EXHIBIT 89

Bankr. ECF 19 - Motion to Appoint Trustee or Convert to Chapter 7

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TOPDEVZ, LLC and TYLER DAVIS

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO

In re ASHKAN MIRFAKHR RAJAEE and NASSIM RAJAEE, Debtors.	Case No. 24-00617-CL11 Chapter 11 JUDGMENT CREDITORS' MOTION TO APPOINT A CHAPTER 11 TRUSTEE OR, ALTERNATIVELY, CONVERT CASE TO ONE UNDER CHAPTER 7; MEMORANDUM OF POINTS OF AUTHORITIES; DECLARATION OF D. EDWARD HAYS IN SUPPORT Date: May 6, 2024 Time: 2:00 p.m. Ctrm: 5 Room: 318 Place: 325 West F. Street, San Diego, CA 92101

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Generally, the Arbitration Award addresses the various issues in the same order they were addressed at trial. *Id.*, Ex. 3, pgs. 98, 99-102, and 103-106. Nonetheless, a portion of the Arbitration Award addresses specific actions taken by Ashkan to divert TopDevz's assets to accounts controlled by him in another country in direct defiance of a ruling by the Arbitrator are the conclusion of the portion of the trial. *Id.*, Ex. 3, pgs. 121-126. The Arbitration Award is summarized below.

1. The dissolution of TopDevz

Davis and Ashkan decided to go into business together and in May 2017, they formed TopDevz. *Id.*, Ex. 3, pgs. 115-120. In the company's operating agreement, Ashkan was designated as TopDevz's managing member. *Id.*, pg. 111. Ashkan was also the company's chief executive officer. The Arbitration included a determination of the member's capital contributions. Ashkan misrepresented the claim that he put $750,000 into the LLC, but Ashkan first testified that he had put in no capital. The Operating Agreement provides that the member's capital accounts change annually, and that Rajaee put in only $37,000. The judgment therefore confirms that Ashkan's ownership interest was small. Indeed, as confirmed in the Arbitration Award, Davis held more than 95% of the membership interest in TopDevz. *Id.*, pgs. 121 and 166.

As manager and CEO, however, Ashkan illegally funneled millions of dollars to companies owned and controlled by him, most of which are headquartered abroad. *Id.*, pgs. 136-138. Ashkan also improperly used TopDevz's money to fund his lavish lifestyle. *Id.*, pgs. 136-138. Eventually, Davis grew tired of Ashkan's poor-decision making and petitioned for dissolution. *Id.*, pgs. 103-106. Over Ashkan's objection, the Arbitrator agreed with Davis, determining that multiple grounds existed to order the dissolution of TopDevz. *Id.*, pgs. 98, 103-106.

2. Funds fraudulently transferred abroad by Ashkan in violation of an order by the Arbitrator

Ashkan's actions in response to the Arbitrator's ruling regarding the dissolution of TopDevz proves his inability to serve as a chapter 11 fiduciary. In December 2021, the Arbitrator conducted a 3-day trial. *Id.* Ex. 3, pgs. 98, 103-106. On January 6, 2022, the Arbitrator issued her order directing Davis to oversee the dissolution of TopDevz ("January 6 Ruling"). *Id.*, pgs. 98, 103-106. Among other things, the January 6 Ruling designated Davis as the immediate, new managing member of TopDevz, and unequivocally provided that, "Davis and only Davis, or his designee, shall have authority to access, disburse funds from, open and close bank and other financial accounts belonging to or standing in the name of" TopDevz. *Id.*, pgs. 122. The January 6 Ruling was provided to Ashkan immediately after it was issued. *Id.*, pgs. 121-125.

At approximately 11:00 pm on January 6, 2022, hours after being provided with a copy of the January 6 Ruling, Ashkan caused $900,000 to be wired out of TopDevz's bank account and to an international account held by him. *Id.*, pgs. 121-125. The following day, Ashkan caused another $131,586.76 to be wired out of TopDevz's bank account to an international account held by Mobile Monster, a company wholly owned by Ashkan. *Id.*, pgs. 122. This theft of TopDevz's funds in contempt of the Arbitrator's order, left TopDevz with insufficient funds to make its payroll. *Id.*, pgs. 122.

Less than a week later, after an emergency hearing, the Arbitrator ordered Ashkan to return the funds that he sent abroad on January 6 and 7, 2022. *Id.*, pgs. 122. To date, Ashkan has failed and refused to comply. With Movants' $10 million judgment being the largest creditor claim in this estate, Debtor's history proves that he will continue his campaign to hinder, delay, and defraud creditors.

3. Ashkan's self-dealing and the millions of dollars he pilfered.

In April 2022, the Arbitrator received 10 days of testimony from the parties regarding their various accounting claims. Hays Decl., Ex. 3, pgs. 127-153. In particular, the evidence focused on (a) the capital contributions of Davis and Rajaee to TopDevz; (b) a reconciliation of the financial affairs of the TopDevz; (c) whether there were outstanding loans owed by TopDevz to Ashkan or Davis; and (d) whether Ashkan or Davis was owed money by or owed money back to TopDevz. *Id.*, pgs. 128. An important piece of the reconciliation was substantiation of funds paid to or for the benefit of the parties or companies owned by them. *Id.*, pgs. 129.

Despite being the managing member of TopDevz, Ashkan was unable to produce documents or explain the alleged business purposes behind the millions of dollars in payments he made to

Declaration of D. Edward Hays

I, D. EDWARD HAYS, say and declare as follows:

1. I am an individual over 18 years of age and competent to make this declaration.

2. If called upon to do so, I could and would competently testify as to the facts set forth in this Declaration. The facts set forth below are true of my personal knowledge.

3. I am an attorney at law duly admitted to practice before this Court and all courts of the State of California.

4. I am a partner of the law firm of Marshack Hays Wood LLP, attorneys for Judgment Creditors, TOPDEVZ, LLC and TYLER DAVIS, and maintain offices at 870 Roosevelt, Irvine, California, 92620.

5. Unless otherwise stated, the facts set forth in this declaration are personally known to me and if called as a witness, I could and would competently testify thereto.

6. All terms not otherwise defined herein are used as they are defined in the Motion.

7. I make this declaration in support of Judgment Creditors Motion to Convert Chapter 11 Case to One Under Chapter 7 Pursuant to 11 U.S.C. §1112(b), or in the alternative appoint a Chapter 11 Trustee ("Motion.")

8. I reviewed the docket in this case prior to execution of this Declaration to refresh my memory as to the dates on which particular documents were filed.

9. On February 26, 2024, Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code ("Chapter 11 BK Case"), schedules of the assets and liabilities, and statement of their financial affairs (collectively, "Schedules"). A true and correct copy of this Court's webPACER Docket for Case No. 24-00617-CL11 as of April 8, 2024, is attached here as Exhibit "1." A true and correct copy of the Schedules is attached here as Exhibit "2."

10. Although the Debtors are acting as debtors-in-possession, as described below, the Debtors' pre-petition conduct proves their inability to serve as fiduciaries to the Estate and its creditors. Further, positions taken by the Debtors in connection with the filing of the Schedules, as well as actions taken post-petition, including post-petition lawsuits filed by Ashkan, confirm the

Debtors' incapacity to be honest stewards for the Estate and appropriately discharge their fiduciary duties.

11. In February 2021, an arbitration was commenced ("Arbitration") which lasted more than two years. The parties to the Arbitration were Ashkan and Judgment Creditors. The arbitrator was Rebecca Callahan ("Arbitrator"),[8] who issued a 93-page written Final Award in May 2023 ("Arbitration Award"). A true and correct copy of the Judgment and Arbitration Award is attached here as Exhibit "3."

12. The issues addressed in the Arbitration Award include (1) the respective ownership interests of Ashkan and Davis in TopDevz; (2) whether grounds existed to dissolve TopDevz and, if so, who should oversee the dissolution; (3) an accounting of amounts owed to or from TopDevz by Davis; (4) an accounting of amounts owed to or from TopDevz by Ashkan; (5) Davis's claims against Ashkan for fraud and breach of fiduciary duty; (6) Ashkan's claims against Davis for defamation, civil extortion, intentional infliction of emotional distress; intentional interference with contract, intentional interference with prospective business advantage, and breach of fiduciary duty. In August 2023, the San Diego County Superior Court entered a Judgment confirming the Arbitration Award ("Judgment"). A true and correct copy of the Judgment is attached here as Exhibit "7."

13. A true and correct copy of the San Diego Superior Court Docket for Case No. 37-2022-00001968-CU-PA-CTL is attached here as Exhibit "9."

14. A true and correct copy of the Sacramento Superior Court Docket for Case No. 34-2022-00316510-CU-MC-GDS is attached here as Exhibit "10."

15. A true and correct copy of the Complaint and Docket pending in the Southern District of California as Case No. 3:24-00001-RSH-KSC is attached here as Exhibit "11."

16. A true and correct copy of the operative complaint and docket for the Tax Case is attached here as Exhibit "12."

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[8] Ms. Callahan is a 30-year AV-rated attorney that was a highly-respected bankruptcy litigator prior to becoming a full-time neutral.

17. A true and correct copy of the Trade Secret Case operative complaint and docket is attached to the Hays Declaration as Exhibit “13.”

18. Moreover, during their initial meeting of creditors pursuant to 11 U.S.C. § 341(a), Debtors claimed not to know the beneficiaries of the trusts and whether they were beneficiaries. When asked to produce copies of the trusts, Debtors would not commit to doing so and instead said he wanted to discuss with his counsel.

19. Findings in the Arbitration Award include that the Debtors are not and cannot be trusted to be fiduciaries of this Estate. First, while acting as TopDevz’s chief executive officer, and with only a small ownership interest, Ashkan treated the company as his personal piggybank, diverting assets to other companies owned by him, and sending funds out of the country to keep them from the TopDevz and its majority shareholder—Davis. Indeed, Ashkan transferred over $1 million of company funds out of the country to bank accounts controlled by him in violation of an order issued by the Arbitrator within hours of Ashkan being notified of the same.

20. Additionally, after Ashkan lost the Arbitration, the Debtors fraudulently transferred two properties to others, allowing family members to strip the equity from those properties in the process. A true and correct copy of the fraudulent transfer defaults obtained by the Judgment Creditors against the Trusts and LLC are attached as Exhibit “4.” On the eve of filing this case, title was restored to Debtors but the equity has been stripped and there is no accounting for the disposition of the funds borrowed against those properties.

21. Finally, the Debtors omit significant assets from their Schedules, including Ashkan’s ownership interest in a company (Mobile Monsters, Inc.) that received the largest share of the funds illegally stolen by Ashkan from TopDevz. In a post-petition action filed by Ashkan, he alleges this company to be very valuable. A true and correct copy of the post-petition actions commenced by Ashkan are attached as Exhibits “5” and “6.”

22. Other false statements in the Schedules include Debtors’ failure to disclose a $1 million deed of trust recorded against Debtors’ $8.5 million home in La Jolla in favor of Debtors’ attorneys Brown Neri as well a $1million deed of trust in favor of Ashkan’s father, Majid Rajaee. A