 B.R. at 532 (finding that the moving party bears the burden of proving that a debtor is subject to the SARE provisions). However, it is the debtor who generally carries the burden of demonstrating eligibility to proceed under specific provisions of the Bankruptcy Code. *See Evergreen,* 652 B.R. at 316 (noting the "long-standing case law in this district that the debtor has the burden of proof in establishing eligibility to seek relief under various chapters of the Bankruptcy Code"). Consequently, when the SARE definition converges with Subchapter V eligibility in § 1182(1)(A), a difficult question emerges: if a party in interest objects to a debtor's election to proceed under Subchapter V based on an argument that the debtor is ineligible as a single asset real estate entity, who carries the burden of proof?

Neither the Bankruptcy Code nor Rules provide guidance on this issue. *Id.* ("The Bankruptcy Code and Rules are silent as to who has the burden of proof on the issue of a debtor's eligibility to proceed under Subchapter V when an objection is filed."). And, a split of authority has arisen with respect to who carries this burden of establishing eligibility to proceed under

Subchapter V when a party in interest objects that the debtor is a SARE entity. Compare *NetJets Aviation, Inc. v. RS Air, LLC (In re RS Air, LLC)*, 638 B.R. 403, 414 (B.A.P. 9th Cir. 2022); *Evergreen*, 652 B.R. at 316 (collecting cases) and *In re Bridle Path Partners, LLC*, 2024 Bankr. LEXIS 41, at *8, 2024 WL 86601, at *3 (Bankr. D. Utah Jan. 8, 2024) with *In re 218 Jackson LLC*, 2021 Bankr. LEXIS 2284, at *4, 2021 WL 3669371, at *2 (Bankr. M.D. Fla. 2021) and *In re Caribbean Motel Corp.*, 2022 Bankr. LEXIS 25, at * 8-9, 2022 WL 50401, at *3 (Bankr. D. P.R. Jan. 5, 2022).

Upon careful consideration of the limited case law on this issue, this Court finds the majority view more persuasive and follows the holding of its sister bankruptcy court within the Southern District of Ohio. *See Evergreen*, 652 B.R. at 316. The burden of proving eligibility to proceed under Subchapter V is appropriately placed on the debtor as it is the debtor who typically is responsible for proving eligibility. *See RS Air, LLC*, 638 B.R. at 414; *Evergreen*, 652 B.R. at 316 *In re Blue*, 630 B.R. 179, 187 (Bankr. M.D. N.C. 2021) (holding that when a party challenges a debtor's eligibility to file under a particular chapter of the Bankruptcy Code, the debtor carries the burden of proving eligibility and the majority of courts extend that rule to a debtor's election to proceed under Subchapter V). When Congress added the "single asset real estate" exclusion to § 1182(1)(A), it made the exclusion a component of eligibility to proceed under Subchapter V. Consequently, upon objection from a party in interest to a debtor's election to proceed under Subchapter V, it is the debtor that carries the burden of establishing its eligibility, including that it is a non-SARE entity, by a preponderance of the evidence.[1]

B. Eligibility to Proceed Under Subchapter V: Single Asset Real Estate Exclusion

As previously noted, there are three components to a SARE debtor under the definitional

[1] Based on the evidence admitted at the hearing, the burden of proof would not change the outcome in this case. Even if Pioneer and the UST as the [moving] objecting parties bore the burden of proof, they carried that burden.

provision of 11 U.S.C. § 101(51B): "(1) the debtor must have real property constituting a single property or project (other than residential real property with fewer than 4 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." *Scotia Pacific*, 508 F.3d at 220. All three components must be present to be deemed a SARE debtor. *Id.*; *Evergreen*, 652 B.R. at 317. Consequently, if the debtor can demonstrate that it does not meet any one of the three prongs by a preponderance of the evidence, then it is not a SARE debtor.

1. Whether the real property constitutes a single property or project

The first element requires a determination of whether or not the real property constitutes a single property or project (other than residential real property with fewer than 4 residential units). 11 U.S.C. § 101(51B). Because the Village Gate property is not residential and involves two parcels of real property, this issue can be narrowed to whether the two parcels collectively form a "single project." *Evergreen*, 652 B.R. at 318.

In *Evergreen*, the bankruptcy court determined that the meaning "single project" was unclear from the statute and legislative history but found clarification in the case law:

> For two or more properties to constitute a single project, "the properties must be linked together in some fashion in a common plan or scheme involving their use." [citing *In re The McGreals*, 201 B.R. 736, 742 (Bankr .E.D. Pa. 1996)]. Interpreting the term " 'single project' to require an element of commonality in the use of multiple properties is consistent with the commonly accepted meanings of the component words 'single' and 'project'." *Id.* at 742 n.7 (citation omitted). "The mere fact of common ownership, or even a common border, will not suffice." *Id.* at 742-743. "The 'common plan or scheme' must govern the present use of all the properties." *In re Hassen Imports P'ship,* 466 B.R. 492, 507 (Bankr. C.D. Cal. 2012) (citation omitted).

652 B.R. at 318. Determining whether multiple properties have the commonality necessary to comprise a single project is a factual inquiry in which a number of factors have been considered

by courts including: (1) the use of the properties; (2) the circumstances surrounding the acquisition of the properties, including the time of the acquisition and the funds used to acquire the properties; (3) the location of the properties and proximity of the properties to one another; and (4) any plans for future development, sale or abandonment of the properties. *Evergreen*, 652 B.R. at 318 (citing *In re 218 Jackson LLC*, 2021 Bankr. LEXIS 2284, 2021 WL 3669371 (Bankr. M.D. Fla. June 3, 2021), *In re Hassen Imports P'ship,* 466 B.R. 492 (Bankr. C.D. Cal. 2012) and *In re The McGreals*, 201 B.R. 736 (Bankr. E.D. Pa. 1996)). Of these factors, a common use of the properties is the essential condition. *Id*. (noting that if the properties are not presently used together in a common scheme, a single project cannot exist) (citing *Hassen Imports*, 466 B.R. at 508). Examples often cited for commonality in the use of multiple properties include apartment complexes, office buildings and shopping centers. *Id*. (further citation omitted).

Turning to this case, several of the factors support that Village Gate's real property is a single project. The real property involved are two adjacent parcels of real estate that, together, comprised the Green Hills Shopping Center prior to its purchase by Village Gate. Village Gate purchased the parcels together in one transaction in March of 2016.

However, the parties dispute the most important factor which is whether Village Gate treats the properties as a single project by virtue of a common plan or purpose. Village Gate and Funding Realty point to the fact that the shopping center is actually comprised of several buildings with different uses: the main strip mall, a small building being used as a recording studio and an automotive repair garage. Village Gate and Funding Realty argue that the different uses for these buildings are also highlighted by the fact that the repair garage on the separate parcel has been assigned a different county auditor "use code" than the main shopping center building. The assignment of different use codes for each parcel was one factor reviewed in *Evergreen* to support

that the properties were not part of a common scheme or purpose. 652 B.R. at 319.

A good place to begin the analysis is with *Evergreen* and the different uses of the parcels in that case. In *Evergreen*, the Debtor owned two parcels of property. 652 B.R. at 312. The first was an 80-acre parcel with a residential single family home and adjoining pole barn, a small mobile home park, and a zipline course. *Id*. The second was a 60-acre parcel that was vacant except for a paint ball course used by a prior tenant and the start tower for a zip line course that was not finished. *Id*. The use code assigned to the 80-acre parcel case denoted lodges and amusement parks while the use code assigned to the 60-acre parcel pertained to vacant land. *Id*. at 319. While the bankruptcy court noted that "mixed use" properties could be classified as a SARE if part of the same planned development, these properties were not part of a planned development because the residential rentals were completely disconnected from the zip line business and both were separate from the vacant land not being used at all. *Id*. Consequently, the Court concluded that the parcels were not part of a common scheme or purpose. *Id*.

Compare that to a debtor with three contiguous parcels of real property on which two tenants operated different businesses: a restaurant and take-out stand and an academic preparatory school. In re *JJMM Int'l Corp.*, 467 B.R. 275, 276 (Bankr. E.D.N.Y. 2012). The debtor was an entity in which the property was its only asset and its sole business was leasing the property to its two tenants and collecting rental income. *Id*. at 277. The debtor argued that the very different nature of the two businesses on the property supported that the debtor was not a SARE entity. *Id*. at 277-78. The bankruptcy court rejected the argument concluding that the fact that the debtor's tenants operate very different businesses does not alter the single project analysis:

> The focus is not, as Debtor seeks to place it, on the business activities of its tenants. In fact, the definition of SARE in 11 U.S.C. § 101(51B) takes no account of the business activities of a debtor's tenants, and those activities are irrelevant to determining whether a property constitutes a SARE. Instead, the question is

> whether the debtor treats its property as a single project or property by virtue of a common plan or purpose.

Id. at 278 (citations omitted); *see also 218 Jackson*, 2021 Bankr. LEXIS 2284, at *8, 2021 WL 3669371, at *3 (citing *JJMM Int'l Corp.* to conclude that the "fact that different businesses are being conducted by a debtor's tenants does not alter the analysis . . . .[i]nstead, the question is whether the debtor treats its property as a single project or property by virtue of a common plan or purpose"). The bankruptcy court concluded that the three parcels constituted a single project by virtue of the common plan of the debtor to simply hold title to the property and lease it to its two tenants. *JJMM Int'l Corp*., 467 B.R. at 278.

The facts of this case are more closely aligned to those in *JJMM Int'l Corp*. than the *Evergreen* case. All three buildings on Village Gate's two parcels are commercial buildings immediately adjacent to each other that have historically been treated as part of one retail shopping center. The fact that the parcels have been assigned different use codes by the auditor based on the different businesses of the tenants is not the relevant focus. Instead, the question is whether the debtor treats the parcels as a single project by virtue of a common plan or purpose. Village Gate purchased the two parcels in one transaction with the purpose to lease the commercial buildings to tenants. The two parcels are part of a common plan and constitute a single project. Accordingly, this first element of a SARE is met.

2. Whether the real property generates substantially all of the gross income of the debtor

Next, this Court must determine whether Village Gate's real property "generates substantially all of the gross income of the debtor." 11 U.S.C. § 101(51B). For this element, courts review whether the revenues from the debtor's real estate are generated by the property itself, such as through leasing the property, or by the fruit of workers' labor and management's services. *See In re JJMM, Int'l Corp.*, 467 B.R. at 277; *In re Club Golf Partners, L.P.*, 2007 Bankr. LEXIS

1225, at *13-14, 2007 WL 1176010, at *5 (E.D. Tex. Feb. 15, 2007).

Both Village Gate's manager Mr. Rasabi and its appraiser testified that, since its inception, Village Gate's sole income has been rental income from the shopping center's tenants. Nonetheless, Village Gate argues that the joint venture agreement recently entered with one of Village Gate's current tenants to run an event center in the former bowling alley that is being renovated would provide Village Gate with income derived from profit sharing as opposed to passive rental income. Village Gate failed to identify the joint venture agreement on its exhibit list or produce it to opposing counsel, and, consequently, it was not admitted at the hearing. Furthermore, Mr. Rasabi testified to years-long renovations to the bowling alley that are not complete. Mr. Rasabi provided neither a timeline for completion nor a date that the event center would begin operating. Based on the evidence presented at the hearing, this Court concludes that the potential for Village Gate to have a different form of income in the future is too speculative to impact this element. Because substantially all of Village Gate's income is generated through rental income, this element of a SARE entity is met.

3. Whether the debtor conducts substantial business on the properties other than operating the real property and activities incidental thereto

As the third component, this Court must determine whether Village Gate conducts substantial business on the properties other than operating the real property and activities incidental thereto. 11 U.S.C. § 101(51B); *Scotia Pacific*, 508 F.3d at 220. In general, SARE entities are those whose main business activities involve owning income producing property along with "truly incidental activities" such as mowing the grass, arranging for maintenance or some marketing activity. *Club Golf Partners*, 2007 Bankr. LEXIS 1225, at *15, 2007 WL 1176010, at *5. Examples of typical SARE entities include an apartment building, office building, or a strip-mall shopping center. *In re Philmont Dev. Co*., 181 B.R. 220, 224 (Bankr. E.D. Pa. 1995).

While Village Gate's ownership and operation of a retail shopping center fits squarely within the SARE definition, Village Gate argues that other activities conducted on the property take it outside the definition. In examining whether such activities amount to "substantial business" not "incidental" to operating the real property, courts look to whether the activities generate revenue separate and apart from the sale or lease of the underlying real estate. *See Kara Homes, Inc. v. Nat'l City Bank (In re Kara Homes, Inc.)*, 363 B.R. 399, 405-406 (Bankr. D. N.J. 2007); *Club Golf Partners*, 2007 Bankr. LEXIS 1225, at *14-15, 2007 WL 1176010, at *4 (concluding that the § 101(51B) definition should be interpreted according to an active-versus-passive criterion inquiring into the nature of revenue generation on and by the property). Also relevant to the inquiry is whether the debtor has employees outside of the debtor's principals that generate income for the business. *Club Golf Partners*, 2007 Bankr. LEXIS 1225, at *15, 2007 WL 1176010, at *4.

With that criteria in mind, courts have found that a debtor meets the definition of a SARE entity when it owns a commercial building and collects rent from its tenants but also conducts normal business operations intrinsic to owning the real estate, such as paying for parking lot lights, trash removal, building improvements and landscaping. *See In re MTM Realty Trust,* 2009 Bankr. LEXIS 580, at *6-7, 2009 WL 612147, at *2 (Bankr. D. N.H. March 9, 2009). Furthermore, a debtor owning apartment buildings met the SARE definition even though part of the debtor's activities included in-house general contracting work to improve the units rather than hiring an outside contractor to do the work. *In re Vargas Realty Enter., Inc.*, 2009 Bankr. LEXIS 2040, at *10-11, 2009 WL 2929258, at *4 (Bankr. S.D.N.Y. July 23, 2009). The bankruptcy court held that such work aimed at increasing the rent roll for each building was activity intrinsic to owning and developing the real estate. *Id*.

Contrasting these cases are those in which the debtor entity engages in various other forms of income producing activities on the real property. Income producing activities that have taken an entity outside of the SARE definition include harvesting and selling timber, renting golf carts and selling food and beverages in the clubhouse, repairing boats and selling gas and concessions at a marina, or operating the services inside a hotel. *See, e.g., Scotia Pacific*, 508 F.3d at 224-25; *Centofante v. CBJ Dev., Inc. (In re CBJ Dev., Inc.)*, 202 B.R. 467, 472 (B.A.P. 9th Cir. 1996); *Club Golf Partners*, 2007 Bankr. LEXIS 1225, at *15-16, 2007 WL 1176010, at *6; *In re Kkemko, Inc.,* 181 B.R. at 50-51.

In this case, Village Gate has no employees that generate income for the business and its main business activity is collecting rental income it receives from its tenants. While Mr. Rasabi testified that Village Gate engages in other activities on the real property, such as making roof repairs and renovating the shopping center spaces, those activities are incidental to owning and leasing the property. No evidence supports that making repairs or renovating the property itself generates income for Village Gate. Instead, it is through the leasing of the repaired and renovated spaces that passive income is produced in the form of rents.

Nonetheless, Village Gate asserts that the joint venture agreement recently entered with a current tenant to operate the future event center in the renovated area of a former bowling alley is an activity that takes Village Gate outside the SARE definition. As noted previously, the joint venture agreement was not properly identified on the Debtor's exhibit list or produced to opposing counsel, so it was not admitted at the hearing. Consequently, there is no evidence to demonstrate the extent to which Village Gate would actively engage in operating the event center as opposed to passively collecting profits from the tenant through a profit sharing agreement. Furthermore, Village Gate provided no timeline for completion of the renovations or the opening of the event

center. This potential to engage in other revenue generating activities in the future is too vague and speculative to be considered "substantial business." For these reasons, this Court concludes that Village Gate's business activities are limited to operating the real property and activities incidental thereto meeting this third element of a SARE entity.

III. CONCLUSION

For the foregoing reasons, the objections filed by Pioneer and the UST [Docket Numbers 31 and 42] are sustained. The facts presented at the hearing support that Village Gate is a "single asset real estate" debtor and, consequently, ineligible to proceed under Subchapter V of Chapter 11.

SO ORDERED.

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