Orders from 11th Circuit, District Court, and Bankruptcy Court will have far reaching negative impact. It gives courts the power to deprive private citizen's aforementioned rights and privileges and protection. This Court should review, and set aside, those order which will provide critical guidance to all lower courts, both state and federal, regarding the scope of standing regarding the prior listed and aforementioned constitutional and statutory provisions at issue.

CONCLUSION

The petition for a writ of certiorari should be granted because if SCOTUS granted other petitions because SCOTUS cared about whether lower courts ruled incorrectly when judges in the lower court actually diligently did their job, then SCOTUS should care even more about this petition when lower court judges are skillfully deceitful to fabricate statements that are contrary to and are not supported by records and rule based on those fabricated statements.

February 2, 2022

Respectfully submitted,

ALICE GUAN, OR YUE GUAN, PRO SE
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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12970-AA

In Re: ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.

Debtor.

ALICE GUAN,

Plaintiff-Appellant,

versus

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Nov. 4, 2021)

Before: WILSON, ROSENBAUM, and LUCK, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Alice Guan, proceeding *pro se*, initially appealed to the district court from the bankruptcy

court's "Order Scheduling Hearing on Confirmation of Plan and Establishing Deadlines," entered on June 25, 2020. In that order, the bankruptcy court established a plan for ruling on the Debtor's then-pending reorganization plan, including procedures for parties to file rejections to the plan or objections to confirmation. Guan argued that the scheduling order finally resolved her objections to the Debtor's ability to proceed under Subchapter V because the bankruptcy court stated at an earlier hearing that "[i]f the Debtor is permitted to remain as a Sub V debtor, then we'll issue the order setting the confirmation hearing." In affirming the bankruptcy court's order, the district court stated that "it is clear that the Bankruptcy Court was intending to set the hearing as a placeholder pending resolution of the objections, prompting the issuance of the Hearing Order" and that Guan "jumped the gun and appealed an interlocutory scheduling order then failed to properly amend her notice of appeal to include the written order that actually denied her objections." Nonetheless, the district court affirmed the interlocutory scheduling order, which Guan has appealed here.

Because the scheduling order did not "completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief," the scheduling order is a non-final bankruptcy court order. *See Barben v. Donovan (In re Donovan)*, 532 F.3d 1134, 1136-37 (11th Cir. 2008) (quotation marks omitted). Thus, we lack jurisdiction to review the district court's order affirming that order. *See* 28 U.S.C. § 158(d)(1); *Mich.*

State Univ. v. Asbestos Settlement Tr. (In re Celotex Corp.), 700 F.3d 1262, 1265 (11th Cir. 2012) ("Although a *district court*, at its discretion, may review interlocutory judgments and orders of a bankruptcy court, a *court of appeals* has jurisdiction over only final judgments and orders entered by a district court . . . sitting in review of a bankruptcy court." (quotation marks and citations omitted)). Accordingly, we DISMISS this appeal for lack of jurisdiction. In so doing, we note that we express no opinion as to the merits of the district court's and bankruptcy court's orders.

All pending motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In Re: Ellingsworth Residential Community Association, Inc.

Case No: 6:20-cv-1243-WWB

ALICE GUAN,

Appellant,

v.

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Appellee. /

ORDER ON APPEAL

(Filed Aug. 19, 2021)

THIS CAUSE is before the Court on appeal from the United States Bankruptcy Court for the Middle District of Florida's Order Scheduling Hearing on Confirmation of Plan and Establishing Deadlines ("**Hearing Order**," Doc. 11-11). Appellant filed her Initial Brief (Doc. 43) on September 18, 2020, to which Appellee filed an Answer Brief (Doc. 50), and Appellant filed a Reply (Doc. 56). This matter is now ripe for resolution. For the reasons that follow, the Hearing Order is affirmed.

Appellee, Ellingsworth Residential Community Association, Inc., is a Florida not-for-profit corporation

that operates a homeowner's association consisting of approximately eighty homes in three subdivisions in Seminole County, Florida. (Doc. 43 at 14; Doc. 50 at 7). Appellant, Alice Guan, owns a home within one of the subdivisions and is a member of the homeowner's association. (Doc. 43 at 14; Doc. 50 at 7). In February 2016, Appellee filed a lawsuit against Appellant in state court related to landscaping alterations she made to her property, to which Appellant made a counterclaim. (Doc. 11-8 at 1-2). Appellant successfully defended Appellee's lawsuit and it was determined by the state court that she is entitled to recover her reasonable attorney's fees and costs in an amount to be determined. (*Id.* at 2).

On March 3, 2020, Appellee filed a voluntary bankruptcy petition under Chapter 11, Subchapter V of the Bankruptcy Code. (Doc. 11-1 at 2; Doc. 11-2 at 2). Appellee listed Appellant as an unsecured creditor with a contingent, unliquidated, and disputed claim for $500,000.00 arising out of her attorney's fees, costs, and counterclaim. (Doc. 11-2 at 7; Doc. 11-4 at 14). Appellant filed an Objection to Debtor's Subchapter V Election (Doc. 11-8) followed by a Combined Amended Motion and Motion for Summary Judgment (Doc. 11-10). On June 17, 2020, the Bankruptcy Court held a hearing and took Appellant's objections under advisement. (Doc. 11-1 at 11; Doc. 11-14 at 17:10-16). At the hearing, the Bankruptcy Court noted that it would "go ahead and proceed with a scheduling order today to keep a placeholder for a confirmation if it does go forward . . . as a Sub V plan."

(Doc. 11-14 at 17:17-19). Specifically, the Bankruptcy Court informed the parties that a confirmation hearing was tentatively set for August 19, 2020, and that "[i]f the Debtor is permitted to remain as a Sub V debtor, then we'll issue the order setting the confirmation hearing. If not, the order will provide otherwise and you'll know what to do." (*Id.* at 18:10-21). Thereafter, on June 22, 2020, Appellant filed a Second Amended Motion and Amended Response (Doc. 11-12) objecting to Appellee proceeding under Subchapter V.

On June 23, 2020, the Bankruptcy Court issued the Hearing Order, setting Appellee's proposed plan for a confirmation hearing. (Doc. 11-11 at 1). On July 6, 2020, Appellant filed a Notice of Appeal in which she seeks to appeal the Hearing Order and oral statements made by the Bankruptcy Court on June 17, 2020, which she argues were effectively an order denying her objections to Appellee's Subchapter V election. (Doc. 1 at 1-2). On July 10, 2020, the Bankruptcy Court issued an Order Overruling Alice Guan's Objection to Debtor's Eligibility Under Subchapter V (Doc. 11-17). Thereafter, the Bankruptcy Court denied Appellant's request for a stay pending appeal. (Doc. 11-31 at 1). However, Appellant never sought leave to amend her Notice of Appeal to include the July 10, 2020 Order or the Order Denying Motion for Stay Pending Appeal. (*See* Doc. 35 at 1).

"The district courts of the United States shall have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . of bankruptcy judges." 28 U.S.C. § 158(a)(1). "[T]o be final, a bankruptcy court order

must completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief." *Barben v. Donovan* (*In re Donovan*), 532 F.3d 1134, 1136-37 (11th Cir. 2008) (quotation omitted). "[A]ppeals from nonfinal bankruptcy court orders may be taken only 'with leave' of the district court." *Musselman v. Stanonik* (*In re Seminole Walls & Ceilings Corp.*), 388 B.R. 386, 390 (M.D. Fla. 2008) (quoting 28 U.S.C. § 158(a)(3)).

In its appellate capacity, a district court reviews legal conclusions of the bankruptcy court de novo and findings of fact for clear error. *Claremont McKenna Coll. v. Asbestos Settlement Fund* (*In re Celotex Corp.*), 613 F.3d 1318, 1322 (11th Cir. 2010). A bankruptcy court's evidentiary and discretionary rulings are reviewed only for an abuse of discretion. *See Curtis v. Perkins* (*In re Int'l Mgmt. Assocs., LLC*), 781 F.3d 1262, 1265 (11th Cir. 2015) (per curiam); *Lorenzo v. Wells Fargo Bank, N.A.* (*In re Lorenzo*), 518 B.R. 92, 94 (S.D. Fla. 2014).

As an initial matter, this Court must first determine if it has jurisdiction to hear this appeal. *See Walden v. Walker* (*In re Walker*), 515 F.3d 1204, 1210 (11th Cir. 2008). Appellant argues that the Bankruptcy Court's oral statements at the June 17, 2020 hearing and the Hearing Order effectively constitute a final order denying her objections to Appellee proceeding under Subchapter V. The Court is not convinced. Specifically, Appellant cherry-picks one statement from the June 17, 2020 hearing to argue that the Bankruptcy Court stated that a confirmation hearing

would only be scheduled if her objections were overruled. However, when that statement is read in the context of the entire discussion by the Bankruptcy Court, it is clear that the Bankruptcy Court was intending to set the hearing as a placeholder pending resolution of the objections, prompting the issuance of the Hearing Order. Simply put, Appellant jumped the gun and appealed an interlocutory scheduling order then failed to properly amend her notice of appeal to include the written order that actually denied her objections. The issue Appellant seeks to appeal has never been properly brought before this Court.

Nevertheless, even if Appellant had properly raised the issue before this Court, her appeal would be denied. As set forth in the Bankruptcy Court's July 10, 2020 Order, Subchapter V was enacted in 2019 "to help small businesses reorganize by streamlining the cumbersome and often expensive process of a typical Chapter 11 reorganization case." (Doc. 11-17 at 2). Pursuant to the Bankruptcy Code, Subchapter V is limited to small business debtors, which are defined, as relevant to this appeal, as "a person engaged in commercial or business activities. . . ." 11 U.S.C. § 1182(1)(A); *see also* 11 U.S.C. § 101(51 D)(A). In the Bankruptcy Court's July 10, 2020 Order, the Bankruptcy Court held that Appellee qualifies for Subchapter V because the plain language of the statute does not require the debtor's commercial or business activities to be motivated by profit making and Appellee's activities, including entering contracts for the provision of goods and services to its members,

oversight of common areas of the properties, registering as a corporation, and filing regular tax returns listing business income, fall within the statutory definition of business or commercial activities. (Doc. 11-17 at 3-4).

First, Appellant argues that the Bankruptcy Court erred in determining that the definition of "commercial or business activities" within Subchapter V does not require a profit motive. In support of her argument, Appellant relies on Congress's purported intent in enacting Subchapter V as stated by two congressmen, as opposed to the plain language of the statute. However, "with any question of statutory interpretation, [courts] begin by examining the text of the statute to determine whether its meaning is clear." *Lindley v. FDIC*, 733 F.3d 1043, 1055 (11th Cir. 2013) (quotation omitted). Where the text of the statute is unambiguous and the "statutory scheme is coherent and consistent" then courts may not "look beyond the plain language of a statute at extrinsic materials to determine the congressional intent[.]" *Id.* (quotations omitted); *see also Iberiabank v. Beneva 41-I, LLC*, 701 F.3d 916, 924 (11th Cir. 2012) (holding that courts can "look beyond the plain language of the statute to evidence of congressional intent only if the statute's language is ambiguous; applying the plain meaning of the statute would lead to an absurd result; or there is clear evidence of contrary legislative intent"). Here, Appellant has neither argued nor shown that the text of the statute is ambiguous. Appellant has also not shown that the plain language of the statute itself

requires that a debtor's activities be done for the purpose of profit.

Having carefully reviewed the statute, this Court is satisfied that it is not ambiguous and that the ordinary and plain meaning of "commercial or business activities" does not require that the debtor's actions be motivated by profit. Although these terms are not defined in Subchapter V, "[w]hen interpreting a statute and confronted with undefined terms, we give those terms their plain and ordinary meaning because we assume that Congress uses words in a statute as they are commonly understood." *U.S. Commodity Futures Trading Comm'n v. Hunter Wise Commodities, LLC*, 749 F.3d 967, 976 (11th Cir. 2014) (quotation omitted). Although Appellant is certainly right that corporations involved in commerce or doing business can, and frequently do, have a profit motivation, the plain and ordinary meanings of those terms do not require such a motive. For example, Black's Law Dictionary notes that "business activities" can be either "the carrying out of a series of similar acts for the purpose of realizing a pecuniary benefit, *or* otherwise accomplishing a goal." *Doing Business*, Black's Law Dictionary (11th ed. 2019) (emphasis added); *see also* 28 U.S.C. § 1603(d) ("A 'commercial activity' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by

reference to its purpose."). Therefore, Appellant's first argument is without merit.

In the alternative, Appellant argues that Appellee should not be permitted to proceed under Subchapter V because the election was made in bad faith. However, Appellant fails to cite any legal authority for the proposition that Appellee's alleged motives for making a Subchapter V election are relevant or could result in the denial of Appellee's right to proceed thereunder. *See Rosen v. Abrams (In re Fort Lauderdale Bridge Club, Inc.)*, 658 F. App'x 549, 551 (11th Cir. 2016) ("A list of conclusory assertions about which the brief makes no argument and cites no authorities fails to present a cognizable issue for review on appeal." (quotation omitted)); *Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1319 (11th Cir. 2012) ("A passing reference to an issue in a brief is not enough, and the failure to make arguments and cite authorities in support of an issue waives it."). Accordingly, Appellant's second argument also fails.

Finally, to the extent that Appellant also argues that the Bankruptcy Court erred in denying her motion to stay the confirmation pending this appeal, Appellant has not properly appealed the Bankruptcy Court's orders and this Court will not consider such arguments.

For the foregoing reasons the United States Bankruptcy Court for the Middle District of Florida's Order Scheduling Hearing on Confirmation of Plan and Establishing Deadlines (Doc. 11-11) is

AFFIRMED. All other pending motions are **DENIED as moot**. The Clerk is directed to terminate all pending motions and close this case.

DONE AND ORDERED in Orlando, Florida on August 19, 2021.

/s/ Wendy W. Berger
WENDY W. BERGER
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

Unrepresented Party

ORDERED. [SEAL]

Dated: August 04, 2020

/s/ Karen S. J.
Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re	)	
	)	
Ellingsworth Residential Community Association, Inc.,	)	Case No. 6:20-bk-01346-KSJ
	)	Chapter 11
Debtor(s).	)	

ORDER DENYING COMBINED AMENDED MOTION AND MOTION FOR SUMMARY JUDGMENT BY ALICE GUAN

(Filed Aug. 4, 2020)

This case came before the Court on July 23, 2020 on the Combined Amended Motion and Motion for Summary Judgment, as amended (Doc. Nos. 64, 85 and 176) (collectively the "Motions") filed by Alice Guan, who is *pro se*. The Motions object to Debtor's eligibility under Subchapter V of Chapter 11 or seek summary judgment as to the Debtor's eligibility under Subchapter V of Chapter 11. On July 13, 2020, the Court entered an Order Overruling Alice Guan's Objection to Debtor's Eligibility Under Subchapter V (Doc. No. 142)

(the "Order"), which resolves the Motions.[1] After reviewing the pleadings and considering the positions of all interested parties, it is

ORDERED:

1. The Motions (Doc. No. 64, 85, 176) are **DENIED**.

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The Clerk is directed to serve a copy of this order on interested parties.

[1] To the extent necessary, the Court's factual findings and legal conclusions in the Order (Doc. No. 142) are incorporated into this order.

ORDERED. [SEAL]

Dated: July 10, 2020

/s/ Karen S. J.
Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re Ellingsworth Residential Community Association, Inc., Debtor(s).	)	Case No. 6:20-bk-01346-KSJ Chapter 11

ORDER OVERRULING ALICE GUAN'S OBJECTION TO DEBTOR'S ELIGIBILITY UNDER SUBCHAPTER V

(Filed Jul. 10, 2020)

An unsecured creditor, Alice Guan ("Guan"), contends the Debtor cannot proceed in this Subchapter V Chapter 11 case because, as a non-profit community association, it does not engage in commercial or business activities and, therefore, is not an eligible debtor.[1] I will overrule the objection concluding the

[1] Doc. No. 51. Debtor filed a Memorandum in Opposition. Doc. No. 61. Debtor is a non-profit incorporated in the State of Florida. Debtor operates a Homeowners Association and its primary source of income is derived from the dues and assessments from its eighty homeowners. Doc. No. 14.

Debtor engages in commercial or business activities and otherwise fits the definition of a small business debtor as defined in 11 U.S.C. § 101(51D)(A).[2] Debtor can proceed with this Subchapter V Chapter 11 case.

The Small Business Reorganization Act ("SBRA"), enacted in August 2019, became effective on February 19, 2020.[3] It is commonly called Subchapter V because all of its provisions are contained in Subchapter V of Chapter 11 of the Bankruptcy Code.[4] The new law was enacted to help small businesses reorganize by streamlining the cumbersome and often expensive process of a typical Chapter 11 reorganization case.[5] The statutory hope is that by encouraging small business reorganizations more creditors will receive greater distributions and more small businesses will survive and prosper.

Many of the new procedures allow for a quick confirmation of a plan of reorganization. No disclosure statement is required.[6] Strict timelines require parties to quickly move the case forward. And, by abrogating the "absolute priority rule"[7] as to *unsecured* creditors, debtors may confirm a plan without creditor support

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[2] All references to the Bankruptcy Code refer to 11 U.S.C. §§ 101 *et. seq.*

[3] Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079 (2019).

[4] §§ 1181-1195 of the Bankruptcy Code.

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

[6] *See* § 1181(b) of the Bankruptcy Code.

[7] § 1129(b)(2)(B) of the Bankruptcy Code.

and still retain property, even though unsecured creditors, such as Guan, are not paid in full.[8]

Debtor filed this Chapter 11 case under Subchapter V on March 3, 2020.[9] In her Objection, Guan argues that, because the Debtor, a non-profit business, has no commercial activities, it is not eligible to file a Chapter 11 case under Subchapter V. Section 1182(1) of the Bankruptcy Code limits those who can file a Subchapter V case to a "small business debtor." In turn, § 101(51D)(A) of the Bankruptcy Code defines a small business debtor as:

> [A] person engaged in ***commercial or business activities*** . . . that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition . . . in an amount not more $2,725,625[.][10]

So, the crux is whether a non-profit community association—the Debtor—conducts sufficient "commercial or business activities" to qualify as a small business debtor. No statutory definition of "commercial or business activities" exists. And, legislative history to discern congressional intent is sparse.[11] Statutory

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[8] § 1191(b), (c) of the Bankruptcy Code.

[9] Doc. No. 1.

[10] 11 U.S.C. § 101(51D)(A); emphasis added. The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, enacted on March 27, 2020, temporarily increased the debt limit in to $7,500,000. Here, this increase, even if applicable, is not relevant because the debts do not exceed $2.7 million.

[11] *In re Wright*, 2020 WL 2193240 at *3 (Bankr. D. S.C. 2020).

interpretation asks courts to presume the legislature "says in a statute what it means and means in a statute what it says there."[12] And, if the plain language of the statute is unambiguous, the court's inquiry ends.[13]

Here, the Court finds the statute clear and unambiguous. Any corporation that conducts "commercial or business activities" is a small business debtor. No profit motive is required. The only statutory exclusion is a person whose primary business is owning a single parcel of real estate, which does not apply. The plain and unambiguous language of § 101(51D)(A) indicates a small business debtor may engage in a very inclusive range of commercial or business activities. The Court will presume the statute means exactly what it says. Other courts also have interpreted § 101(51D)(A) broadly.[14]

Congress could have chosen different terms or added other exclusions when drafting the SBRA but instead chose very broad language. Any person who conducts a business or commercial enterprise is a small business debtor. Perhaps, one can contrast this

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[12] *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992).

[13] *Id.* at 254, 112 S.Ct. 1146.

[14] *See In re Wright*, 2020 WL 2193240 at *3 (Bankr. D. S.C. 2020)(holding that debtor was engaged in commercial or business activities by addressing residual business debt); *In re Ventura*, 615 B.R. 1, 22 (holding that debtor was engaged in commercial or business activities by operating a bed and breakfast in her home).

definition against the term "consumer debt," defined as "debt incurred by an individual primarily for a personal, family, or household purpose."[15] This definition reveals that commercial or business activities consist of any activities **not** of a personal, family, or household nature connected with business operations.[16]

Debtor engages in several commercial or business activities that fit this broad categorization. It contracts for goods and services and hires managers, lawyers, and other professionals. It oversees the common area property at the project, engaging landscaping help and maintenance professionals. It files regular tax returns and lists business income. It is registered with the State of Florida as a corporation.[17] It has a board of directors who make decisions. And, it collects regular and special assessments from its homeowners. These activities constitute business and commercial activities, not debts for personal, family, or household purposes.

Guan argues the Debtor does not engage in any "commercial or business activities" because the Debtor lacks a profit motive and that § 101(51D)(A) is ambiguous relying on dissimilar language in two other sections of the Bankruptcy Code—§ 303(a) and § 1112(c).[18] Both sections include this phrase: "a

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[15] 11 U.S.C. 101(8).

[16] *See In re Ventura*, 615 B.R. at 18-19 (Bankr. E.D. N.Y. 2020).

[17] *See* Doc. Nos. 15 and 21.

[18] § 303(a) provides an "involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person,

moneyed, business, or commercial corporation." Section 303(a) prohibits filing an involuntary bankruptcy against (among others) any corporation that is "not a moneyed, business, or commercial corporation." Section 1112(c) similarly limits the court's ability to convert to Chapter 7 a Chapter 11 case of a corporation that is "not a moneyed, business, or commercial corporation." This phrase aptly defines the **type of corporation** protected from an involuntary bankruptcy or forced conversion to a liquidating Chapter 7 case. And, at least one court has held that non-profit corporations cannot be forced into Chapter 7.[19]

However, the phrase does not define the **actual activities** conducted by a corporation or limits a non-profit corporation from being a small business. Comparing the two phases is like comparing apples to oranges; they simply have different uses and meanings. Any corporation that conducts any "commercial

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except a farmer, family farmer, or a corporation that is not a *moneyed, business, or commercial corporation*, that may be a debtor under the chapter under which such a case is commenced." § 1112(c) provides "[t]he Court may not convert a case under this case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a *moneyed, business, or commercial corporation*, unless the debtor requests such conversion."

[19] *See In re Mandalay Shores Assoc.*, 22 B.R. 202 (Bankr. M.D. Fla. 1982). The Bankruptcy Court for the Middle District of Florida surveyed existing case law to interpret the phrase "not a moneyed, business, or commercial corporation" in the context of § 1112(c). The Court found a non-profit, organized for the singular purpose of acquiring an apartment house, is included in the exception within § 1112(c) because it has no profit related motive and does not distribute any of its income to its members.

or business activity" can be a small business debtor, whether they operate for profit or not. And, there are numerous examples of non-profit corporations filing Chapter 11 prior to the enactment of the SBRA.[20] That litigants cannot *forcibly* convert non-profit corporations into Chapter 7 or an involuntary bankruptcy does not preclude non-profit corporations from *voluntarily* filing a Subchapter V Chapter 11 case or qualifying as a small business debtor under SBRA.

Guan incorrectly interprets § 101(51D)(A) to circumvent provisions of the SBRA that will limit her recovery, such as elimination of the absolute priority rule.[21] Guan understandably is unhappy with the new provisions of Subchapter V. They may limit how much she receives on her claim. Her dissatisfaction is not justification, however, to limit the otherwise broad, unambiguous definition of who qualifies as a small business debtor under § 101(51D)(A). Just because

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[20] *See In re Charles Street African Methodist Episcopal Church of Boston*, 478 B.R. 73 (Bankr. D. Mass. 2012)(non-profit religious corporation Chapter 11 debtor); *In re National Heritage Foundation, Inc.*, 478 B.R. 216 (Bankr. E.D. Va. 2012)(non-profit public charity Chapter 11 debtor); *In re Delta Transitional Home*, 399 B.R. 654 (Bankr. E.D. Ark. 2009) (non-profit corporation Chapter 11 debtor); *In re Pleasantview Swimming Pool Ass'n, Inc.*, 2007 WL 1063014 (Bakr. D. Md. 2007)(non-profit operating neighborhood swimming pool Chapter 11 debtor); *In re S.A.B.T.C. Townhouse Ass'n, Inc.*, 152 B.R. 1005 (Bankr. M.D. Fla. 1993)(non-profit homeowners' association Chapter 11 debtor); *In re Titusville Country Club*, 128 B.R. 396 (Bankr. W.D. Pa. 1991)(non-profit country club Chapter 11 debtor).

[21] *See* 11 U.S.C. 1181(a).

Guan does not like the new law does not make the Debtor ineligible for relief under Subchapter V.

Accordingly, it is

ORDERED:

1. Guan's Objection (Doc. No. 51) is **OVERRULED**.

ORDERED. [SEAL]

Dated: June 23, 2020

/s/ Karen S. J.
Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re Ellingsworth Residential Community Association, Inc., Debtor(s).	)	Case No. 6:20-bk-01346-KSJ Chapter 11

ORDER SCHEDULING HEARING ON CONFIRMATION OF PLAN AND ESTABLISHING DEADLINES

(Filed Jun. 23, 2020)

A proposed Plan (Doc. No. 54) was filed by the debtor in this Chapter 11 case pursuant to 11 U.S.C. §1189 and Fed. R. Bankr. P. 3016. After reviewing the pleadings and considering the positions of all interested parties, it is

ORDERED:

1. Confirmation Hearing. A hearing by video will be held on **August 19, 2020 at 1:00 p.m.** in Courtroom A, Sixth Floor, of the United States Bankruptcy Court, 400 West Washington Street, Orlando, Florida 32801

to conduct a confirmation hearing (the "Confirmation Hearing"), including hearing objections to confirmation, 11 U.S.C. §1191(b) motions, applications of professionals for compensation, and applications for allowance of administrative claims. The Court, by separate order, has established procedures for the video hearing (Doc. No. 72).

2. Adjournment. The Court may continue the hearing by announcement and without further notice.

3. Date for Accepting or Rejecting Plan. Creditors and other parties in interest shall file with the Clerk their written acceptances or rejections of the plan (ballots) no later than seven (7) days before the Confirmation Hearing.

4. Objections to Confirmation. Parties objecting to confirmation shall file an objection no later than seven (7) days before the Confirmation Hearing. The objecting party shall file and simultaneously serve a copy of the objection on the debtor, counsel for the debtor, the subchapter v trustee, and the United States Trustee.

5. Ballot Tabulation. In accordance with Local Bankruptcy Rule 3018-1, the debtor shall file a ballot tabulation no later than two (2) days before the Confirmation Hearing.

6. Service of Solicitation Package. No later than fourteen (14) days after the service of this order, the debtor, through its counsel, shall obtain a current mailing matrix from the Clerk and serve by mail a

solicitation package upon: (a) all creditors, (b) all equity security holders, (c) all administrative claim applicants, (d) the Subchapter V trustee, (e) the Internal Revenue Service at Post Office Box 21126, Philadelphia PA 19114, (f) the Securities and Exchange Commission, Branch of Reorganization at 175 West Jackson Street, Suite 900, Chicago, Illinois 60604-2601 (g) the United States Trustee at 400 West Washington Street, Suite 1101, Orlando, Florida 32801, (h) all attorneys who have appeared in this case, (i) all professionals of the debtor, and (j) other parties in interest in the debtor's case as provided in Fed. R. Bankr. P. 3017(d). Counsel shall promptly file a certificate of such service. The solicitation package shall include the plan together with all exhibits and a ballot for accepting or rejecting the plan.

7. Administrative Claims Bar Date. All creditors and parties in interest that assert a claim against the debtor which arose after the filing of this case or under 11 U.S.C. §503(b), including, but not limited to, all attorneys, accountants, auctioneers, appraisers, the Subchapter V trustee, and other professionals seeking compensation from the debtor under 11 U.S.C. §330, must file applications for these claims twenty-one (21) days before the Confirmation Hearing (the "Administrative Claims Bar Date"). The requirement to file applications for administrative claims shall not apply to claims that arise after the Administrative Claims Bar Date. The Court will hear any timely filed applications at the Confirmation Hearing.

8. 11 U.S.C. §1111(b) Election. An election pursuant to 11 U.S.C. §1111(b) must be filed no later than seven (7) days before the Confirmation Hearing.

9. Confirmation Affidavit. Two (2) days before the Confirmation Hearing, the debtor shall file a confirmation affidavit containing the factual basis to establish each of the requirements of 11 U.S.C. § 1191 and such information as will allow the Court to easily understand significant terms of the plan of reorganization and facts of the case.

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Attorney Justin M Luna is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO.: 6:20-bk-01346-KSJ

IN RE:

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Debtor.

JUNE 17, 2020

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE
KAREN S. JENNEMANN
UNITED STATES BANKRUPTCY JUDGE

GEORGE C. YOUNG FEDERAL BUILDING
400 WEST WASHINGTON STREET
ORLANDO, FLORIDA

APPEARANCES:

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Orlando, Florida
Appearing on behalf of the United States Trustee's Office

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Latham, Luna, Eden & Beaudine, LLP
Appearing on behalf of Debtor

L. TODD BUDGEN, ESQUIRE – Telephonic
Budgen Law
P.O. Box 520546
Longwood, Florida
Appearing as Subchapter V Trustee

BRADLEY M. SAXTON, ESQUIRE – Telephonic
Winderweedle, Haines, Ward & Woodman, P.A.
250 South Park Avenue
Winter Park, Florida
Appearing on behalf of Alice Guan as local counsel

WYATT B. DURRETTE, JR., ESQUIRE – Telephonic
KEVIN J. FUNK, ESQUIRE – Telephonic
Durrette, Arkema, Gerson & Gill PC
1111 East Main Street
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Appearing on behalf of Alice Guan

CARLOS R. ARIAS, ESQUIRE – Telephonic
Appearing on behalf of Arias, Bosinger, PLLC

ALSO PRESENT:

Alice Guan – Telephonic

Proceedings recorded by electronic sound recording
Transcript provided by
ACCREDITED COURT REPORTERS
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(407) 443-9289

* * *

[15] Congress intended plain meaning should be given its effect and the facts that were articulated in our objection are just that. We do qualify, we have business activities and commercial activities, and that's the

proper measure and it's a very limited issue. So with that, I will rest on my pleading.

THE COURT: And, Ms. Guan, I see you filed a response, Number 64 as well as Number 61, to some degree that talks about the same issue.

Is there anything that you need to add that you have not already expressed in your pleading?

MS. GUAN: Yes, Your Honor.

Yesterday the transcript of the 341 creditor's meeting became available to me and as Mr. Saxton has mentioned he filed that with the Court, and in my previous pleadings, Number 61, I have referenced certain content that came out of that meeting but those were pretty much based on my – my own notes from the meeting.

So because of the ability of – because of the availability of the transcript yesterday, and I'm not sure of the time, when certain transcripts, and so I have provided second amended motion and first amended response to the Debtor's Doc – Docket 61. So I filed it to the Court this morning and emailed it to Mr. Luna and the Trustees early this morning around 9:00 or 9:30, and I [16] emailed it based on the email address I could find. I just wanted to give them an early copy of that.

So the content of that is pretty much similar to what I have filed with today on the docket but I added the direct references, page numbers and the line numbers to the transcript.

Now, regarding Mr. Luna's objections or feeling that that certain arguments are outside of the bankruptcy code. In the – my – in the – my association's response actually has covered a range of topics, so regarding if 50 percent or – yes, if 50 percent of the debt is commercial debt, regarding if the association is a small business engaged in commercial or business activities and regarding if the association's finances and/or lack of finances and regarding the Congress, the intention for the Subchapter V, and so my response to my association's memorandum in opposition to my motion did track all these relevant points. If there is any aspect of these discussions or was not in their original motion, but then it was brought out by the responses, and also I believe I would always should be allowed opportunities to amend our motions and even then bring in additional aspects to – to the process of the hearing. Therefore, I will object to what Mr. Luna has expressed regarding the relevancies of the various aspects of the content [17] regarding my objections to Debtor's – Debtor's Subchapter V election.

So I would like to fully incorporate all these, file the documents in this record without repeating them. I request respectfully for the Court to rule the Debtor's Subchapter V election is incorrectly made and remove Subchapter V designation and allow this case to proceed under the traditional Chapter 11. Thank you, Your Honor.

THE COURT: Thank you very much. Thank you.

I will read both of the – I will read all of the pleadings and the transcripts and the line items designated by Ms. Guan as well as the motion and the Debtor's response and issue an order accordingly. I will do that in the near future. I keep promising this, but I really will try to do this in the near future but I will take it under advisement.

Let's go ahead and proceed with a scheduling order today to keep a placeholder for a confirmation if it does go forward as a Chapter – as a Sub V plan. And let me ask Mr. Luna, how does confirmation scheduling relate to the Debtor's objection to claims 4 and 5? Is that a pre-confirmation issue or post confirmation? How do they connect that we may need to resolve?

MR. LUNA: Thank you, Your Honor.

The objection to the claims are not a [18] confirmation issue. They can be resolved post confirmation.

THE COURT: Okay. And so you suggested setting a confirmation hearing approximately how far out? I'm sorry, I'm just getting tired this afternoon.

MR. LUNA: Thank you, Your Honor.

It's based on discussion we had with the United States Trustee's Office. We discussed approximately 60 days out from today.

THE COURT: That sounds good to me, and it will be – it will be August the 19th, and I'm going to start setting my Chapter 11's a little bit differently.

So I'm going to just – the time that day may change, Mr. Luna, but for right now we'll just set a pretrial conference for August the 19th at 1:00 p.m. As I said it may change but for right now it's just a status conference.

If the Debtor is permitted to remain as a Sub V debtor, then we'll issue the order setting the confirmation hearing. If not, the order will provide otherwise and you'll know what to do.

We'll set a status conference on the omnibus objection for that date and time. I'll look for the withdrawal orders from Mr. Brad Saxton and Durrette, and I think that's it.

* * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12970-AA

In Re: ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.

Debtor.

ALICE GUAN,

Plaintiff-Appellant,

versus

ELLINGSWORTH RESIDENTIAL COMMUNITY ASSOCIATION, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Dec. 7, 2021)

Before: WILSON, ROSENBAUM, and LUCK, Circuit Judges.

BY THE COURT:

Alice Guan's motion for reconsideration of our November 4, 2021 order dismissing this appeal for lack of jurisdiction is DENIED.

CASE NO. 21-12970
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALICE GUAN
Appellant
v.
ELLINGSWORTH RESIDENTIAL
COMMUNITY ASSOCIATION, INC.,
Appellee

Appeal of the August 19, 2021 Order of the
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION Case No. 6:20-cv-1243-Orl-78
(Hon. Wendy Berger)
(from Bankruptcy Case No.: 6:20-bk-01346-KSJ,
Hon. Karen Jennemann)

INITIAL BRIEF

(Draft, final will be provided within 7 days or
by the deadline court specifies, whichever is later)
(Filed Nov. 3, 2021)

Alice Guan, pro se Appellant
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* * *

Appellant's Claims 4-1 and 5-1 to try to erase all of Appellant's claims in their entirety; filed objection to Appellant's amended claims 4-3 and 5-2 past the filing deadline; opposed to Appellant's motion to lift automatic stay and motion to abstain.[2]

Appellant timely filed objections to Debtor's Sub-chapter V election, **her Amended Motion and Motion for Summary Judgement and Reponses were FAXED to the court at 8:09AM on June 17, 2020 and were clearly fully adopted and fully incorporated into 3:50PM June 17 hearing** (see Page 11 of BDoc 127 showing fax of 42 pages for 3 documents was sent at 8:09AM and court received it, also see page 4 of BDoc162-1 the designations for the appeal) collectively called "Objection and Motions" herein. Emphasis added. Doc No. 51 or App-p280-288, Doc No.61 or App-p110-118,

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[2] App-p.1485-1487, 149-220. 341p.1-34-39, App. 619-1944. App-p6191944, 2365-2378, 619-1944. 341p.34-35, App-p187-188, 149-220, 619-1944. App-p619-1944. 341p.36-39, 43-44 or App-p189-190, 196-197. 341p.54 – 59 or App-p207-212. App-p207-212,1047-1102. App-p149-220, 619-1944. 341p.32-35 or App-p185-188, 390, 393-395. 341p.5-54, App 1-2378, App-p188. 341p.64-65 or App-p217-218. 341p.16-17 or App-p169-170.341p.28-31 or App-p181-184. 341p.9-11, or App-p162-164. App-p. 402-436, 470-589. 341p.46-47 or App-p199-200, Doc. No. 21 or App-p470-589, 421). 341p.46-47 or App-p199-200. App-p402-436, 470-589,1840-1930. 341p.11-13 or App-p164-166. Doc No.67 or App-p.2379-2384, App-p1651-1685. Doc No. 191, 203, 206 or App-p2135-2136, 2124-2134, 2123. (Doc No.1 or App-p389) (Doc No. 54, App-p437-469, 1995-2005, 2175-2188, 1931-1946, 1958-1962, 1975-1977, 1767-1926. p.619-1499) (App-p2385-2539, 2244-2378, 2197-2221, 2222-2378), App-p.2385-2392, 2090-2096, 61-73, 564-1576, 2090-2096, 1978-1994, 2097-2122.

Doc No. 64 or App-p119-148, Doc No. 64, 85 or App-p119-148, 221-252, 1599-1603.

At the June 17, 2020 hearing, Appellant presented all of her Objection and Motions and recited most of the basis upon which she objects to the Subchapter V election. Appellant stated that the document she filed with the court in the morning of June 17th included particularly "***the direct references, page numbers and the line numbers to the transcript***". Appellant adopted and fully incorporated all of those documents into the hearing record. Court accepted all of the documents including particularly the ones faxed to the court at about 9AM that morning[3] () by saying: "***I will read all of the pleadings and the transcripts and the line items designated by Ms. Guan***" and then court took the matter under advisement:

> "MS. GUAN: Yes, Your Honor. Yesterday the transcript of the 341 creditor's meeting became available to me and as Mr. Saxton has mentioned he filed that with the Court, and in my previous pleadings, I have referenced certain content that came out of that meeting but those were pretty much based on my – my own notes from the meeting. So because of the ability of – because of the availability of the

[3] District court's order on appeal purported state those documents were filed on June 22, which is incorrect. If the court docketed those documents on June 22, that is irrelevant to the fact those documents were received by the court and the parties prior to 9AM on June 17 2020 and those documents were referenced multiple times at the June 17 2020 hearing and the court took them under advisement.

transcript yesterday, and I'm not sure of the time, when certain transcripts, and ***so I have provided second amended motion and first amended response to the Debtor's Doc – Docket 61. So I filed it to the Court this morning***[4] and emailed it to Mr. Luna and the Trustees early this morning around 9:00 or 9:30, and I emailed it based on the email address I could find. I just wanted to give them an early copy of that. So the content of that is pretty much similar to what I have filed with today on the docket but ***I added the direct references, page numbers and the line numbers to the transcript.*** Now, regarding Mr. Luna's objections or feeling that that certain arguments are outside of the bankruptcy code. In the – my – in the – my association's response actually has covered a range of topics, so regarding if 50 percent or – yes, if 50 percent of the debt is commercial debt, regarding if the association is a small business engaged in commercial or business activities and regarding if the association's finances and/or lack of finances and regarding the Congress, the intention for the Subchapter V, and so my response to my association's memorandum in opposition to

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[4] District court's order on appeal referenced a June 22 filing but Appellant did not do such a filing on June 22 – the document referenced as filed on June 22 was actually filed with the court at 8:09AM on June 17th via a fax directly to the court, the document was faxed to the court several hours prior to the 3:50PM hearing on June 17th, 2021. During the hearing, Appellant fully adopted and fully incorporated the content from the faxed documents into the hearing.

> my motion did track all these relevant points. If there is any aspect of these discussions or was not in their original motion, but then it was brought out by the responses, and also I believe I would always should be allowed opportunities to amend our motions and even then bring in additional aspects to – to the process of the hearing. Therefore, I will object to what Mr. Luna has expressed regarding the relevancies of the various aspects of the content regarding my objections to Debtor's – Debtor's 2 Subchapter V election. ***So I would like to fully incorporate all these, file the documents in this record without repeating them.*** I request respectfully for the Court to rule the Debtor's Subchapter V election is incorrectly made and remove Subchapter V designation and allow this case to proceed under the traditional Chapter 11. Thank you, Your Honor.
>
> THE COURT: Thank you very much. Thank you. I will read both of the – ***I will read all of the pleadings and the transcripts and the line items designated by Ms. Guan as well as the motion*** and the Debtor's response and issue an order accordingly. I will do that in the near future. I keep promising this, but I really will try to do this in the near future but I will take it under advisement. Let's go ahead and proceed with a scheduling order today"

Then the court proceeded with scheduling to tentatively reserved an August 19th 1PM as a place holder as a potential date to hold confirmation hearing

but at the time of the hearing on June 17th Judge has not decided on if Debtor can proceed as a Subchapter V debtor, the place holder of August 19th was announced at the June 17th hearing in a way to inform Appellant, Mr. Luna, and trustee to keep that date and time open and wait for Judge's order to set plan confirmation hearing on that date and time once the judge has determined the debtor can proceed under subchapter V[5]:

> "THE COURT: Thank you very much. Thank you. I will read both of the – I will read all of 11 the pleadings and the transcripts and the line items 12 designated by Ms. Guan as well as the motion and the 13 Debtor's response and issue an order accordingly. I will 14 do that in the near future. I keep promising this, but I 15 really will try to do this in the near future but I will 16 take it under advisement. Let's go ahead and proceed with a scheduling order today to keep a placeholder

[5] District court's order provided a selected segment of the hearing transcript and seems to interpret that order to set confirmation hearing was only to reserve August 19 date pending a written order denying Appellant's objection to Subchapter V election – that is not true. Bankruptcy court clearly first reserved the August 19th date at the hearing, and clearly stated: "If the Debtor is permitted to remain as a Sub V debtor, then we'll issue the order setting the confirmation hearing" and did not say: when I issue the order setting the confirmation hearing I would still be unsure if debtor can remain as Sub V but I will issue such order to keep the date as a place holder, if I write an order deny objection to sub V then we will keep that date and if I write an order grant objection to sub V then we will scratch that date because we will not hold hearing to confirm the plan – judge did not say that and that was not discussed at the hearing, not at all.

for a confirmation if it does go forward as a Chapter – as a Sub V plan. And let me ask Mr. Luna, how does confirmation scheduling relate to the Debtor's objection to claims 4 and 5? Is that a pre-confirmation issue or post confirmation? How do they connect that we may need to resolve?

MR. LUNA: Thank you, Your Honor. The objection to the claims are not a confirmation issue. They can be resolved post confirmation.

THE COURT: Okay. And so you suggested setting a confirmation hearing approximately how far out? I'm sorry, I'm just getting tired this afternoon.

MR. LUNA: Thank you, Your Honor. It's based on discussion we had with the United States Trustee's Office. We discussed approximately 60 days out from today.

THE COURT: That sounds good to me, and it will be – it will be August the 19th, and I'm going to start setting my Chapter 11's a little bit differently. So I'm going to just – the time that day may change, Mr. Luna, but for right now we'll just set a pretrial conference for August the 19th at 1:00 p.m. As I said it may change but for right now it's just a status conference. If the Debtor is permitted to remain as a Sub V debtor, then we'll issue the order setting the confirmation hearing. If not, the order will provide otherwise and you'll know what to do. We'll set a status conference on the omnibus objection for that date and time."

Court at the June 17th hearing made a verbal order tandem with a future event: "If the Debtor is permitted to remain as a Sub V debtor, then we'll issue the order setting the confirmation hearing" (the "Oral Order"). On June 25, court issued THE order setting the confirmation hearing (Doc No. 79 or App-p277-279).

On July 6, 2020, Appellant filed Notice of Appeal and the updated Appeal Cover Page (the "Appeal", Doc No. 126 and 127, or App-p2195-2196, 1-42) which appealed the tandem oral order (Oral Order that got activated by BDoc79) which allows Debtor to remain as a Subchapter V Debtor to proceed to Subchapter V plan confirmation by overruling and denying all of Appellant's Objection and Motions (Doc No. 51, 64, 85). Appellant paid appeal fee of $298 and court accepted it.

On July 13, court memorized the tandem oral order into a written order: Order *Overruling Alice Guan's Objection to Debtor's Eligibility under Subchapter V* (BDoc142).

On July 15 and 20, 2020 (District Court's Order on Appeal did not mention anything at all about these record), Appellant respectively filed Bdoc156: Supplement to *Notice of Appeal Stealth Order Denying Motions Objecting Debtor's Subchapter V Election, filed BDoc154:* Supplement to *Motion for Stay Pending Appeal and Motion for Certification of Direct Appeal to Eleventh Circuit Court of Appeals*; filed designation/ supplement to designation of record BDoc 162 and

included and incorporated the July 13 order BDOC 142 and indicated that 3 times of appeal fees have been provided to the court. On August 3, court filed: Transmittal of Record on Appeal to District Court. Case No. 6:20-cv-01243-Orl-WBB. On August 4, Appellant filed Second Supplemental Appellant Designation of Contents for Inclusion in Record on Appeal Filed by Creditor Alice Guan BDoc214, she also filed a Motion for *Leave to File Second Supplemental Designation of Items BDoc213*. On August 4th[6], District Court granted Appellant's motion and the filed supplements related to the Notice of Appeal and its designations. Do c15-17.

Between August 10th and 18th, Appellants filed multiple documents in the District Court such as Doc18, 19, 20, 22, 23[7], all of those documents and centralized on the topic that: Appellant has paid appeal fee 3 times, July 13 2020 order has been explicitly appealed and it was properly designated and placed in front of the district court (appeal court).

ANALYSIS AND ARGUMENT AND LAW

In Appellant's briefs and documents filed in the district court as well as filed in this court in the appeal cases in 2020, she indicated the bankruptcy court's orders denying her objection to subchapter V election erred and District court's decision on July 13 order was

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[6] District Court's Order on Appeal did not mention anything at all about this record.

[7] District Court's Order on Appeal AGAIN did not mention anything at all about all of these records.

not appealed is also erred because of the following reasons. Here, District court's order on this appeal (Doc87) also erred because of the following reasons. Below are what Appellant filed in the district court as briefs plus Appellant added more recent laws, the same laws that are available to District court but order on appeal did not include:

1. June 17, 2020 Hearing's Oral Order Is a Dormant Stealth Conditioned Oral Order (in Overruling and Denying Objection to Subchapter V Election) that Took Legal Effect at the Time When BDoc79 Was Issued

Oral Order intelligently announced that court will decides if Debtor can remain in Subchapter V and once decision is made and if the decision is that Debtor can remain as Subchapter V, the court will issue an order setting the confirmation hearing of the Subchapter V plan. So, court issuing order BDOc79 is the clear event the triggered conditioned Oral Order and together they formed a tandem order which is an event excludes all possibilities of any Court decision to grant Appellant's Objection to Subchapter V election. Thus Appellant appealed. If Appellant did not appeal, the court will proceed with Subchapter V plan confirmation through the plan estate distribution, then issue a written order denying Appellant's objection to subchapter V election, at that time when Appellant appeals, court will use this court created mootness to defeat the appeal. Court created mootness is well known and is practiced in many court and some of the scenarios of how the court created mootness can

succeed is by using the same or similar court's strategies as employed in this case and when a party do not appeal the obvious oral order. If Appellant here did not appeal the Oral Order, court would not have issued the written order on July 13th and court created mootness strategy will assist the court to avoid an appeal of its order or to avoid a successful appeal of its order by defeat the appeal with mootness doctrine. Here,

2. Order on Appeal Erred Court Erred Because of the Following Rules and Fact (Appellant did Put the July 13 Order and August order in Front of the Bankruptcy Court and the District Court and Clearly and Loudly In Writing Stated that She Appealed the July 13 and August 4 Written Orders)

Upon the issue of the July 13, 2020 order, per Rule 8002, Appellant's earlier Notice of Appeal and the Appeal's effective date is moved to July 13, 2020. In addition to the aforementioned facts, on July 15, 2020, Appellant filed supplement to notice of appeal which expressly added Doc No. 142 as another order appealed (Doc No. 156, 157, App-p.1533, 295-299), and she filed supplement to motion for stay and for certification which added content related to Doc No. 142 (Doc No. 154 or App-p376-384) [for which, Debtor opposed (Doc No. 171 or App-p.1577-1588), Appellee replied (Doc No. 172 or App-p1589-1598) and cited Ventura as the source while filed motion for reconsideration (Doc No. 189 or App-p1609-1647)].

Per Rule 8003, designation of record is due 14 days from the effective date (as defined by Rule 8002) of the Appeal, thus the due date was July 28, 2020. On July 18, 2020, Appellant emailed the bankruptcy court the designation of record which included 26 documents (Bankr Doc No. 162-1 or App-p2137-2151). Appellant then supplemented her designation of record twice on July 27 and at 7:45AM on August 4, 2020 (Doc No. 190 and 214 or App-p1648-1650, 17101714) to add 1 and then to add 6 more documents, those added documents have not been transmitted from the bankruptcy court to the district court.

On July 21, 2020, Appellant filed a notice to the court regarding her motion for summary judgement Doc No. 85. Doc No. 176 or App-p.1599-1603.

On August 4, 2020, bankruptcy court docketed a written order denying Doc No. 85. Based on Rule 8002, the Appeal's effective date was then moved to August 4, 2020. Per Rule 8003, designation of record is due 14 days from the effective date (as defined by Rule 8002) of the Appeal, thus the new due date became August 28, 2020.

On August 10, 2020, Appellant emailed bankruptcy court the Amended or Supplemented Appeal Cover Sheet (Doc No. 244 and 243 or App-p1760, 17611763) indicating the amended or supplemented notice of appeal is to appeal 4 orders dated June 17, June 25, July 13, and August 4, 2020.

Also, on August 10, 2020 Appellant emailed bankruptcy court the Amended or 2nd Supplemented

Notice of Appeal with Exhibits AA-EE which included all 4 orders appealed. Bankruptcy court docketed the 43 pages of the Exhibit EE only but then on September 16, 2020, it notified Appellant that it added Doc No. 311 to restore (per Appellant's Motion to Restore, Doc No. 310) the missing 30 pages of the document including main document and its Exhibits AA-DD, which Appellant used to supplement her Appendix by filing Document 41 in the District Court. (Doc No. 242 and 243 or App-p1717-1759, 2047-2089, 1761-1763, as well as District Court's document 41 as Appendix supplement for pages 1717-1 through 1717-30). The Amended or Supplemented Notice of Appeal as in Doc No. 311 was filed timely on August 10, 2020 and it specifically appealed the 4 orders. The filing of such document was notified to the District Court on August 10, 2020 and District Court put such documents totaling more than 74 pages on its dockets.

On August 12, 2020, Appellant filed in the bankruptcy court her amended or 3rd supplemental designation of record (Doc No. 248, 247 or App-p.2028-2046) and added 15 documents and then on August 18, 2020 Appellant filed her final or 2nd Amended or 4th Supplemented Designation of Record (Doc No. 264, which was also provided to the District Court on August 18, 2020 and it was docketed as document 23. This document is in the front portion of the Appendix without bate numbers) and added additional documents so that total documents in the record is 77, those records have not been transmitted by the bankruptcy court to the district court.

Appellant filed motions for leave in both the bankruptcy court and the district court to file amended or supplemental notices of appeal, cover sheets, designations of record (such as Document 20) but those motions are moot because such motions were filed in the event "if motion for leave is required" (Document 20, page 3 line 13) and no Rule requires such motion in order to file; Per rule 158(a), filing notice of appeal does not require leave from the court; 3). Per rule 158(a), notice of appeal is filed at the bankruptcy court for the orders docketed by the bankruptcy court which Appellant did, thus no action is needed in the district court on the motions. Thus, the motions for leave were moot, so should be the ruling on those motions.

Appellant presents that Notice of Appeal Doc. No. 127 should be treated as filed on August 4, 2020 per Rule 8002 of the Federal Rules of Bankruptcy Procedure, per Rule 8009 the Final or 2nd Amended or 4th Supplemental Designation of Items, Statement of Issues, Written Request for Transcript filed at the bankruptcy court at about 11:30am on August 18, 2020 should be the designation of record, per Rule 8018 the Initial Brief is due 30 days "after the docketing of notice that the record has been transmitted or is available electronically" which has not occurred thus the 30 days could not commenced yet.

Thus, Appellant effectively appealed all of the bankruptcy orders denying her objection to Sub-chapter V election. Even if the aforementioned Rules did not apply, which is not the case, with all the of the multiple filings, Appellant has informed the courts and

district court knew Appellant have appealed all those aforementioned orders, there is absolutely no uncertainty or doubt about the scope of the appeal.

3. Order on Appeal Erred Because Subchapter V contains two co-existing requirements demanding the person not only has to engage in "business or commercial activities[8]",

[8] Under the subtitle of "Business and commercial activities" from *US IRS's 220 INTERNAL REVENUE 23,760-220V Income Taxes 8,960-220V(W) Exempt Organizations 182-220-4049 Business and commercial activities*, "Business and commercial activities" are tied with activities involving sales, eyed with profit in mind: Commercial advertisements (for the purpose making a profit) in medical organization's journal (tax exempt journal) were not "substantially related" to the journal's educational purposes, and thus were taxable. *U.S. v. American College of Physicians, Supreme Court of the United States April 22, 1986 475 US. 834*; In light of evidence indicating that corporations' retail sales operation was an end in itself rather than merely a means of accomplishing a charitable goal, finding that corporation was not devoted exclusively to charitable purposes was not erroneous in proceeding by corporation claiming charitable purpose exemption from income tax. *26 US.C.A. (I.R.C.1954) § 501(c) (3). United States Court of Appeals, Fifth Circuit. September 13, 1979 602 F.2d 711.* In proceeding by corporation seeking refund of federal income taxes, the United States District Court for the Southern District of Texas, Finis E. Cowan, J., determined that corporation's operations did not qualify for charitable purposes exemption, and corporation appealed. The Court of Appeals held that in light of evidence that corporations' retail sales operation was an end in itself rather than merely a means of accomplishing a charitable goal, finding that business was not devoted exclusively to charitable purposes was not erroneous. Affirmed. *United States Court of Appeals, Fifth Circuit. September 13, 1979 602 F.2d 711.* Business activities in the context of bankruptcy involves "employees" and "providing basic amenities to guest" p. 236-237. In contract, lack of "own employees or a separate permanent facility from which to operate" are the foundation to

but also has more than "50% of the debt" as "business debt" and Order on Appeal Could Not Demonstrate Debtor Met Those 2 Requirements

The *In re Ventura*, Case No. 8-18-77193, the court applied the test of "whether a debt is incurred with an eye towards profit[9]" and if more than 50% of the debt is from business debt[10] and ruled the debtor in *Ventura* case was permitted to proceed under Subchapter V. In *In re: Charles Christopher Wright*, 2020 WL 2193240, *3 (Bankr. D.S.C. 2020), court holds that debtor was "engaged in commercial or business activities" by addressing residual business debt[11] thus qualify as

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deem there is no "substantial business activities." P. 237. Appellee has no employees, no customers and no guest, no profit making and no permanent place to operate from (BDoc.65, 66, p.237).

[9] Court found that there are multiple activity (such as offering room for rent, operating a massage service, providing meals to customers) offering made to customers for additional fees on the premise of the residence.

[10] Court found the debt to the secured creditor, which is more than 50% of the total debt, did result from a commercial or business activity because the debtor planned to operate a bed and breakfast in her residence when she purchased it even though she did not start operating it as such until later.

[11] *the debtor was the sole member of a limited liability company and the owner of 49% of the stock of a corporation.* Those two businesses failed and were no longer in operation, then debtor filed for bankruptcy. The debtor himself was not engaged in any business. The court determined that he was engaged in a commercial or business activity because *he was "addressing residual business debt" left by the failed businesses and those debts accounted for more than 50% of the debtor's total outstanding debts.*

Subchapter V. In case Moore, Debtor owns three separate parcels of real property, which it leases to third parties who engage in farming operations (for a fee or profit). *In re Moore Properties of Pers. Cty., LLC, No. 20-80081, 2020 WL 995544, at *1 (Bankr. M.D.N.C. Feb. 28, 2020).*

Debtor bears burden of proving his eligibility under Subchapter V of Chapter 11 but my HOA, the Debtor did not prove and could not prove. Term "commercial or business activities," as used in section of Bankruptcy Code providing that, to be eligible under Subchapter V of Chapter 11, debtor must be "engaged in commercial or business activities" and half or more of debtor's aggregate debt must have arisen from those same "commercial or business activities," is exceptionally broad and means any private sector actions related to buying, selling, financing, or using goods, property, or services, undertaken for purpose of earning income, including by establishing, managing, or operating incorporated or unincorporated entity to do so. Here, none of my HOA's activities were to earn income. 11 U.S.C.A. § 1182(1)(A). In re Ikalowych, 629 B.R. 261 (Bankr. D. Colo. 2021).

4. Order on Appeal Erred Because Appellee Does Not Engage in Business or Commercial Activities

"Commercial activities," as that term is used in bankruptcy statute limiting Subchapter V relief to Chapter 11 debtors "engaged in commercial or business activities," are activities of or relating to the exchange or buying and selling of commodities on a

large scale, involving transportation from place to place. 11 U.S.C.A. § 1182(1)(A). In re Port Arthur Steam Energy, L.P., 629 B.R. 233 (Bankr. S.D. Tex. 2021)

Two U.S.C. codes used terms "commercial" or "business" in the following two Chapter 11 bankruptcy contexts. Case laws then established how those codes can be applied, again, within the Chapter 11 contexts. Both codes not only directly relate to Chapter 11 bankruptcy, they and the case laws in tandem determined what a non-business and a non-commercial entity or activities should be and how they should or should not be treated:

> In § 303 the Code permits an involuntary petition to be filed against any person "except a farmer, family farmer, or a corporation that is not a moneyed, *business, or commercial* corporation," 11 U.S.C. § 303(a) (emphasis added). (51, 64, 85)

Section 1112 contains similar language relating to the conversion of Chapter 11 cases to Chapter 7:

> "The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, *business, or commercial* corporation, unless the debtor requests such conversion". 11 U.S.C. § 1112(c) (emphasis added).

Courts have interpreted both §§ 303 and 1112 to exclude their application to non-profit entities. *In re*

Mandalay Shores Assoc., 22 B.R. 202 (M.D. Fla. 1982) (involving conversion to Chapter 7); *In re MAEDC Mesa Ridge, LLC*, 334 B.R. 197 (N.D. Tex. 2005) (involving involuntary bankruptcy).

Therefore, these two bankruptcies codes, 11 U.S.C. § 303(a) and 11 U.S.C. § 1112(c), both relevant for Chapter 11, and the relevant case laws *Mandalay* and *MAEDC* let one draw direct argument and conclusion that: since non-profits were excluded from those two codes' application while those two codes specifically exclude "not a moneyed, business, or commercial corporation" then non-profit is not a moneyed corporation, is not a business corporation, and is not a commercial corporation and thus it is impossible for non-profit to engage in moneyed activities, or business activities, or commercial activities in context of Subchapter V of Chapter 11. Also: "Business activities," as that term is used in bankruptcy statute limiting Subchapter V relief to Chapter 11 debtors "engaged in commercial or business activities," are usually commercial or mercantile activities engaged in as means of livelihood, or dealings or transactions especially of an economic nature. 11 U.S.C.A. § 1182(1)(A). In re Port Arthur Steam Energy, L.P., 629 B.R. 233 (Bankr. S.D. Tex. 2021). And:

In cases that involve the term "engaged in", element of making prediction or provide services and/or make profit as the requirements for commercial and business activities: In *In re Tim Wargo & Sons, Inc.*,[24] the Eighth Circuit deems the § 101(18)(B)) subsection analogously requires the "conduct" being

active role in farming operation for the purpose to make profit. And:

Similarly, in discussing whether certain income and debts qualified as arising out of a farming operation, the Eighth Circuit in *In re Easton directed* bankruptcy court to examine the nature of the income and debts by stating: "Those sums cannot be counted as § 101(17)(A) (§ 101(18)(B)) income unless debtors show . . . significant operational role in, or had an ownership interest in the crop production which took place on the [rented] acreage." As the operation is for the purpose to make profit and operation is where debt was incurred. In re Thurmon, 625 B.R. 417, 422-23 (Bankr. W.D. Mo. 2020)

The cases cited above also demonstrated that other Courts' rulings so far on determining if an entity engage in business or commercial activities have been very much based on if those activities are associated with profit generation. Therefore, since Appellee is a non-profit entity, it then cannot engage in business or commercial activities in the context of Subchapter V. Thus, it cannot elect Subchapter V.

Black dictionary provides: **What is COMMERCIAL?:** Relating to or connected with trade and traffic or commerce in general. U. S. v. Breed, 24 Fed. Cas. 1222; Earnshaw v. Cadwalader, 145 U. S. 258, 12 Sup. Ct. 851, 36 L. Ed. 693; Zante Currants (C. C.) 73 Fed. 189. **What is TRADE?** – The act or business of exchanging commodities by barter; or the business of buying and selling for money; traffic; barter. **The Law**

Dictionary *Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. Says:* **What is BUSINESS ACTIVITY?:** Umbrella term covering all the functions, processes, activities and transactions of an organisation and its employees. Includes public administration as well as commercial business. Here. this HOA debtor has no employees.

5. Order on Appeal Erred Court Erred Because Debtor's Only Business Is to Spend Money on Consumer Goods and Service

Consumer consumption transactions generally are not considered to be "commercial or business activities," at least from perspective of consumer debtor, since such transactions are not undertaken to earn income. 11 U.S.C.A. § 1182(1)(A). In re Ikalowych, 629 B.R. 261 (Bankr. D. Colo. 2021).

6. Order on Appeal Erred Because Appellee not only is a non-profit organization that is designed not allowed to make any profit and it indeed does not carried out any activities to make profit – None of Appellee's activities are for the purpose to make profit

Order on Appeal is contrary with: "Commercial activities," as that term is used in bankruptcy statute limiting Subchapter V relief to Chapter 11 debtors "engaged in commercial or business activities," are activities of or relating to commerce and viewed with regard to profit. 11 U.S.C.A. § 1182(1)(A). In re Port Arthur Steam Energy, L.P., 629 B.R. 233 (Bankr. S.D. Tex. 2021)

7. Order on Appeal Erred Court Erred Because Even If Debtor Is Qualitied as Conducting Commercial or Business Activities such as the Ones Order on Appeal Described, More Than 50% of Its Debts Were Not from Any of Those Activities Because 90% of the Debts Is Owed to Appellant as Fees

In order for a debt to have "arisen from" the commercial or business activities of the debtor, the debt must be directly and substantially connected to the "commercial or business activities" of the debtor. 11 U.S.C.A. § 1182(1)(A). In re Ikalowych, 629 B.R. 261 (Bankr. D. Colo. 2021). Debtor or the court never said suing people is Debtor's commercial or business activities, yet more than 50% of Debtor's debt is from suing Appellant.

8. Appellee Has Ample Funds

Congress intended the Subchapter V process to provide reduced cost and expenses associated with the bankruptcy proceedings to assist financially struggling small businesses so that they can get through a reorganization process more economically and more successfully while keeping their employees, serving their customers and generating profit to get back on their feet again. Appellee has ample easy funds and cash flow[12] as demonstrated by their February 2019

[12] Appellee has the financial ability to go through a traditional Chapter 11 bankruptcy. Its utilization of Subchapter V process is unjust, is not only a deprivation of the rights of Appellant, it also deprives court's otherwise rightfully deserved expenses and cost that must be paid by a traditional Chapter 11 Debtor, and it deplete the resources that otherwise should be

$100,000 special assessment and their already obtained permission from the court to store up to $250,000 cash in the bank outside the monitored estate.

9. Appellee's Bad Faith Motive and Conduct In the Bankruptcy Case and None Conduct Was for the Benefit of the Creditors

As aforementioned bad faith conducts and motives by the Appellee, Appellee does not deserve to enjoy Subchapter V benefit, in the same way that bad faith conducts and motive prevents debtor from enjoying the automatic stay. Similarly, bad faith (deceptive conduct during the case in playing fast and loose with the facts, and given conflicting information that he provided as to ownership and transfer dates for significant asset) can be cause for dismissal of Chapter 11 case under the "for cause" provision. 11 U.S.C.A. § 1112(b). In re Wetter, 620 B.R. 243 (Bankr. W.D. Va. 2020). Giving the example of a debtor who fraudulently conceals assets prior to or during bankruptcy, the Supreme Court observed that a debtor who acts in bad faith may forfeit his right to relief under the Bankruptcy Code. *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007). *Although Marrama* was on conversion from Chapter 7 to Chapter 13 – not on election of Subchapter V or small business, but it is applicable where the debtor seeks to use Subchapter V to its leverage similarly to a

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reserved for a true small business or commercial business that fit the Subchapter V new law.

conversion to Chapter 11 (*In re Hunter*, 597 B.R. 287 (Bankr. M.D.N.C. 2019), *In re Woodruff*, 580 B.R. 291, 296 (Bankr. M.D. Ga. 2018); *In re FMO Assocs. II, LLC*, 402 B.R. 546, 551 (Bankr. E.D.N.Y. 2009); *In re Broad Creek Edgewater, LP*, 371 B.R. 752, 758 (Bankr. D.S.C. 2007)) because subchapter V code serves similar purpose to that of 11 U.S.C. § 1112(b) and 11 U.S.C. § 1307(c).

Reason rooted in debtor's bad faith conduct and his eventual request to use Subchapter V, court denied Debtor's motion to convert his case from one under Chapter 7 to one under Chapter 11 so as to elect Subchapter V status. In re Wetter, 620 B.R. 243, 255 (Bankr. W.D. Va. 2020).

The Eleventh Circuit Court of Appeals has long recognized that a debtor's lack of good faith constitutes cause for the dismissal of a case pursuant to § 1112(b)[.]"[32] "A determination of bad faith is a question of fact and must be made on a case-by-case basis."[33] "There is no particular test for determining whether a debtor has filed a petition in good faith, but in finding a lack of good faith courts have emphasized an intent to abuse the judicial process and the purposes of the reorganization process."[34] The timing of the bankruptcy filing evidenced an intent to frustrate efforts of the secured creditors to enforce their rights. In re McGrath, No. 3:20-BK-3689-RCT, 2021 WL 2405722, at *4 (Bankr. M.D. Fla. June 10, 2021).

Pre-petition bad faith can be grounds for dismissal or conversion under § 1112(b). *See, e.g., In re Melendrez Concrete, Inc.*, 2009 WL 2997920, at *4 (Banks. D.N.M.) ("Prepetition conduct of a debtor can be considered to determine whether cause exists under § 1112(b)(4) to convert or dismiss on the ground the chapter 11 case was filed in bad faith."); *In re Nursery Land Dev., Inc.*, 91 F.3d 1414, 1415 (10th Cir. 1996) (affirming the bankruptcy court's finding of bad faith filing based on debtor's prepetition conduct).

Debtors apparently thought it more important to keep the money than to comply with the Bankruptcy Code. The Court finds that Debtors filed this case in bad faith, "solely to frustrate the legitimate efforts of a legitimate creditor to enforce his rights. . . ." *Nursery Land Dev.*, 91 F.3d at 1415. In re Young, No. 2011844-T11, 2021 WL 1191621, at *6 (Bankr. D.N.M. Mar. 26, 2021).

Here the evidence is clear that HOA debtor carried out significant number of bad faith conducts, thus on ground of bad faith or prejudice and lack of any conduct that is for the benefit of the creditor, Debtor should not be allowed to proceed under subchapter V and order on appeal erred.

10. Order or Appeal Erred Because Appellee Is Not the Business the Congress Intends to Assist and Subchapter V was never designed for Appellee

Congress's intent for Subchapter V is documented in the report Submitted by Mr. Nadler from the

Committee on the Judiciary to accompany H.R. 3311, which states:

> "Small Business Reorganization Act of 2019, would streamline the bankruptcy process by which "*small businesses debtors reorganize and rehabilitate their financial affairs.*" . . . "*Small businesses – typically family-owned businesses, startups, and other entrepreneurial ventures – "form the backbone of the American economy.*" . . . "'*companies with 50 to 5,000 employees* account for more employment than those with over 5,000.'" . . . By their very nature, however, *the longevity of these businesses is limited*. . . . by the five-year mark only 50 percent are still in business and by the ten-year mark only one-third survive.
>
> Chapter 11 is . . . used by businesses to reorganize their financial affairs . . . This protection allows the chapter 11 debtor to continue its business operations while formulating a plan of reorganization to repay its creditors . . . *If a chapter 11 case is unsuccessful, the case is usually converted to one under chapter 7, which is a form of bankruptcy relief that provides for the orderly liquidation of the debtor's assets for distribution to its creditors*. . . . The Results of a Study and Analysis of the Law, 97 Corn. L.J. 297, 325 (1992) (finding that *only 6.5% of debtors confirmed and completed a reorganization plan, seemingly making saving a business under Chapter 11 very unlikely*).

> Representative Ben Cline explained . . . on June 25, 2019 at which H.R. 3311 was considered, *the legislation allows these debtors – to file bankruptcy in a timely, cost-effective manner, and hopefully allows them to remain in business" which "not only benefits the owners, but employees, suppliers, customers, and others who rely on that business.*"

Order on Appeal did not show how Debtor fit any of the intended categories. Subchapter V was never designed for Appellee because by the operation of laws consisted of 11 U.S.C. § 303(a) and *In re MAEDC Mesa Ridge, LLC*, 334 B.R. 197 (N.D. Tex. 2005), Appellee will never have to worry about being forced into an involuntary bankruptcy; and, by the operation of laws consisted of 11 U.S.C. § 1112(c) and *re Mandalay Shores Assoc.*, 22 B.R. 202 (M.D. Fla. 1982), even when Appellee files a voluntary Chapter 11 bankruptcy, Court will never have the authority to convert a Chapter 11 case into a Chapter 7 case to cause the demise of the Appellee, therefore, Appellee has no chance to fall into the scenario that the Congress is trying to protect businesses from. The Subchapter V shoes does not fit Appellee.

CONCLUSION

This appeal "involves a matter of public importance[13]", 28 U.S.C. § 158(d)(2)(A)(i), it not only affects debtors generally or creates the prospect of divergent authority, *Ransom v. MBNA Am. Bank, N.A. (In re Ransom)*, 380 B.R. 809, 812 (9th Cir. BAP 2007), it can affect a large number of debtors potentially, *In re Nortel Networks Corp.*, 2010 WL 1172642, *2 *(Bankr. D. Del. Mar. 18, 2010)*, and the resolution of which will advance the cause of jurisprudence, *In re Virissimo*, 332 B.R. 208, 209 (Bankr. D. Nev. 2005), *in re Qimonda AG*, 470 B.R. at 386-87.

This court should rule Appellant's appeal to include all 4 bankruptcy court's orders per Rule 8002, her final designation of appendix per Rule 8003 when Rule 8002 is applied is proper, deems all her briefs and documents are filed within the time allowed per Rule 8018 when Rules 8002 and 8003 and are proper. OrderS on appeal should be vacated, voided, and reversed, and Debtor's subchapter V eligibility should be removed and the bankruptcy case should be

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[13] There are about 351,000 homeowners associations in the United States, allowing Debtor to proceed under Subchapter V will create a significant public injustice that can affect one way or another the 40,000,000 households residing inside those associations, enough households representing more than 53% of the owner-occupied households in the US, thus Debtor to proceed under Subchapter V is not constitutional and is causing harm to the public, it will also create a precedence that 2 or more people or household can bind together to contribute money to pay for consumer expenses but can take advantage of the Subchapter V program, that is not just.

unwinded to be a traditional chapter 11 case, all of Appellant's rights lost due to Debtor's subchapter V election must be restored and damages reversed, Appellant timely filed motion for leave to file motion to stay pending appeal, plan confirmation process as well as the order confirming the plan should also be reversed.

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