

CSD 2065 [08/01/24]

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Christopher R. Barclay, Chapter 7 Trustee  
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**UNITED STATES BANKRUPTCY COURT**  
 SOUTHERN DISTRICT OF CALIFORNIA  
 325 West F Street, San Diego, California 92101-6991

In Re

Ashkan Mirfakhr Rajaei &amp; Nassim Rajaei

Debtor(s)

BANKRUPTCY NO. 24-00617-CL7

**TRUSTEE'S NOTICE OF PROPOSED ABANDONMENT OF PROPERTY**

TO THE DEBTOR, ALL CREDITORS, AND OTHER PARTIES IN INTEREST:

Pursuant to 11 U.S.C. § 554 and FRBP 6007(a), notice is hereby given that the undersigned Trustee for this estate intends to abandon the following property:

**PROPERTY TO BE ABANDONED:**

The estate's interests in the Arbitration Confirmation Appeal, the Arbitration, the Arbitration Confirmation Action, the Arbitration-Related Actions, and also the Debtors' LLC member interest in TopDevz (See attached addendum for further details and information).

**ESTIMATED VALUE OF THE PROPERTY:**

\$0.00

**LIENS AGAINST THE PROPERTY:**

Unknown/ N/A

The property is to be abandoned because:

- ☒ There is little or no equity in the property for the estate.
- ☒ Costs of collection or litigation will probably exceed any recovery.
- ☒ Preservation of the asset is burdensome to the bankruptcy estate.
- ☐ Other:

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By abandoning the property, the Trustee is returning the property to the debtor because it cannot, for the reasons stated above, be liquidated for the benefit of creditors. Requests for additional information about the proposed abandonment should be directed to the Trustee named below.

IF YOU OBJECT TO THE PROPOSED ABANDONMENT:

1. **You are required** to obtain a hearing date and time from the appropriate Courtroom Deputy for the judge assigned to this bankruptcy case. Determine which deputy to call by looking at the Bankruptcy Case No. in the caption on Page 1 of this notice. If the case number is followed by the letters:
 

|   |     |   |                     |   |                             |
|---|-----|---|---------------------|---|-----------------------------|
| - | CL  | - | call (619) 557-6019 | - | DEPARTMENT ONE (Room 218)   |
| - | JBM | - | call (619) 557-5157 | - | DEPARTMENT TWO (Room 118)   |
| - | LT  | - | call (619) 557-5157 | - | DEPARTMENT THREE (Room 129) |
  
2. **Within 14 days<sup>1</sup> from the date of this notice**, you are further required to serve a copy of your **Declaration in Opposition to the Abandonment** and separate **Request and Notice of Hearing** [Local Form CSD 1184<sup>2</sup>] upon the undersigned trustee, together with any opposing papers. A copy of these documents must also be served upon the United States Trustee at 880 Front Street, Suite 3230, San Diego, CA 92101. The opposing declaration must be signed and verified in the manner prescribed by FRBP 9011, and the declaration must:
  - a. identify the interest of the opposing party; and
  - b. state, with particularity, the factual and legal grounds for the opposition.
  
3. **You must** file the original of the Declaration and Request and Notice of Hearing with proof of service with the Clerk of the U.S. Bankruptcy Court at 325 West F Street, San Diego, California 92101-6991, no later than the next business day following the date of service.

**If you fail to serve your “Declaration in Opposition to the Abandonment” and “Request and Notice of Hearing”** within the 14-day<sup>1</sup> period provided by this notice, **no hearing will take place**, you will lose your opportunity for hearing, and the moving party may proceed to take the intended action.

Dated: February 6, 2025

/s/ Christopher R. Barclay

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Chapter 7 Trustee

Address: P.O. Box 2819  
La Mesa, CA 91943

Phone No.: (619) 255-1529

E-mail: admin@crb7trustee.com

<sup>1</sup>Depending on how you were served, you may have additional time for response. See FRBP 9006.

*In re Ashkan Mirfakhr Rajaei and Nassim Rajaei*  
Case No. 24-00617-CL7

[Addendum to Notice of Intended Action and Opportunity for Hearing]

**Proposed Abandonment of Arbitration Confirmation Appeal, Related Litigation Rights, and TopDevz, LLC**

Christopher R. Barclay (the "Trustee"), the chapter 7 trustee for the bankruptcy estate of Ashkan Rajaei ("Rajaei") and Nassim Rajaei (the "Debtors"), proposes to abandon the estate's interest in the property described below:

**Background**

Prior to bankruptcy, Rajaei was engaged in a years-long bitter legal dispute with his former business partner, Tyler B. Davis ("Davis"). The Rajaei-Davis dispute centered primarily on their ownership and management of TopDevz, LLC ("TopDevz").

On or about February 23, 2021, Rajaei commenced an arbitration against Davis with the International Centre for Dispute Resolution, ICDR Case No. 01-21-9983 (the "Arbitration"). Davis filed a counterclaim against Rajaei in the Arbitration. Davis and Rajaei disputed their relative ownership interests in TopDevz. Rajaei contended that he owned 51% of TopDevz, whereas Davis contended Rajaei owned less than 5% of the company. In addition, Rajaei and Davis accused each other of various misconduct related to TopDevz, and Davis sought dissolution of TopDevz.

On or about May 12, 2023, after more than two years of litigation, the Arbitrator issued a Final Award (the "Arbitration Award"). The Arbitrator found that Davis owned more than 95% of TopDevz, Davis had the right to dissolve TopDevz, and Rajaei had improperly taken millions out of the company. Based on these findings, the Arbitrator awarded Davis \$1,704,415.64 against Rajaei, and awarded TopDevz an additional \$7,670,151.00 against Rajaei.

On or about June 6, 2023, Davis and TopDevz filed a Petition to Confirm the Arbitration Award with the San Diego Superior Court in *Tyler Davis v. Ashkan Rajaei*, San Diego County Superior Court Case No. 37-2022-00026691-CU-PA-CTL (the "Arbitration Confirmation Action"). The Petition was granted.

On or about August 15, 2023, the Superior Court entered a Judgment confirming the Arbitration Award (the "Arbitration Confirmation Judgment").

On or about October 6, 2023, Rajaei filed an appeal of the Arbitration Confirmation Judgment, *Ashkan Rajaei v. Tyler Davis et al.*, Cal. Ct. of Appeal Case No. D082966 (4th App. Dist.) (the "Arbitration Confirmation Appeal"). The appeal is currently stayed.

In addition to the Arbitration Confirmation Appeal, Rajaei filed several additional lawsuits collaterally attacking the Arbitration Award/Arbitration Confirmation Judgment in both state and federal courts.

On February 26, 2024, the Debtors voluntarily commenced this bankruptcy case under chapter 11 of the Bankruptcy Code.

On May 6, 2024, Davis and TopDevz filed Proofs of Claim in the Debtors' bankruptcy case. Proof of Claim Nos. 8-2 & 9-2. Davis asserted a general unsecured claim in the amount of \$1,748,776.84 and TopDevz asserted a general unsecured claim in the amount of \$7,869,785.04. Both Proofs of Claim were based on the confirmed Arbitration Award.

On May 9, 2024, the Bankruptcy Court entered an order converting the Debtors' bankruptcy case from chapter 11 to chapter 7. The Trustee is the duly authorized representative of the Debtors' bankruptcy estate pursuant to 11 U.S.C. § 704.

The Trustee entered into a settlement agreement with Davis and TopDevz to resolve most of the collateral attacks on the Arbitration Confirmation Judgment. Among other claims preserved in aid of administration of the Chapter 7 case, the settlement excluded the Arbitration Confirmation Appeal and any proceedings on remand in either the Arbitration and/or the Arbitration Confirmation Action, expressly. It also excluded two state court actions related to the Arbitration: *Tyler Davis v. Ashkan Rajaei*, Sacramento County Superior Court Case No. 34-2021-00295173-CU-BT-GDS, consolidated with *Ashkan Rajaei v. Tyler Davis*, Sacramento County Superior Court Case No. 34-2022-00316510-CU-MC-GDS (together, the "Arbitration-Related Actions").

On October 23, 2024, the Trustee filed a motion to approve the settlement with Davis and TopDevz. ECF No. 141.

On December 10, 2024, this Court entered an Order approving the Trustee's settlement with Davis/TopDevz. ECF No. 159.

### **Property to be Abandoned**

The Trustee now seeks to abandon the estate's interests in the Arbitration Confirmation Appeal, the Arbitration, the Arbitration Confirmation Action, the Arbitration-Related Actions, and also the Debtors' LLC member interest in TopDevz.

### **Legal Standard**

The Trustee's proposed abandonment is governed by Bankruptcy Code § 554. 11 U.S.C. § 554(a). "In order to approve a motion to abandon property, the bankruptcy court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000).

A trustee is granted wide authority and discretion regarding his or her chosen methods of administering the assets of an estate, including his or her decisions regarding whether assets are worth liquidating and whether litigation is worth pursuing. *See Mobile Diagnostech, Inc. v. Cohen (In re Equimed, Inc.)*, 267 B.R. 530, 534 (D. Md. 2001).

A bankruptcy trustee is not required to prosecute every cause of action belonging to the bankruptcy estate. *Koch Refining v. Farmers Union Cent. Exchange, Inc.*, 831 F.2d 1339, 1346-47 (7th Cir. 1987); *In re Reed*, 178 B.R. 817, 821 (Bankr. D.

Ariz. 1995). Instead, the trustee is given a substantial degree of discretion in deciding how best to administer the estate committed to his [or her] care and his actions are measured by a business judgment standard. *In re Fulton*, 162 B.R. 539, 540 (Bankr. W.D. Mo. 1993); *In re Cult Awareness Network, Inc.*, 205 B.R. 575 (Bankr. N.D. Ill. 1997); *In re Curlew Valley Associates*, 14 B.R. 506, 513 (Bankr. D. Utah 1981); *Ford Motor Credit Co. v. Weaver*, 680 F.2d 451 (6th Cir. 1982). So long as the trustee's decision concerning how or whether to administer an asset or to pursue a cause of action falls within the proper scope of the trustee's business judgment, the trustee's decision will be upheld. *In re Cult Awareness*, 205 B.R. 575; *In re Fulton*, 162 B.R. at 540; *In re Wilson*, 94 B.R. 886, 888 (Bankr. E.D. Va. 1989).

*In re Carvalho*, 578 B.R. 1, 11 (Bankr. D.D.C. 2017) (quoting *In re Consol. Indus. Corp.*, 330 B.R. 712, 715 (Bankr. N.D. Ind. 2005).

### **The Grounds for Abandonment**

The Trustee believes that retaining the Arbitration Confirmation Appeal, the Arbitration, the Arbitration Confirmation Action, the Arbitration-Related Actions, and the Debtors' LLC member interest in TopDev is burdensome to the estate and not in the bankruptcy estate's best interest. The Trustee's decision is based on the following considerations:

**First**, the Trustee understands that the cost of proceeding with the Arbitration Confirmation Appeal will be substantial. The appeal is complex. The Trustee has spoken with prospective appellate counsel and has been advised that it will likely take more than a year and cost \$50,000 to complete the appeal.

**Second**, the Trustee believes that the likelihood of success of the Arbitration Confirmation Appeal is low. Under California law, "the grounds for judicial review of a contractual arbitration award are extremely limited." *Pierotti v. Torian*, 81 Cal. App. 4th 17, 23 (2000) (citing *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 11 (1992)). An appellate court "cannot review the merits of the controversy, the arbitrator's reasoning, or the sufficiency of the evidence supporting the award." *Id.* Even "an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review." *Moncharsh*, 3 Cal. 4th at 33. "Code of Civil Procedure sections 1286.2 and 1286.6 provide the only grounds for challenging an arbitration award." *Pierotti*, 81 Cal. App. 4th at 23. These limited grounds include fraud and situations where the arbitrator "exceeded [his or her] power ...." See Cal. Civ. Proc. Code § 1286.2.

The Trustee has previously expressed his opinion that the Arbitration Confirmation Appeal is "neither frivolous nor improper." ECF No. 124 at 2:11-13. That does not mean, however, that the appeal will likely succeed. Given the extraordinarily high bar that an appellant must clear to overturn a confirmed arbitration award, the Trustee is informed and believes that prevailing on the appeal is not likely.

**Third**, the Trustee believes there is little or no benefit to the estate in proceeding with the Arbitration Confirmation Appeal.<sup>1</sup> Even if the appeal is successful, the case would simply be remanded, and the estate would be then required to relitigate the underlying dispute. The cost involved with relitigating the arbitration would be immense. The Trustee reasonably anticipates that this process would take years and cost several hundreds of thousands of dollars in legal and arbitrator's fees (at a minimum).

**Fourth**, there are other considerations beyond the cost of litigation. The estate's case on remand would rely heavily, if not almost exclusively, on Rajae's testimony. First, there is no guaranty that Rajae will cooperate with the Trustee or even be capable of offering competent testimony in future proceedings. The Trustee understands that Rajae has relocated, and it may prove difficult or impossible to compel his testimony at an arbitration conducted years from now. Moreover, the Arbitrator's prior factual findings (which are not subject to appellate review) do not reflect favorably on Rajae's credibility and effectiveness as a witness.

**Fifth**, even if the estate prevailed on remand, it is not clear that the estate would ultimately receive anything of meaningful value. In theory, the estate might be determined to be the majority owner of TopDevz. The Trustee understands, however, that TopDevz has essentially been shut down and no longer has any real value. Any effort to unwind TopDevz's shutdown and recover the value of its assets would be difficult (if not impossible) and require yet additional, more substantial and costly litigation.

Finally, prevailing on remand would potentially result in the disallowance of the Davis and TopDevz Proofs of Claim. At first blush, this might seem like a benefit. In reality, however, there is little or no meaningful value to the bankruptcy estate of this accomplishment. There are substantial, priority tax claims asserted in the bankruptcy case, which may consume much if not all of any eventual Chapter 7 distribution. Given the economics of this case, the Trustee believes spending substantial estate funds litigating the allowance of general unsecured claims does not make any reasonable sense. Even if that were not true, the Trustee expects that Rajae will aggressively pursue the Arbitration Confirmation Appeal post-abandonment. As such, if Rajae succeeds with the appeal and then succeeds on remand and the judgment is set aside, the estate will still obtain the benefit of the claim disallowance without need for further expense.

## **Conclusion**

For these reasons, the Trustee believes it imprudent to prolong administration of the Chapter 7 case and delay closure of this case for years, in the meantime spending substantial (if not all) estate funds prosecuting an appeal with a low chance of success and very little (if any) upside. As such, the Trustee requests that the Bankruptcy Court approve the proposed abandonment.

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<sup>1</sup> The Trustee considered settling the Arbitration Confirmation Appeal. The Trustee conducted preliminary settlement discussions prior to determining that filing this notice is reasonable and necessary to administration of the Chapter 7 case. Consistent with his statutory duties to maximize the value of the estate, the Trustee reserves the right to withdraw the proposed abandonment and pursue a settlement or sale if a party in interest submits a bona fide, non-contingent offer that is better for the estate than abandonment.