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IT IS SO ORDERED.

Dated: March 7, 2025



Mina Nami Khorrami
Mina Nami Khorrami
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:

THOMPSON CHIBUIKE NWOSU,

Debtor.

Case No. 2:24-bk-54469

Chapter 13

Judge Mina Nami Khorrami

OPINION AND ORDER GRANTING COMMUNITY LOAN SERVICING, LLC'S MOTION TO DISMISS CHAPTER 13 CASE (DOC. 14) AND TRUSTEE'S MOTION TO DISMISS (DOC. 25), AND DENYING WITHOUT PREJUDICE SECURED CREDITOR U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE FOR VELOCITY COMMERCIAL CAPITAL LOAN TRUST 2022-2'S MOTION TO DISMISS (DOC. 18), SECURED CREDITOR U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE FOR VELOCITY COMMERCIAL CAPITAL LOAN TRUSTS 2022-4 AND 2022-4'S MOTION TO DISMISS (DOC. 19), COMBINED MOTION OF CREDITORS U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE FOR VELOCITY COMMERCIAL CAPITAL LOAN TRUST 2022-2 AND U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE FOR VELOCITY

COMMERCIAL CAPITAL LOAN TRUST 2022-4 FOR AN ORDER EXCUSING THE TURNOVER REQUIREMENT OF SECTION 543, NUNC PRO TUNC, TO THE PETITION DATE (DOC. 20), SECURED CREDITOR U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE FOR VELOCITY COMMERCIAL CAPITAL LOAN TRUST 2022-4'S AMENDED MOTION FOR IN REM RELIEF FROM AUTOMATIC STAY (2709 WESTERVILLE ROAD, COLUMBUS, OHIO 43224-4440) (DOC. 31), SECURED CREDITOR U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE FOR VELOCITY COMMERCIAL CAPITAL LOAN TRUST 2022-2'S AMENDED MOTION FOR IN REM RELIEF FROM AUTOMATIC STAY (856 ELLSWORTH AVENUE, COLUMBUS, OHIO 43206), (DOC. 32), COMMUNITY LOAN SERVICING, LLC'S MOTION TO DISMISS OR ABSTAIN PURSUANT TO SECTION 305(a) (DOC. 38), AND JOINT MOTION OF COMMUNITY LOAN SERVICING, LLC AND MIKE GUGGENHEIM OF GUGGENHEIM COMMERCIAL REAL ESTATE GROUP FOR AN ORDER EXCUSING TURNOVER PURSUANT TO 11 U.S.C. § 543(d) (DOC. 39) AS MOOT

I. Introduction

Before the Court are the following motions (hereinafter collectively the "Motions"):

1. *Community Loan Servicing, LLC's Motion to Dismiss Chapter 13 Case* (Doc. 14) (hereinafter the "CLS Motion to Dismiss"), filed by Community Loan Servicing, LLC (hereinafter "CLS"), together with the *Debtor's Response to Community Loan Servicing, LLC's Motion to Dismiss Chapter 13 Case* (Doc. 14) (Doc. 15), filed by the Debtor, Thomson Chibuike Nwosu (hereinafter the "Debtor");
2. *Community Loan Servicing, LLC's Motion to Dismiss or Abstain Pursuant to Section 305(a)* (Doc. 38) (hereinafter the "CLS Motion to Abstain") filed by CLS, together with *Debtor's Response to Community Loan Servicing, LLC's Motion to Dismiss or Abstain Pursuant to Section 305(a)* (Doc. 38) (Doc. 60), filed by the Debtor, and the *Supplement to Community Loan Servicing, LLC's Motion to Dismiss or Abstain Pursuant to Section 305(a)* (Doc. 75) (the "Supplement"), filed by CLS;¹
3. *Joint Motion of Community Loan Servicing, LLC and Mike Guggenheim Of Guggenheim Commercial Real Estate Group for an Order Excusing Turnover Pursuant to 11 U.S.C. §543(d)* (Doc. 39) (hereinafter the "CLS 543(d) Motion"), filed jointly by CLS and Receiver Mike Guggenheim, together with *Debtor's Response to Joint Motion of Community Loan Servicing, LLC and Mike Guggenheim of Guggenheim Commercial Real Estate Group for an Order*

¹ CLS filed the Supplement after the Hearing on February 13, 2025, pursuant to leave granted by the Court at the Hearing. Pursuant to the *Order Establishing Deadline for Supplemental Briefing* (Doc. 76), the Debtor was given until February 28, 2025, to respond to the Supplement. No response was filed.

Excusing Turnover Pursuant to 11 U.S.C. Section 543(d) (Doc. 39) (Doc. 61), filed by the Debtor;

4. *Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-2's Motion to Dismiss (Doc. 18) (hereinafter the "U.S. Bank Trustee #2 Motion to Dismiss"), filed by U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-2 (hereinafter "U.S. Bank Trustee #2"), together with Debtor's Response to Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-2's Motion to Dismiss (Doc. 18) (Doc. 42), filed by the Debtor;*
5. *Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trusts 2022-4 and 2022-4's Motion To Dismiss (Doc. 19) (hereinafter the "U.S. Bank Trustee #4 Motion to Dismiss") filed by U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-4 (hereinafter "U.S. Bank Trustee #4"),² together with Debtor's Response to Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-4's Motion to Dismiss (Doc. 19) (Doc. 43), filed by the Debtor;*
6. *Combined Motion of Creditors U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-2 and U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-4 for an Order Excusing the Turnover Requirement of Section 543, Nunc Pro Tunc, to the Petition Date (Doc. 20) (the "U.S. Bank Trustee 543(d) Motion"), filed by U.S. Bank Trustee, together with Debtor's Response to Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-2 and U.S. Bank Trust Company, National Association, as Trustee For Velocity Commercial Capital Loan Trust 2022-4 for an Order Excusing the Turnover Requirements of Section 543, Nunc Pro Tunc, to the Petition Date (Doc. 20) (Doc. 44), filed by the Debtor;*
7. *Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-4's Amended Motion for In Rem Relief from Automatic Stay (2709 Westerville Road, Columbus, Ohio 43224-4440) (Doc. 31) (the "U.S. Bank Trustee #4 MFRS"), together with the Debtor's Response to Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-4's Amended Motion for In Rem Relief From Automatic Stay (2709 Westerville Road, Columbus, Ohio 43224-4440) (Doc. 31) (Doc. 55), filed by the Debtor;*

² U.S. Bank Trustee #2 and U.S. Bank Trustee #4 are referred to collectively as "U.S. Bank Trustee."

8. *Secured Creditor U.S. Bank Trust Company, National Association, as Trustee or Velocity Commercial Capital Loan Trust 2022-2's Amended Motion for In Rem Relief From Automatic Stay (856 Ellsworth Avenue, Columbus, OH 43206) (Doc. 32) (the "U.S. Bank Trustee #2 MFRS")*, together with *Debtor's Response to Secured Creditor U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trust 2022-2's Amended Motion for In Rem Relief From Automatic Stay (856 Ellsworth Avenue, Columbus, Ohio 43206) (Doc. 32) (Doc. 56)*, filed by the Debtor;
9. *Trustee's Motion to Dismiss (Doc. 25)*, (hereinafter the "Trustee's Motion to Dismiss") filed by Chapter 13 Trustee, Edward A. Bailey (hereinafter the "Trustee"), together with *Debtor's Response to Trustee's Motion to Dismiss (Doc. 25) (Doc. 45)*, filed by the Debtor.

A hearing on the Motions was held on February 11, 2025 (hereinafter the "Hearing"). Kari Balog Coniglio and Tiffany Strelow Cobb appeared on behalf of CLS. Zachary Prendergast appeared on behalf of U.S. Bank Trustee. The Trustee appeared together with his counsel, Andrew Stimmel. Laura Atack appeared on behalf of the United States Trustee. Receiver Mike Guggenheim (hereinafter the "Central Ohio Receiver" or "Mr. Guggenheim") appeared on his own behalf. The Debtor appeared through his counsel Edward Clark Corley, but the Debtor himself did not appear at the Hearing. With the Court's permission, the Debtor listened to a portion of the Hearing by telephone.³

As part of their closing statements, counsel for CLS and U.S. Bank Trustee both stated a preference for the Court to first address the dismissal of this case, because dismissal would provide them with the relief they were seeking and moot their other motions seeking relief other than dismissal of the case. None of the parties objected to those suggestions, so the Court's analysis will begin with the question of whether this case should be dismissed.

³ At the start of the afternoon session of the Hearing, the Court informed Debtor's counsel that the Debtor had not reconnected to the Court's Zoom audio line used for telephonic appearances. Debtor's counsel elected to proceed without any attempt to reconnect the Debtor.

As set forth below and based on the stipulated facts of the parties, documents jointly admitted into evidence, and arguments of counsel, the Court grants the CLS Motion to Dismiss and the Trustee's Motion to Dismiss. Accordingly, the Court declines to address the relief requested in the other pending motions as they are now moot. Among the motions that are rendered moot by the Court's ruling are several other motions seeking dismissal. In particular, the Court does not address the CLS Motion to Abstain, the U.S. Bank Trustee #2 Motion to Dismiss, or the U.S. Bank Trustee #4 Motion to Dismiss. Although there is some overlap between the facts and legal arguments in those motions and the CLS Motion to Dismiss, they also involve distinct factual and legal issues. Since the Court's ruling disposes of the entire case, it is not necessary to resolve those additional issues.

II. Findings of Fact

The Court makes the following findings of fact.⁴

This case was commenced when the Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on November 4, 2024 (hereinafter the "Petition Date"). Joint Stip. ¶ 1, ECF No. 67. The Debtor asserts an ownership interest in the following real properties: (1) 2709 Westerville Road, Columbus, Ohio (hereinafter the "Westerville Road Property"), (2) 856 Ellsworth Avenue, Columbus, Ohio (hereinafter the "Ellsworth Avenue Property"), (3) 2800 West Broad Street, Columbus, Ohio (hereinafter the "Broad Street Property"), (4) 2339-2349 Cleveland Avenue, Columbus, Ohio (hereinafter the "Cleveland Avenue Property"), and (5) 421 Georgesville

⁴ The factual record for the Motions consists primarily of the facts agreed to and the exhibits referenced in the *Joint Stipulated Facts and Admitted Documents* (Doc. 67) (hereinafter the "Joint Stipulations"). At the Hearing, the exhibits attached to the Joint Stipulations were admitted into evidence, as were certain additional exhibits. In addition, at the Court's request, testimony was taken from Mr. Guggenheim. The Joint Stipulations contain two sets of numbered paragraphs with overlapping paragraph numbers. Pages 1-12 of the Joint Stipulations contain 56 paragraphs numbered 1-56 setting forth factual stipulations. Pages 13-18 contain 38 paragraphs numbered from 1-38 listing stipulated exhibits. For the sake of clarity, all citations to a particular paragraph in the Joint Stipulations are to the stipulated facts contained in pages 1-12 of the Joint Stipulations. Where the Court relies upon an exhibit for a factual finding, it will cite directly to that exhibit as it was identified and admitted at the Hearing.

Road, Columbus, Ohio (hereinafter the “Georgesville Road Property”) (hereinafter collectively the “Properties”). Joint Stip. ¶ 2, ECF No. 67; Velocity Ex. 1 at 10-12.⁵

Debtor is the sole member of Central Ohio Health Properties LLC (“Central Ohio”), a Columbus-based company that owns three rental properties – the Cleveland Avenue Property, the Broad Street Property, and the Georgesville Road Property (hereinafter collectively the “Central Ohio Properties”). Joint Stip. ¶ 3, ECF No. 67. In 2017 and 2018, Central Ohio, as owner of the Central Ohio Properties, granted mortgages (the “Central Ohio Mortgages”) on each of the Central Ohio Properties. Joint Stip. ¶¶ 6, 12, and 18, ECF No. 67. Central Ohio also granted an assignment of rents on each of the Central Ohio Properties. Joint Stip., ¶¶ 8, 14, and 20, ECF No. 67. The Central Ohio Mortgages were assigned to CLS, as were the associated notes, assignments of rents, and personal guarantees of each obligation by the Debtor. Joint Stip. ¶¶ 10, 16, 22-24, and 25, ECF No. 67.

On November 14, 2023, the Franklin County, Ohio Court of Common Pleas (hereinafter the “State Court”) issued a *Decree in Foreclosure and Judgment Entry Granting Motion for Default Judgment and Summary Judgment*, (hereinafter the “CLS Judgment”) in a case captioned *Community Loan Servicing, LLC v. Central Ohio Health Properties LLC, et al.*, Case No. 23-CV-001434 (hereinafter the “CLS Foreclosure”). Joint Stip. ¶ 26, ECF No. 67; CLS Ex. 22. The CLS Judgment provided for, among other things, the foreclosure of the Cleveland Avenue Mortgage, the Broad Street Mortgage, and the Georgesville Road Mortgage. Joint Stip. ¶ 27, ECF No. 67. The CLS Judgment also determined that Central Ohio and the Debtor, jointly and severally, were

⁵ The Debtor asserted on his Schedule A/B that he owns an “equitable interest” in the Cleveland Avenue, Broad Street, and Westerville Road Properties, that he holds the Georgesville Road Property in fee simple, and did not state the nature of his interest in the Ellsworth Avenue Property. Velocity Ex. 1 at 11-12.

indebted to CLS in the amount of \$1,280,684.10, as of the date of the judgment, plus interest and attorney's fees that accrued following the entry of that judgment. Joint Stip. ¶ 27, ECF No. 67.

On December 4, 2023, roughly three weeks after the CLS Judgment was entered, the State Court entered an *Order Granting Plaintiff Community Loan Servicing, LLC's Motion for Appointment of a Receiver* (hereinafter the "Central Ohio Receivership Order"). Joint Stip. ¶ 29, ECF No. 67; CLS Ex. 23. The Central Ohio Receivership Order appointed the Central Ohio Receiver and granted him "sole possession and full control" over the Central Ohio Properties. Joint Stip. ¶ 29, ECF No. 67. Section 5 of the Central Ohio Receivership Order broadly enjoined the "Adverse Parties" and "Adverse Agents"⁶ from interfering with the Central Ohio Receiver or otherwise attempting to take any actions regarding the Central Ohio Properties. CLS Ex. 23 § 5.

Since his appointment on December 4, 2023, the Central Ohio Receiver has maintained control over the Central Ohio Properties. Joint Stip. ¶¶ 29, 30, ECF No. 67. This included "performing periodic site visits, providing routine maintenance, and addressing tenant leasing matters in order to stabilize the properties to maximize the value for potential sale." Joint Stip. ¶ 30, ECF No. 67. He also addressed exterior code violations and mold issues, and repair and maintenance on the HVAC systems. Joint Stip. ¶ 30, ECF No. 67.

On July 17, 2024, the Debtor, as managing member of Central Ohio, executed quitclaim deeds purporting to transfer each of the Central Ohio Properties from Central Ohio to the Debtor. CLS Ex. 25-27.⁷ The Quitclaim Deeds were recorded two weeks later. Joint Stip. ¶ 32, ECF No. 67. The Debtor paid no consideration for those transfers. Joint Stip. ¶ 32, ECF No. 67.

⁶ Both terms include the Debtor. "Adverse Parties" is defined to be "the named Defendants in this action," and "Adverse Agents" is defined to be any of the Adverse Parties' "respective partners, representatives, officers, managers, directors, members, shareholders, affiliates or agents." CLS Ex. 23 § 3. The Debtor was a named defendant in the CLS Foreclosure. CLS Ex. 22 at 1. He is also a manager and member of Central Ohio. Joint Stip. ¶ 3, ECF No. 67. The Debtor is therefore both an "Adverse Party" and an "Adverse Agent" under the Central Ohio Receivership Order.

⁷ These deeds will be referred to collectively hereinafter as the "Quitclaim Deeds."

Debtor was also a member of an entity known as Mid-Ohio Health Properties, LLC (“Mid-Ohio”), which owned the Westerville Road and Ellsworth Avenue Properties (hereinafter collectively the “Mid-Ohio Properties”). Joint Ex. CC and HH. The Mid-Ohio Properties were owned by Mid-Ohio until July 17, 2024, when the Debtor executed quitclaim deeds transferring them into his name. Joint Stip. ¶¶ 43, 54, ECF No. 67. On July 18, 2024, the State Court issued an order appointing Prodigy Properties, LLC (the “Mid-Ohio Receiver”) as receiver over the Westerville Road and Ellsworth Avenue Properties. Joint Stip. ¶¶ 40, 51, ECF No. 67. On the Petition Date, the Mid-Ohio Receiver was marketing the Westerville Road Property for sale. Joint Stip. ¶ 42, ECF No. 67. He was also conducting an online auction of the Ellsworth Avenue Property, which was scheduled to conclude on November 14, 2024. Joint Stip. ¶ 53, ECF No. 67.

The Debtor’s Schedule I specifies that he has no income, nor did he expect the lack of income to change over the following year. Velocity Ex. 1 at 26-27. The Debtor’s Statement of Financial Affairs reflects that the Debtor had no income from January 1, 2024, through the Petition Date, he had only \$714 in income for all of 2023, and \$2,200 in income for all of 2022. Velocity Ex. 1 at 31-32. The Debtor’s Schedule J indicates that he has no expenses, and that he did not expect that to change in the following year. Velocity Ex. 1 at 28-29. On the Petition Date, the Debtor filed a chapter 13 plan (hereinafter, the “Plan”). Velocity Ex. 2. The Plan calls for mortgage payments on the Properties to be made through the Trustee. Velocity Ex. 2 § 5.1.1. The Plan proposes a first monthly payment of \$4,500 with subsequent monthly payments of \$19,500. Velocity Ex. 2 § 2. The Plan contains a non-standard provision (hereinafter “NSP”) stating:

All real property is currently controlled by a receiver. Subsequent to filing the Chapter 13 Bankruptcy, the Debtor will obtain possession of the properties and use the rental income to fund the Chapter 13 Plan. Also, the Debtor will sell 856 Ellsworth Ave. Columbus, Ohio and 2709 Westerville Road, Columbus, Ohio. The

proceeds from the sell [sic] of the properties should exceed the mortgage values of each property.⁸ It is estimated that the properties should be sold within 6-8 months.

Velocity Ex. 2 § 13. As of the Hearing, the Debtor has not made any plan payments to the Trustee, and the delinquent balance on the Plan is \$43,500.⁹ Trustee's Ex. 1. Further, the Debtor did not provide in the Plan any estimate of what his income or expenses from the Properties would be if he were able to obtain possession of the Properties. He has not filed amended Schedules I and J to provide that information and did not present any such evidence at the Hearing.

On February 3, 2025 (91 days after the Petition Date), the Debtor filed *Debtor's Motion for an Order Directing Creditors U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trusts 2022-2 and 2022-4, and Community Loan Servicing, LLC, to Turnover Property and for Damages* (Doc. 59) (hereinafter "Debtor's Turnover Motion"). The Debtor's Turnover Motion was only directed to CLS and U.S. Bank Trustee, and not to the receivers who are in possession of those properties. Joint Stip. ¶¶ 29, 40, 51, ECF No. 67. Although the Court issued an *Order Regarding Motion/Application (Doc. No. 59) Due to Noncompliance with Code and/or Rules* (Doc. 65) because the certificate of service does not indicate proper service, no amended motion correcting that issue was filed by the February 19, 2025, deadline. The Debtor's Turnover Motion is scheduled for a pretrial conference on May 14, 2025.

At the request of the Court, Mr. Guggenheim testified at the Hearing to provide information on the income and expenses generated from the Central Ohio Properties. For the first eleven

⁸ Contrary to the terms of the NSP, the Joint Stipulations indicate that both properties have substantial negative equity. The Westerville Road Property is worth \$370,700 and the total mortgage liens are \$925,163.71, resulting in negative equity of (\$537,463.71), and the Ellsworth Avenue Property is worth \$194,700 with mortgage liens of \$341,527.44, resulting in negative equity of (\$146,827.44). Joint Stip. ¶¶ 38, 49, 55, and 56, ECF No. 67.

⁹ The Plan was filed on November 4, 2024, so payments are due on the 4th of each month. An additional \$19,500 came due on March 4, 2025. The Debtor has not filed any request that the Court modify the dates when payments are due.

months of 2024, the Central Ohio Properties generated \$187,623.91 in total revenue, and the total expenses were \$177,349.78, yielding total net income of \$10,274.13, or \$934.01 per month. CLS Ex. 24, Ex. B. Mr. Guggenheim also testified that the expenses do not include any component for debt service on the mortgages on the Central Ohio Properties.

III. Conclusions of Law

A. Jurisdiction and Venue

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Standard for Motions to Convert or Dismiss Under 11 U.S.C. § 1307(c)

Dismissal or conversion of a chapter 13 case is governed by 11 U.S.C. § 1307(c), which provides that the Court may dismiss a case or convert it to one under another chapter for cause:

- (c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—
 - (1) unreasonable delay by the debtor that is prejudicial to creditors;
...
 - (4) failure to commence making timely payments under section 1326 of this title;
 - (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
...

Section 1307(c) thus sets forth a two-step process. First, the Court must determine whether there is “cause.” Second, if cause is found, the Court must determine whether dismissal or conversion is in the best interests of the creditors and the estate. *Karamoussayan v. Mass. Dept. of Rev. (In re Karamoussayan)*, 656 B.R. 652, 662 (B.A.P. 1st Cir. 2024). The moving party has the burden of establishing cause. *Alt v. United States (In re Alt)*, 305 F.3d 413, 419 (6th Cir. 2002).

C. The CLS Motion to Dismiss

CLS primarily asserts that cause exists because the Debtor filed this case in bad faith. The Supreme Court and Sixth Circuit have affirmed that bad faith in filing the petition is a proper basis to find cause under 11 U.S.C. §1307(c) though it is not specifically listed in the examples of cause in that section. *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 374-75, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007); *Alt*, 305 F.3d at 419. A bad faith dismissal “is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13. That individual, in other words, is not a member of the class of ‘honest but unfortunate debtor[s]’ that the bankruptcy laws were enacted to protect.” *Marrama*, 549 U.S. at 374 (quoting *Grogan v. Garner*, 498 U.S. 279, 286, 287, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)) (internal quotations omitted).

In *Marrama*, the Supreme Court declined to “articulate with precision what conduct qualifies as ‘bad faith’ sufficient to permit a bankruptcy judge to dismiss a Chapter 13 case,” but emphasized that the debtor’s conduct “must, in fact, be atypical.” 549 U.S. at 375 n.11. Bad faith dismissals should be limited to “extraordinary cases.” *Id.* In *Alt*, the Sixth Circuit has stated that, “[t]he key inquiry in such cases is whether the debtor is seeking to abuse the bankruptcy process.” 305 F.3d at 419. The court is to broadly examine the totality of the circumstances while undertaking that inquiry. *Id.* “The ‘totality of the circumstances’ test means what it says: It exacts an examination of all the facts in order to determine the bona fides of the debtor.” *Hardin v.*

Caldwell (In re Caldwell), 851 F.2d 852, 860 (6th Cir. 1988) (quoting *In re Chaffin*, 816 F.2d 1070, 1074 (5th Cir. 1987)).

The Sixth Circuit in *Alt* identified a nonexclusive list of seven factors to guide the bad faith inquiry. 305 F.3d at 419. These factors are: (1) the nature of the debt, including the question of whether the debt would be nondischargeable in a chapter 7 proceeding; (2) the timing of the petition; (3) how the debt arose; (4) the debtor's motive in filing the petition; (5) how the debtor's actions affected creditors; (6) the debtor's treatment of creditors both before and after the petition was filed; and (7) whether the debtor has been forthcoming with the bankruptcy court and the creditors. *Id.* at 419 (citing *Matter of Love*, 957 F.2d 1350, 1357 (7th Cir. 1992)). *Alt* also directed bankruptcy courts to consider (to the extent relevant) the factors that are relevant to whether a chapter 13 plan has been proposed in good faith. *Alt*, 305 F.3d at 420.¹⁰

“Good faith is an amorphous notion, largely defined by factual inquiry. In a good faith analysis, the infinite variety of factors facing any particular debtor must be weighed carefully. We cannot here promulgate any precise formulae or measurements to be deployed in a mechanical good faith equation.” *Okoreeh-Baah*, 836 F.2d at 1033; *Caldwell*, 851 F.2d at 859-60. The factors listed in *Alt* are nonexclusive, and courts must examine the totality of the circumstances as they

¹⁰ The factors for good faith to be considered in the plan confirmation context under 11 U.S.C. § 1325(a)(3) are: (1) the debtor's income; (2) the debtor's living expenses; (3) the debtor's attorney's fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor. *Alt*, 305 F.3d at 919 (citing *Soc. Nat'l. Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 591 (6th Cir. 1992)). The *Alt* court stressed that the *Barrett* factors are not exclusive, and that good faith is a fact-specific and flexible determination. 305 F.3d at 419 (citing *In re Okoreeh-Baah*, 836 F.2d 1030, 1032-33 (6th Cir. 1988)).

make the “key inquiry” – whether the Debtor is seeking to abuse the bankruptcy process. 305 F.3d at 419.

Although *Alt* discusses nineteen factors that may be relevant to the question of bad faith, the parties here focused on only a handful of them. CLS focused primarily on the transfer of the Central Ohio Properties. It also addressed the fact that the Plan proposes a \$19,500 payment in the second month of the plan term when the Debtor has no income, and that the Debtor has very few creditors. The Debtor’s counsel attributed the Debtor’s inability to comply with the terms he proposed in the Plan on the creditors’ refusal to turn over the possession and income from the Properties back to the Debtor after the filing of the Petition. He further asserted generally that the Debtor has acted in good faith.

1. Prepetition Transfers in Violation of the Central Ohio Receivership Order

The Debtor filed his bankruptcy case almost a year after the CLS Judgment had been entered. By itself, the fact that a chapter 13 was filed after a foreclosure judgment does not raise significant bad faith concerns. *See, e.g. In re Anderson*, 631 B.R. 417, 424 (Bankr. S.D. Ohio 2021) (“a foreclosure sale is most frequently the final impetus for a debtor to file a bankruptcy reorganization case, and this Court cannot impute bad faith based upon this timing”). But the Debtor’s case is not the usual case. The Debtor has come before this Court claiming ownership interests in the Central Ohio Properties and has proposed a Plan that is dependent upon this Court placing him in control of the Central Ohio Properties. The Quitclaim Deeds demonstrate defiance of the Central Ohio Receivership Order and indeed the State Court’s jurisdiction and control of the Central Ohio Properties, which is strongly suggestive of the Debtor’s intent to circumvent the Central Ohio Receivership Order and of the Debtor’s bad faith.

More than seven months after the Central Ohio Receivership Order was entered, the Debtor caused Central Ohio to transfer the Central Ohio Properties to himself for no consideration when he signed the Quitclaim Deeds. Joint Stip. ¶¶ 29, 32, ECF No. 67. The Central Ohio Receivership Order “granted the Central Ohio Receiver *sole possession and full control* of the Central Ohio Properties together with all property related thereto, including all rents and income therefrom.” Joint Stip. ¶ 29, ECF No. 67 (emphasis added). Section 5 of the Central Ohio Receivership Order broadly enjoined the Debtor from impeding or interfering with the Central Ohio Receiver and from making any agreements relating to any of the Central Ohio Properties. CLS Ex. 23 § 5.

Under Ohio law, a receiver is an officer of the appointing court and is subject to its control. *State ex rel. Celebrezze v. Gibbs*, 573 N.E.2d 62, 67, n.4 (Ohio 1991) (stating that a receiver is “a trustee or ministerial officer representing the court”) (quoting *Receiver*, BLACK’S LAW DICTIONARY (6th ed. 1990)). Once a receiver is appointed, the appointing court takes jurisdiction and control over the receivership property, exercised through its officer, the receiver. *In re Greenleaf Apts., Ltd.*, 158 B.R. 456, 458 (Bankr. S.D. Ohio 1993).

“No rule is better settled than that, when a court has appointed a receiver, his possession is the possession of the court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the court” *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 552 (6th Cir. 2006) (quoting *Ex parte Tyler*, 149 U.S. 164, 181, 13 S.Ct. 785, 37 L.Ed. 689 (1893)); *see also Cheney v. Maumee Cycle Co.*, 60 N.E. 207, 212-13 (Ohio 1901) (holding that the receivership order in question “satisfies the rule that the order should distinctly state over what property the receiver is appointed, in order that persons dealing with him may know what property *is in possession of the court by its officer.*”) (emphasis added).

Therefore, once the Central Ohio Receiver had been appointed, the Central Ohio Properties were in the possession of the State Court. At that point, no party had any authority to transfer those properties absent the approval and permission of the State Court. Indeed, even the Central Ohio Receiver, acting as an officer of the State Court, had no authority to transfer the Central Ohio Properties without that court's approval. *See* Ohio Rev. Code § 2735.04(D)(2) (requiring a motion, notice, and opportunity for a hearing to all affected parties, and an order from the court prior to any sale of real property by a receiver). Accordingly, the Quitclaim Deeds violated the Central Ohio Receivership Order and represented an attempt to undermine the State Court's exclusive jurisdiction, possession, and control of the Central Ohio Properties.¹¹

The Debtor's violation of the Central Ohio Receivership Order strongly suggests bad faith. *Michigan Nat'l Bank v. Charfoos (In re Charfoos)*, 979 F.2d 390, 394-95 (6th Cir. 1992). In *Charfoos*, the Debtor had transferred assets in violation of a state court restraining order in the month before he filed a chapter 11 case. The Sixth Circuit found that this was a factor that strongly supported dismissal. *Id.*; *see also In re Mayfield*, 564 B.R. 627, 634-35 (Bankr. W.D. Ark. 2017) ("The purpose of the Bankruptcy Code is to provide debt relief to debtors who require a 'fresh start.' It is not a forum to avoid the import of state court decisions.") (quoting *In re Banks*, 241 B.R. 434, 437 (Bankr. E.D. Ark. 1999)); *In re Page*, 519 B.R. 908, 914 (Bankr. M.D.N.C. 2014). In fact, a debtor's violation of an injunction can present the kind of "extreme situation" that

¹¹ CLS further claims that the Quitclaim Deeds did not have any legal effect on the Central Ohio Properties. In the CLS 543(d) Motion and at the Hearing, CLS asserted that the Quitclaim Deeds are void, such that the Central Ohio Properties are not property of the estate and therefore the Central Ohio Receiver is not a "custodian" subject to section 543(b). However, CLS did not cite to any Ohio authority addressing whether such a transfer is void, voidable, avoidable, or otherwise. In the absence of any legal authorities, the Court declines to make a definitive determination on this point, particularly where it is not necessary to resolve the issues before this Court.

warrants not only dismissal for bad faith but also a bar to refiling. *In re Hall*, 304 F.3d 743, 746 (7th Cir. 2002) (citing *In re Tomlin*, 105 F.3d 933, 937 (4th Cir. 1997)).¹²

The Debtor's proposed Plan makes clear that this case was filed to validate the Debtor's violation of the Central Ohio Receivership Order. But for that violation, the Debtor would not be able to claim that the Central Ohio Properties are property of his estate. The very foundation of this bankruptcy case, and the Debtor's only hope for earning the income needed to make the Plan work, is thus the Debtor's violation of the Central Ohio Receivership Order.

2. The Debtor's Conduct Since Filing This Case Shows Bad Faith

The Debtor's Schedule I shows that he has no income. Velocity Ex. 1 at 26-27. The Plan confirms that the only way the Debtor will have any income is if he is able to obtain possession of the Properties and their rental incomes.¹³ Velocity Ex. 2 at 12. The Debtor has failed to make any plan payments, despite proposing a plan that calls for plan payments of \$19,500 after the first month. Unless the Debtor obtains possession of the Properties and their rental income, the Debtor does not have any income or ability to earn an income in the near future. The schedules of income and expenses, as filed, do not show any income or expenses or propose income and expenses on the assumption that the Debtor will obtain possession of the Properties.¹⁴

Setting aside the fact that the Debtor's title to the Central Ohio Properties was obtained without permission or authority from the State Court, the Debtor has not presented any evidence, either in the form of amendments to his schedules or evidence at the Hearing, to suggest that the

¹² No party has requested such a bar here.

¹³ Although confirmation of the Plan is not currently before the Court, "information contained in the plan may be relevant when determining if the entire proceedings were initiated in good faith." *Matter of Love*, 957 F.2d at 1360.

¹⁴ No party has raised the fact, but viewed in isolation, the Debtor's Schedule I suggests that he is not eligible for chapter 13. A chapter 13 debtor must be an "individual with regular income." 11 U.S.C. § 109(e). Schedule I indicates that the Debtor has no income and no expectation of that changing over the year after he signed it. Velocity Ex. 1 at 26-27.

Debtor would be able to meet his plan payments even if he had a legal basis to claim control over the Central Ohio Properties and their rental income. The Central Ohio Receiver testified that the Central Ohio Properties had generated net income of \$10,274.21 (or \$934.02 per month) in the first eleven months those properties had been under his control. CLS Ex. 24 at Ex. B. As a result, even if the Debtor had possession and control over the Properties and their rental incomes, there is no evidence that the Debtor's income would be sufficient to meet the monthly payments he proposes in his Plan.

Moreover, given that obtaining control of the Properties is critical for the Debtor to have any ability to fund the Plan, he has waited several months after the filing of the Petition to seek recovery of the Properties. The Central Ohio Receiver testified that he never received any demand from the Debtor to turn over the Central Ohio Properties. Notwithstanding the fact that pursuant to 11 U.S.C. § 1326(a), the Debtor's first Plan payment was due on December 4, 2024, and the only way the Debtor could fund the Plan was to obtain turnover of the Central Ohio Properties, it was not until February 3, 2025 – 91 days after the Petition Date – that the Debtor filed the Debtor's Turnover Motion. Even then he did not seek any kind of expedited consideration. Given that obtaining control of the Properties would be the only way for this case to proceed to confirmation, the Court would have expected a turnover motion to be filed immediately after the petition was filed along with a motion for expedited consideration.¹⁵ Moreover, the Debtor's Turnover Motion was directed to CLS and U.S. Bank Trustee and not to the receivers, even though CLS and U.S. Bank Trustee lack the authority to control a court-appointed receiver as a matter of law. *Greenleaf Apts.*, 158 B.R. at 458 (dismissing adversary complaint against secured lender for alleged damage

¹⁵ Given that the Debtor attributes the turnover issue for his lack of plan payments, the Court would also have expected an immediate motion under 11 U.S.C. § 1326(a)(1) to delay the due date for the Debtor's first plan payment.

to property while it was in hands of a receiver because, under Ohio law, the receiver was subject to the exclusive control of the appointing court and not the secured creditor).

Viewing the totality of the circumstances, the Debtor appears to be pursuing a course of delay and not a sincere effort to rehabilitate his financial affairs.

3. The Debtor's Failure to Appear and Testify

A final factor reinforcing the Debtor's bad faith is his non-appearance at the Hearing. Where a witness is "peculiarly within" the power of one party to produce, and can provide testimony that "would elucidate the transaction" at issue, the Court may, in its discretion, draw an adverse inference against the party failing to call that witness. *United States v. Blakemore*, 489 F.2d 193, 195 (6th Cir. 1973). Drawing the inference is discretionary. *Crossley Const. Corp. v. NCI Bldg. Sys., L.P.*, 123 F. App'x. 687, 693 (6th Cir. 2005). It applies to parties who fail to appear as well as third-party witnesses. *See In re McGohan*, 75 B.R. 10, 13 (Bankr. N.D.N.Y. 1986) (drawing adverse inference against debtor in nondischargeability case where debtor had over a month's notice of the trial date and was absent from the trial without explanation). Drawing an inference against the Debtor for his failure to appear at the Hearing is appropriate here.

The Debtor failed to appear at the Hearing and offered no explanation for that failure. The Debtor did not seek a continuance of the Hearing, or request leave to testify remotely, nor did he attempt to make the showing of "good cause in compelling circumstances" required for remote testimony. *See Fed. R. Civ. P. 43(a)* (made applicable herein by Fed. R. Bankr. P. 9017). The unavoidable conclusion is that the Debtor's absence from the Hearing was the result of his voluntary choice and not factors beyond his control. The primary purpose of the Hearing was presentation of evidence regarding the Debtor's sincerity and credibility. The Debtor was uniquely able to offer evidence on those issues. Under these circumstances, the Court can only infer that

the Debtor chose not to appear and testify because he knew that his testimony would be harmful to his case.

The totality of the circumstances here overwhelmingly demonstrates that this case was filed in bad faith.

D. Trustee's Motion to Dismiss

Trustee's Motion to Dismiss under 11 U.S.C. § 1307(c) raises two bases, one being that the Trustee was not able to conduct the 341 Meeting of Creditors due to the Debtor's failure to submit completed schedules I and J to provide a budget that results in payments to creditors. The second basis is that the Debtor has failed to tender his first plan payment in violation of 11 U.S.C. §1326.

1. The Debtor Has Engaged in Unreasonable Delay Prejudicial to Creditors

11 U.S.C. § 1307(c)(1) requires a showing an unreasonable delay by the debtor and that such delay has been prejudicial to creditors. *DeVito v. Pees (In re DeVito)*, 464 B.R. 61 (Table), 2010 WL 4269384, at *5 (B.A.P. 6th Cir. Oct. 14, 2010). The unreasonable delay must be attributable to the debtor. *In re Malek*, 591 B.R. 420, 430 (Bankr. N.D. Cal. 2018). "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *In re Ellsworth*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). The failure to address issues raised by the trustee can demonstrate unreasonable delay. *Malek*, 591 B.R. at 430. Here, the Court concludes that the delay is both unreasonable and prejudicial to creditors.

This case has been pending for four months. The Trustee asserts that he has been unable to conduct his statutory duties due to schedule I and J not reflecting any income or expenses. Without completed Schedules I and J, the Trustee is unable to evaluate whether the Plan is feasible

and whether it satisfies the best interest and disposable income tests of 11 U.S.C. § 1325. And the Debtor's absence from the Hearing confirms that there is no evidence before the Court to justify or explain the failure to address these issues or to explain what path there might be to a confirmable plan. The Debtor, through his companies, owned and operated the Properties for several years. No reason has been provided that the Debtor could not have presented reasonable estimates of the income and expenses associated with the Properties when he filed his Petition.

The Debtor's failure to amend his Schedules I and J or to otherwise provide the budget information required of every chapter 13 debtor has effectively placed the confirmation process on hold. *Malek*, 591 B.R. at 430 ("If the debtor fails to . . . prosecute the plan, the estate enters a state of legal limbo."). The Debtor has not shown any justification for his failure to complete these basic tasks. Despite the Trustee raising these issues in the Trustee's Motion to Dismiss, the Debtor has not taken any steps to correct them. Therefore, this delay is unreasonable. *Id.*, 591 B.R. at 430 (finding delay unreasonable where issues had been made clear by the trustee and the debtor had done nothing to address them).

Further, given this case's impact on pending proceedings, the delay is prejudicial to creditors. The bankruptcy filing inherently creates uncertainty as to who is in control of the Properties, and it creates delay and expense for CLS and U.S. Bank Trustee. On the Petition Date, the Mid-Ohio Receiver was marketing the Westerville Road Property for sale, and he was conducting an online auction for the Ellsworth Road Property, which was scheduled to conclude on November 14, 2024. Joint Stip. ¶ 53, ECF No. 67. Both CLS and U.S. Bank Trustee hold foreclosure judgments that cover all the Properties. Joint Stip. ¶¶ 26, 37, 48, ECF No. 67. They are prevented from proceeding with either sheriff's sales or receiver's sales as long as the automatic stay is in place.

2. The Debtor Failed to Timely Commence Payments as Required by 11 U.S.C. § 1326(a)(1)

11 U.S.C. § 1326(a) required the Debtor to commence making payments pursuant to the Plan not later than December 4, 2024, and on the fourth day of each month afterwards. As of the Hearing, the Debtor has not made any plan payments to the Trustee. Trustee's Ex. 1. As of the Hearing, the Debtor was \$43,500 in arrears. "Section 1326(a)(1) is a significant first test of the debtor's willingness and ability to fund the proposed plan." Keith M. Lundin, LUNDIN ON CHAPTER 13, § 44.1, at ¶ 2, LundinOnChapter13.com (last visited February 28, 2025).¹⁶ 11 U.S.C. § 1326(a) permits the Court to modify the default payment timing. However, the Debtor never requested that the default payment schedule be modified.

The Debtor did not dispute the nonpayment at the Hearing. While the Debtor argued that his failure to make the plan payments was the result of the creditors' failure to turnover the Properties, the Debtor did not present any evidence to show that, even if the Properties had been turned over to the Debtor, the Debtor would have been able to make the payments called for by the Plan.¹⁷

Thus, the Court finds that no plan payments have been made and no legitimate excuse for that failure has been established. The Trustee has thus established cause under 11 U.S.C. §1307(c)(1) and (4).

¹⁶ While the non-payment constitutes cause under 11 U.S.C. § 1307(c)(4), it also reinforces the Court's conclusions as to bad faith. "A debtor displays 'good faith' by complying with their statutory duties." *In re Duruji*, 287 B.R. 710, 713 (Bankr. S.D. Ohio 2003); *see also In re Cadet*, 56 B.R. 301, 305 (Bankr. E.D.N.Y 1985) (stating that the failure to make plan payments was evidence of a lack of good faith).

¹⁷ As discussed previously, the evidence shows a lack of diligence on the Debtor's part regarding his pursuit of turnover. Also, he came forward with nothing to show that he has a legitimate claim to the Central Ohio Properties or their income streams.

E. The Court Dismisses Rather Than Converts the Case

Taken together, CLS and the Trustee have convincingly established multiple grounds for cause under 11 U.S.C. §1307(c), all of which show that this case is an abuse of the bankruptcy process. Having found cause, the Court must determine whether the interests of the creditors and the estate are better served by dismissal or conversion to chapter 7. 11 U.S.C. § 1307(c)'s plain language necessarily requires the Court to consider whether dismissal or conversion is in the best interest of creditors and the estate. *In re Baldwin*, 2024 WL 4806625, at *3 (Bankr. D. Ore. Nov. 15, 2024) (“The court has a legal responsibility to choose a remedy that is beneficial for all creditors and the estate, not just for the one creditor who files a motion.”). The Court should place particular emphasis on whether any party would be prejudiced by conversion or dismissal. *In re Van Gompel*, 632 B.R. 730, 735 (Bankr. D.S.C. 2021).

Although the Court must make an independent determination between dismissal and conversion, the views of the parties are entitled to significant weight. In a case applying chapter 11's comparable dismissal provision, 11 U.S.C. § 1112(b), one court has even suggested that the view of a single large creditor can be dispositive. *In re Staff Inv. Co.*, 146 B.R. 256, 261 (Bankr E.D. Cal. 1992). Here, CLS, U.S. Bank Trustee, and the Trustee have all requested dismissal, and nobody has argued in favor of conversion. CLS and U.S. Bank Trustee hold substantial claims, and the Trustee represents the interests of the estate under 11 U.S.C. § 323(a).

In addition to the views of the parties, the Court's finding that the Debtor filed this case in bad faith to use the bankruptcy process to validate his violation of the Central Ohio Receivership Order strongly favors dismissal. Dismissal will permit the State Court to determine the appropriate consequences for the Debtor's conduct and permit the State Court to determine the validity and effect under Ohio law of the Quitclaim Deeds. The State Court, as the court whose order was

violated, is best situated to determine a remedy for that violation. Likewise, the State Court is the best forum to resolve the effectiveness of the Quitclaim Deed under Ohio law. Dismissal will terminate the automatic stay and allow the State Court to address those issues.

Moreover, there is no evidence that there would be assets for a chapter 7 trustee to administer. While the Debtor has scheduled ownership interests in the Properties, there is no evidence before the Court that there is any equity in any of the Properties. What evidence there is shows affirmatively that there is no equity. The Westerville Road Property has negative equity of (\$537,463.71), and the Ellsworth Avenue Property has negative equity of (\$146,827.44). Joint Stip. ¶¶ 38, 49, 55, and 56, ECF No. 67. The Joint Stipulations do not provide valuations or individual lien balances for the Central Ohio Properties, but the validity of the estate's title to them is in dispute, both because the Quitclaim Deeds violated the Central Ohio Receivership Order, and because the lack of consideration for the Quitclaim Deeds may make them avoidable under the Ohio Uniform Fraudulent Transfer Act, Ohio Rev. Code § 1336.01 et seq. Even if there is equity in any of the Central Ohio Properties, a chapter 7 trustee would have to litigate and prevail on these issues before that equity would be available for distribution.

Finally, the Court has considered whether any party would be prejudiced by conversion or dismissal, an issue which should be given "particular emphasis." *Van Gompel*, 632 B.R. at 735. There is no evidence suggesting that any party would be prejudiced by dismissal. Conversion, on the other hand, would potentially prejudice CLS and U.S. Bank Trustee by creating further litigation and delay.

For all these reasons, the Court dismisses this case.

F. Dismissal Moots the Remaining Motions

At the Hearing, CLS and U.S. Bank Trustee both affirmed that their preference was for the Court to address dismissal first, because dismissal would provide all the relief that they sought if granted; no parties objected to this approach. Under the principle of judicial restraint, the Court need not decide more issues than are necessary to dispose of the matter before the Court. *See United States v. Henderson*, 2 F.4th 593, 597 (6th Cir. 2021) (“[I]f it is not necessary to decide more, it is not necessary to decide more.”) (quoting *PDK Labs., Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in judgment)). As the remaining Motions are rendered moot by the dismissal of this case, they are denied without prejudice.

V. Conclusion

For the foregoing reasons, the CLS Motion to Dismiss and the Trustee’s Motion to Dismiss are each hereby granted. The following motions are moot and therefore denied without prejudice: (1) the CLS 543(d) Motion, (2) CLS Motion to Abstain, (3) the U.S. Bank Trustee #2 Motion to Dismiss, (4) the U.S. Bank Trustee #4 Motion to Dismiss, (5) the U.S. Bank Trustee 543(d) Motion, (6) the U.S. Bank Trustee #2 MFRS, and (7) the U.S. Bank Trustee #4 MFRS. Pursuant to LBR 9072-1(f), the Trustee is directed to submit a proposed order of dismissal that incorporates by reference the Court’s findings and conclusions in this Opinion.

IT IS SO ORDERED.

Copies to: Default List plus:

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