IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SC SJ Holdings LLC, *et al.*,	)	Case No. 21-10549 (JTD)
	)	(Jointly Administered)
Debtors.	)	
	)	**Re: D.I. 1276**

MEMORANDUM OPINION

In March of 2021, SC SJ Holdings LLC ("**SCSJ**") and its affiliate FMT SJ, LLC ("**FMT**") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "**Code**"), commencing this case (the "**First Bankruptcy Case**"). A plan of reorganization was confirmed in August of 2021. On November 5, 2024, reorganized debtor SCSJ and newly formed affiliate NEX SJ, LLC ("**NEX**") filed a new petition under chapter 11 in the Bankruptcy Court for the Northern District of California at Case No. 24-51683 (the "**Second Bankruptcy Case**"). BrightSpire Credit 1, LLC ("**BrightSpire**" or "**Lender**"), a lender with a claim of approximately $140 million secured by substantially all of the assets owned by SCSJ and NEX, has moved to transfer and dismiss the Second Bankruptcy on the grounds that the debtors' sole purpose in filing the new case was to evade the consequences of their defaults under the chapter 11 plan previously confirmed by this Court.[1] For the reasons set forth below, the Motion is granted.

[1] D.I. 1276, Motion by Lender to Transfer New Chapter 11 Cases to This Court and Dismiss Bad Faith Chapter 11 Cases (the "**Motion**").

FACTS

Debtor SCSJ is the owner of a luxury hotel located at 170 South Market Street in San Jose, California (the "**Hotel**"). In early 2020, the Hotel's business took a dramatic and sudden downturn due to the travel restrictions put in place in response to the COVID-19 global pandemic. Accordingly, in March of 2021, SCSJ and FMT commenced the First Bankruptcy Case in this Court.

On August 18, 2021, I entered an order (the "**Confirmation Order**") confirming the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "**Plan**").[2] The Plan became effective on November 8, 2021.

Consistent with the Plan, FMT was liquidated and NEX was formed to take over as the Hotel's new tenant. SCSJ, FMT, and NEX (collectively "**Debtors**") are all owned by Sam Hirbod ("**Mr. Hirbod**").

The Plan modified the terms of the loan held by the Debtors' prepetition secured lender, NS Income Opportunity REIT Holdings, LLC ("**NS Income**"), an affiliate of CLNC Fair Jose Finance, LLC ("**CNLC**"). That loan was made in 2018 to the Debtors in the original principal amount of up to $173,485,000.00 (the "**Original Loan**"). In 2022, CNLC assigned the note and deed of trust to BrightSpire.

Two classes of claims addressed in the Plan concern the Original Loan. Section 4.3 of the Plan, which addresses the treatment of the SC SJ Prepetition Secured Loan Claim, provides that:

> On the Effective Date or as soon as reasonably practicable thereafter: the Prepetition Secured Lender will release its right to receive Default Interest and shall receive, on account of the SC SJ Prepetition Secured Loan Claim (i)

[2] D.I. 660 (Plan) and 684 (Confirmation Order).

> payment in Cash of any unpaid reasonable costs and expenses owed pursuant to the Restructuring Support Agreement, Prepetition Secured Loan Documents, or Financing Orders incurred prior to the Effective Date; and (ii) payment in full over time of the Post-Effective Date Secured Loan Amount by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents, which shall be delivered on or before the Effective Date.

See Plan at Section 4.3.

Section 4.4 of the Plan, which addresses the treatment of the FMT Prepetition Secured Loan Claim, provides that:

> On the Effective Date or as soon as reasonably practicable thereafter, the Prepetition Secured Lender shall receive, on account of the FMT Prepetition Secured Loan Claim, the FMT Collateral Payment, and all Prepetition FMT Collateral, other than cash collateral, shall be delivered in kind to Reorganized SC SJ and repayment of the debt secured by the Prepetition FMT Collateral shall be made over time by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents.

See Plan at Section 4.4. The "Post-Effective Date Secured Loan Documents" referenced in Sections 4.3 and 4.4 of the Plan were entered into as of November 8, 2021, and include the Amended and Restated Promissory Note, Amended and Restated Loan Agreement, and an Amended and Restated Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing (collectively, the "**Loan Documents**").[3]

Pursuant to the Loan Documents, the accrued unpaid interest and fees associated with the Original Loan, which were then all due and payable, were capitalized into the balance owing under the modified loan, which on the effective date of the Plan, would have an aggregate debt of $184,953,169.21 (the "**Post-Confirmation Loan**"). The Loan Documents also modified the payment terms of the Original Loan.

[3] Debtors' Objection to Lender's Motion, D.I. 1280, Exhibits A – C.

Following confirmation, the Debtors resumed their prepetition efforts to renovate the Hotel, but the cost of doing so far exceeded what was anticipated. With costs rising and a slow return of business following the COVID 19 pandemic, the Debtors initiated discussions with the Lenders about right-sizing the asset and deleveraging debt. After extensive negotiations, Debtors decided to market the "South Tower" of the Hotel for sale.

In exchange for the Lender's consent to the sale of the South Tower and the release of part of the proceeds from the sale to fund an interest shortfall reserve account, the Debtors agreed to market the remaining "North Tower" of the Hotel. The parties agreed on a timeline to do so, which included several interim deadlines for the project and concluded on April 30, 2024, with the closing of the sale and payoff of the Post-Confirmation Loan.

Debtors, however, were unable to sell the North Tower. Accordingly, on June 10, 2024, Lender notified Debtors of their default. A formal Notice of Default was served on July 5, 2024, and a foreclosure sale was scheduled for November 6, 2024.

On September 12, 2024, the parties entered into a Settlement Agreement and Release pursuant to which the Lender gave the Debtors additional time to close on a take-out loan from a third party with whom Debtors were negotiating. In exchange, the Debtors agreed to a reduced final balance and an extended payoff date.

On September 25, 2024, Debtors filed a Motion for Entry of a Final Decree and Order Closing Chapter 11 Cases, ("**Motion to Close**") this case, in which they argue that the estate has been fully administered and a final decree should be entered.[4]

The day before the scheduled foreclosure, the Debtors filed the Second Bankruptcy Case.

[4] D.I. 1259. Lender filed an Objection to the Motion to Close at D.I. 1267.

JURISDICTION

The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

DISCUSSION

I. Motion to Transfer – Rule 1014

Lender first seeks the transfer of the Second Bankruptcy Case to this Court pursuant to Federal Rule of Bankruptcy Procedure 1014. Rule 1014 provides that when a debtor commences multiple cases in different districts, the court in the district where the first petition was filed may determine the district in which the cases should proceed in the interest of justice or for the convenience of the parties. Fed. R. Bankr. Proc. 1014(b).

Debtors argue that Rule 1014(b) is not triggered here because, as demonstrated by the arguments set forth in their Motion to Close, the First Bankruptcy Case is substantially complete and a final decree should be entered.[5] Alternatively, Debtors argue that even if Rule 1014(b) applies I should decline to transfer the case because: (1) the interests of justice favor allowing the Debtor to proceed in its chosen forum; and 2) the debt at issue in the Second Bankruptcy Case is new debt that is not subject to the Plan. I disagree with the Debtors on all points.

As discussed below, I find that the Post-Confirmation Loan is not new debt but is a modification of the Original Loan that is governed by the Plan entered in the First Bankruptcy

[5] D.I. 1259.

Case. Accordingly, this case is not yet ripe for a final decree and the interests of justice favor the transfer of the Second Bankruptcy Case to this Court.

II. Motion to Dismiss Bankruptcy Petition – Section 1112(b)

A. Legal Standard

While the Motion was titled a "Motion to Dismiss," the Debtors' relied on voluminous documents in their opposition. Accordingly, at a status conference in advance of oral argument, I advised the parties of my intent to treat the Motion as one for summary judgment. See *Bruni v. City of Pittsburgh*, 824 F.3d 353, 360 (3d Cir. 2016) ("If other 'matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.'") (quoting Fed. R. Civ. P. 12(d)). 5C Charles Alan Wright et al., *Fed. Prac. & Proc. Civ.* § 1366 (3d ed.) ("The element that triggers the conversion [from a Rule 12(b)(6) dismissal motion into a Rule 56 motion for summary judgment] is a challenge to the sufficiency of the pleader's claim supported by extra-pleading material."). An evidentiary hearing was held on December 19, 2024.[6]

Pursuant to Rule 56, a movant is entitled to summary judgment if it shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. Summary judgment is thus proper "where the facts are undisputed and only one conclusion may reasonably be drawn from them." *Gans v. Mundy*, 762 F.2d 338, 341 (3d Cir. 1985). "[A]t the summary judgment stage[,] the judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

[6] See Transcript of December 19, 2024 Hearing at D.I. 1303.

B. Analysis

Lenders argue that the Second Bankruptcy Case should be dismissed as a bad faith filing pursuant to Section 1112(b) of the Code. Section 1112 of the Bankruptcy Code provides that a chapter 11 petition may be dismissed for "cause." 11 U.S.C. § 1112(b)(1). The Third Circuit has held that "cause" includes petitions not filed in good faith. *Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.),* 200 F.3d 154, 160 (3d Cir. 1999) ("Chapter 11 bankruptcy petitions are subject to dismissal under 11 U.S.C. § 1112(b) unless filed in good faith."). The burden is on the debtor to establish that it filed its petition in good faith. *In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 298 (Bankr. D. Del. 2011) (citing *In re 15375 Memorial Corp*., 589 F.3d 605, 609, 618 (3d Cir. 2009).

Lenders argue that Debtors' Second Bankruptcy Case was filed in bad faith because it was filed for the sole purpose of improperly modifying the Post-Petition Loan, thereby modifying the Plan in violation of Section 1127(b). Section 1127(b) prohibits the modification of a plan once it has been substantially consummated. 11 U.S.C. § 1127(b) (providing that a plan proponent may modify a plan any time after confirmation but before substantial consummation).

Courts have held that chapter 11 filings made for the purpose of modifying a previously confirmed and substantially consummated plan in violation of Section 1127(b) of the Code are made in bad faith and must be dismissed under Section 1112(b) of the Code. *See e.g., In re Northampton Corporation*, 39 B.R. 955, 956 (Bankr. E.D. Pa. 1984) ("the filing of a chapter 11 petition, with an eye toward curing defaults arising under a previously confirmed chapter 11 plan, is so akin to modifying the previous plan" that it was impermissible and constituted "cause" to dismiss or convert the second case under Bankruptcy Code § 1112).

Debtors do not dispute this general principle, but instead argue that this case is distinguishable because (1) the debt they are looking to restructure in the Second Bankruptcy Case is not governed by the Plan but is rather entirely new post-confirmation debt; and (2) even if I find that the second case does seek to modify Plan provisions, there are changed circumstances that warrant a modification. I disagree.

The Second Bankruptcy Case is an Attempt to Modify the Plan

It is clear from the record in this case that the Post-Confirmation Loan arose out of the First Bankruptcy Case and is therefore governed by the Plan. To begin, the Debtors' own documents and testimony leading up to confirmation demonstrate that the Debtors understood and intended for the Plan and resulting Post-Confirmation Loan to modify the Original Loan. Mr. Hirbod testified in his Declaration in Support of Confirmation as follows:

> [P]ursuant to the Plan the Prepetition Secured Loan will be amended via the execution of the Post-Effective Date Secured Loan Documents by the Prepetition Secured Lender, Debtor SC SJ, and New Lessee on the Effective Date. The Post-Effective Date Secured Loan Documents will, among other things, extend the maturity date of the Prepetition Secured Loan until three years after the Effective Date with two one-year extension options. Restructuring the Prepetition Secured Loan via the Post- Effective Date Secured Loan Documents is within the Debtors' sound business judgment and in the best interest of the Hotel, the Debtors, and their creditors.[7]

Further, the Plan itself expressly states that "all documents executed, delivered, assumed, or performed in connection with the occurrence of the Effective date," which would include the Loan Documents, "are incorporated into and are a part of the Plan as if set forth in full in the Plan."[8] Similarly, the Confirmation Order states that the "Plan Documents" (defined as including, among other things, the Post-Effective Date Secured Loan Agreement) are

[7] Declaration of Sam Hirbod in Support of Confirmation, D.I. 668, ¶ 4.
[8] D.I. 660 at 64 (emphasis added).

"incorporated by reference, are approved in all respects, and constitute an integral part of this Confirmation Order."[9]

Conversely, the Loan Documents indicate that they were entered into to enable the implementation of the Plan. For example, the Amended & Restated Loan Agreement ("**Loan Agreement**") provides that "WHEREAS, on August 18, 2021, the Bankruptcy Court entered the Confirmation Order . . . , which Confirmation Order inter alia authorized and approved Borrower's entry into and performance under this Agreement . . ."). [10] Likewise, the Amended and Restated Promissory Note states that "[p]ursuant to the terms of the Plan of Reorganization and Confirmation Order, [the parties] intend to enter into that certain Amended and Restated Loan Agreement . . . ."). [11]

This evidence all supports the conclusion that the Post-Confirmation Loan is not new debt that came into existence independent of the First Bankruptcy Case, but rather was a product of the bankruptcy process. Debtors' arguments to the contrary are unpersuasive.

Debtors first point to the Loan Documents as evidence that the Post-Confirmation Loan was entirely new. Specifically, Debtors cite to the provision of the Loan Agreement that states "[o]n the Closing Date, the full amount of the Loan, in the amount of $184,953,169.21, shall be deemed to have been advanced by Lender to Borrower under this Agreement, in full satisfaction of the amounts made available under the Prepetition Loan Agreement[.]"[12] Debtors argue this language must be read to mean that the Post-Confirmation Loan proceeds were used to extinguish the Original Loan. But Debtors' interpretation would require me to ignore the

[9] D.I. 684 at 17 (emphasis added).
[10] Loan Agreement, Recital at p. 1.
[11] D.I. 1280, Exhibits A-C.
[12] D.I. 1280-2.

remainder of that provision, which plainly states that "[t]he Loan deemed made pursuant to this Section 2.1.2 shall be deemed made without any actual funding."[13] In other words, the Post-Confirmation Loan issued no proceeds at all because the full amount had been issued prepetition in connection with the Original Loan.

Debtors next argue that the addition of a new borrower on the Post-Confirmation Loan is evidence that it is new debt. Debtors argue that the addition of NEX who was (1) not a borrower on the Original Loan; (2) not a debtor in the First Bankruptcy Case; and (3) nowhere mentioned in the Plan, demonstrates that the Post-Confirmation Loan is a new loan. But the Plan clearly contemplates that the new tenant of the Hotel – an entity that would be formed post-confirmation – would be a co-borrower on the Amended Loan. See D.I. 660 at 11 (defining the term "Other Post-Effective Date Loan Amendment" as "an amendment to the Prepetition Secured Loan, to be entered into by the Prepetition Secured Lender, Debtor SC SJ, ***and New Lessee*** on the Effective Date . . . .").[14] As the new lessee, NEX's inclusion on the Loan Document is entirely consistent with this provision.

In essence, the Debtors' proffered conclusion that the Post-Confirmation Loan is a new loan is viable only if one views snippets of the record out of context and completely ignores evidence that conflicts with Debtors' narrative. Perhaps most demonstrative of this is Debtors' argument that I should give no significance to the fact that the parties themselves referred to the Post-Confirmation Loan as an amendment to the Original. Debtors argue:

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[13] D.I. 1280-2 at pdf pg 81 (emphasis added).

[14] Debtors' reliance on *In re Garsal Realty, Inc.* for the proposition that assignment of the Post-Confirmation Loan to a new lender and its modification since the effective date renders it new debt is unpersuasive. In *Garsal*, the debt was not simply assigned to a third party but was consolidated with new post-petition debt that "could not have been treated in the Confirmed Plan." 98 B.R. 140, 149 (Bankr. N.D.N.Y. 1989). Here, any changes made to the original debt were made primarily to account for accrued fees and interest. *See* Transcript of December 19, 2024 Hearing, D.I. 1303 at 79-84.

> While the Post-Effective Date Secured Loan Documents are identified as being "Amended and Restated" loan documents, none of the Post-Effective Date Secure Loan Documents incorporate any of the terms of the Original Loan Documents. They did not amend the Original Loan Documents, but instead replaced and superseded the Original Loan Documents in their entirety.[15]

Consistent with this approach, Mr. Hirbod testified upon direct examination at the hearing on this Motion that he understood the Post-Confirmation Loan to be entirely new debt. But his testimony is simply not credible considering all the documentary evidence to the contrary. This includes not only the documents discussed above that were created in connection with the First Bankruptcy Case, but also the various amendments to the Post-Confirmation Loan made since the initial documents were executed in 2021 – all of which repeatedly reiterate that they are simply amendments to the Post-Confirmation Loan.[16]

For these reasons, I find that the Post-Confirmation Loan is debt that was restructured in the First Bankruptcy Case and is therefore subject to the Plan. Accordingly, the Second Bankruptcy Case, which the Debtors have stated was filed for the purpose of restructuring the Post-Confirmation Loan, would have the effect of modifying the substantially consummated Plan, contrary to the provisions of Section 1127(b) of the Code. I next turn to the question of whether there are changed circumstances here that would justify the filing of the second petition and weigh against its dismissal as a bad faith filing under Section 1112.

Changed Circumstances

Debtors argue that even if I find that the Second Bankruptcy Case is an attempt to modify the plan, substantially changed circumstances here permit such modification. I disagree. As a threshold matter (and as was made clear by both this Court and the District Court in the Debtors'

[15] Debtors' Opposition, D.I. 1280 at 4.
[16] See Debtors' Exhibits 1-3 and 13, and Lenders' Exhibit 16. See also Transcript of December 19, 2024 Hearing, D.I. 1303.

appeal of a previous order in this case), "[t]he plain text of § 1127(b) does not provide any exception to the requirement that modification must be requested before substantial confirmation. Congress decided that the timing requirement applies regardless of the circumstances." *SC SJ Holdings, LLC v. Pillsbury Winthrop Shaw Pittman LLP (In re SC SJ Holdings, LLC),* No. 21-10549 (JTD), 2023 U.S. Dist. LEXIS 48320, at *21 (D. Del. Mar. 22, 2023) (emphasis added). As Judge Noreika explained:

> Section 1127(b) states, in relevant part, that "[t]he proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and ***before substantial consummation of such plan***." 11 U.S.C. § 1127(b) (emphasis added). Accordingly, by its plain terms "section 1127(b) is an absolute bar to modification after substantial consummation." *In re NorthEast Gas Generation, LLC*, 639 B.R. 914, 922 (Bankr. D. Del. 2022).

Id. (emphasis in original).

"Section 1127(b)'s prohibition of modification after substantial consummation provides both the debtor and creditors with finality as to confirmation orders." *In re Northtown Realty Co., L.P.*, 215 B.R. 906, 911-912 (Bankr. E.D.N.Y. 1998). As the *Northtown* Court explained:

> To allow the continual modification of substantially consummated plans, by a new chapter 11 case or otherwise, would create uncertainty among creditors. Why would a creditor consent to the treatment of its claim as part of a plan of reorganization if it thought that treatment could later be modified and its claim further impaired? To allow a debtor to continuously file plans of reorganization which modified the prior confirmed and consummated plan would render § 1127(b) meaningless.

Id. (internal citations omitted); *see also In re Northampton Corp.*, 37 B.R. 110, 112-13 (Bankr. E.D. Pa. 1984) ("[T]he current $2,000,000 indebtedness owing to Manufacturers Hanover represents an express obligation imposed upon the debtor by the terms of the confirmed 1981 Plan. Nevertheless, the debtor … asserts that that obligation can now be discharged in the pending chapter 11 proceeding. To accept such rationale would … allow a debtor to

continuously circumvent the provisions of a confirmed plan by filing chapter 11 petitions *ad infinitum*.”); *In re Jartran*, 886 F.2d 859, 869 (7th Cir.1989) (noting that the prohibition on modification after substantial consummation prevents “debtors from evading responsibilities under prior plans”).

To the extent changed circumstances have any bearing on the outcome here, it is not due to an exception to the prohibition set forth in Section 1127(b). Rather, consideration of the presence of unusual circumstances here is done only for purposes of determining whether the Debtors’ filing of a second bankruptcy petition was done in good faith. *See, e.g., In re Triumph Christian Ctr., Inc.*, 493 B.R. 479, 493 (Bankr. S.D. Tex. 2013) (finding second bankruptcy case was filed to modify previous plans and concluding that “[t]he fact that there are no unanticipated changed circumstances necessitating the filing of the Second Case indicates that it was filed in bad faith.”).

Considering the overriding interest in protecting the finality of plans and confirmation orders, Debtors must show extraordinary, unforeseeable changed circumstances to avoid dismissal under Section 1112(b) of a second chapter 11 case that would result in a *de facto* modification of a previous plan. *See*, *e.g.*, *In re Triumph Christian Ctr., Inc.*, 493 B.R. 479, 489 (Bankr. S.D. Tex. 2013) (“Subsequent filings have only been permitted in very unusual, almost extraordinary, factual situations. Further, ‘[e]ven extraordinary and unforeseeable changes will not support a new Chapter 11, if these changes do not substantially impair the debtor's performance under the confirmed plan.’”) (quoting *In re Adams*, 218 B.R. 597, 601-02 (Bankr. D. Kan. 1998)); *In re 234–6 West 22nd St. Corp.*, 214 B.R. 751, 757 (Bankr. S.D.N.Y 1997) (“Courts construe the concept of material change in circumstances quite narrowly.”); *Caviata Attached Homes, LLC v. U.S. Bank, N.A. (In re Caviata Attached Homes, LLC)*, 481 B.R. 34, 47

(B.A.P. 9th Cir. 2012) ("Cases in which a chapter 11 debtor has been successful at showing unforeseen changed circumstances to warrant a second chapter 11 filing are clearly the exception rather than the rule.").

Debtors argue that they have demonstrated the presence of extraordinary circumstances since confirmation that warrant modification to the Plan. Specifically, Debtors cite to a drastic increase in costs, the impractical demand by the Lender that the Debtors sell the North Tower despite poor market conditions, and the City of San Jose's refusal to lift COVID restrictions that limited Hotel operations. Lenders argue that all these things were foreseeable, and none rise to the level of extraordinary. I agree.

Debtors' first bankruptcy became necessary because of the COVID-19 pandemic and the Plan was negotiated during the pandemic. While the exact nature of pandemic-related problems might not have been anticipated, the fact that there might be some continuing problems in the future certainly was. In fact, it was expressly discussed in the Disclosure Statement. D.I. 391 at 81 ("Additional waves of the coronavirus pandemic could lead to new travel restrictions and reductions in economic activity, resulting in further disruptions to the Hotel's future operations and cash flow."). Similarly, rising costs and interest rates following the pandemic were likewise unsurprising. Disclosure Statement, D.I. 391 ("the pandemic has also adversely impacted credit and capital market conditions and the Hotel may be unable to access these markets until conditions normalize."). Finally, Debtors' suggestion that the Lenders' demands with respect to the sale of the North Tower should constitute changed circumstances is simply not supported by the record. The negotiations that occurred regarding the North Tower occurred because of the concessions Debtors obtained from the Lender in connection with their decision to sell the South Tower. Having set the wheel in motion, Debtors cannot now complain that they did not

accurately anticipate the outcome. *In re Roxy Real Estate Co.*, 170 B.R. 571, 576 (Bankr. E.D. Pa. 1993) ("Those courts which construe that second chapter 11 filings may be in good faith, despite the terms of an earlier confirmed plan, consistently hold that the default in the first plan cannot be attributed to events caused by the debtor, events which were known at the time of confirmation, or events which are generally foreseeable.").

The cases cited by Debtors do not alter this conclusion. In the first cited case, the Court determined that the debt at issue in the second bankruptcy case was new debt that was unrelated to the first bankruptcy. *See In re Garsal Realty, Inc.*, 98 B.R. 140, 149 (Bankr. N.D.N.Y. 1989) ("The satisfaction of the Troy debt through the negotiation of further indebtedness from SBU, an entirely new lender and Freddie Mac's assignor created, upon consolidation, an entirely new debt which essentially rendered the Confirmed Plan, and the Chapter 11 case, irrelevant with regard to Freddie Mac."). In the second case, the Court held that the first plan had not been substantially consummated. *See In re Woodson*, 213 B.R. 404, 406 (Bankr. M.D. Fla. 1997) ("This Court is disinclined to accept the proposition that the confirmed Plan was substantially consummated, and that therefore the second Chapter 11 is an impermissible attempt to modify a substantially consummated plan of reorganization."). In the last case, the Court concluded that the change in circumstances was entirely unforeseeable. *Lincoln Nat'l Life Ins. Co. v. Bouy, Hall & Howard & Assocs. (in re Bouy, Hall & Howard & Assocs.)*, 208 B.R. 737, 745 (Bankr. S.D. Ga. 1995) ("[D]uring its initial Chapter 11 case, Debtor never considered the possibility of a significant change in its market resulting from the terminal's relocation, the failure of Key Airlines, *and* the withdrawal from Savannah of two major carriers, nor could it have been expected to foresee such a substantial change."). The same cannot be said here.

Debtors have not cited to any case that would support a finding of good faith in filing a second bankruptcy petition on facts like those presented here. Accordingly, I find that the Second Bankruptcy Case must be dismissed as a filing made in bad faith, pursuant to Section 1112(b) of the Code.

CONCLUSION

For all these reasons, Lender's Motion requesting the transfer and dismissal of the petition filed in the Second Bankruptcy Case is GRANTED.

The parties should submit an appropriate form of order under certification of counsel.

Dated: January 30, 2025

JOHN T. DORSEY, U.S.B.J.