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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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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

TO THE HONORABLE CHIEF JUDGE CHRISTOPHER B. LATHAM, UNITED STATES BANKRUPTCY COURT JUDGE, THE DEBTORS, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES:

Judgment Creditors, TOPDEVZ, LLC ("TopDevz" / "LLC") and Tyler Davis ("Davis," and together with TopDevz, "Judgment Creditors") move the Court for an order appointing a Chapter 11 Trustee in the case filed by Ashkan Mirfakhr Rajaee ("Ashkan") and Nassim Rajaee ("Nassim," and together with Ashkan, "Debtors") or, alternatively, converting Debtors' Chapter 11 case to a proceeding under Chapter 7 ("Motion"). In support of this Motion, Judgment Creditors represent as follows:

1. Summary of Argument

Bankruptcy proceedings are designed to assist the honest but unfortunate debtors. In a Chapter 11 case, debtors-in-possession have fiduciary obligations to act in the best interests of the bankruptcy estate ("Estate"), presupposing that the individuals executing that office are honest. Unfortunately, the Debtors are neither honest nor capable of acting as fiduciaries for the Estate.

Where debtors have engaged in gross mismanagement or fraud, bankruptcy courts have authority to appoint a trustee to act as the representative of the bankruptcy estate. In this case, after a multi-day arbitration that resulted in Movants obtaining a $10 million judgment, Debtor Ashkan Rajaee was adjudicated to have committed substantial fraud and repeated breaches of fiduciary duty over a five-year period.

In entering the Arbitration Award (as defined below), the Arbitrator (as defined below) made extensive findings regarding Debtor Ashkan Rajaee's complete lack of honesty, including his complete "indifference to the oath he took, promising to answer truthfully . . . . [and instead over the course of many days] testified as if the truth was something that he could change from day to day depending on his then current need, objective, whim, or state of mind."[1] Movants respectfully request that the Court review the arbitrator's extensive findings regarding Debtor's fraud, breaches

[1] *See* Hays Decl., Ex. 3, pg. 135.

of fiduciary duties, and perjury. In addition, Debtor has been incessantly suing creditors in this case, making reorganization implausible due to the exposure created by the frivolous lawsuits.

Further, in this case, the Debtors' dishonesty persists as evidenced by their failure to disclose at least one significant asset from their schedules, their interest in Monster Mobile. But, the lawsuit filed by Debtor post-petition references his ownership of this company and its claimed significant value. The evidence is clear that Debtors cannot and will not be good stewards of Estate assets. The Court should either appoint a Chapter 11 trustee or convert this case to a Chapter 7 proceeding.

2. Bankruptcy Filing

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 to the Declaration of D. Edward Hays ("Hays Declaration") as Exhibit "1." A true and correct copy of the Schedules is attached to the Hays Declaration as Exhibit "2."

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' unwillingness to be honest stewards for the Estate and their inability to perform their fiduciary duties.

The Debtors cannot be allowed to continue as debtors-in-possession.

3. Legal Actions

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. *See* Hays Decl., Ex. 3, pgs. 92-190. 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. *Id.*, pgs. 124-126.

Moreover, 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 to the Hays Declaration as Exhibit “4.” On the eve of filing this case, Debtors caused title to be re-transferred to them but the equity has been stripped and there is no accounting for the disposition of the funds borrowed against those properties. *Compare* Hays Decl., Ex. 2, pgs. 52-87; *with* Ex. 4, pgs. 192-195. In all likelihood, Debtors caused title to their home to be restored in what will be an unsuccessful attempt to claim a nearly $700,000 homestead.[2]

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. *Id.*, Ex 3, pgs. 108-132. 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 to the Hays Declaration as Exhibits “5,” and “6.” Other false statements in the Schedules include the 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 $1 million deed of trust in favor of Ashkan’s father, Majid Rajaee. A true and correct copy of the deeds of trust are attached to the Hays Declaration as Exhibit “8”. Instead, Schedule F only reflects a $20,000 unsecured claim owed to the firm. *Id.*, pgs. 63-71.

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[2] Debtors’ fraudulent transfers were the subject of a state court action to avoid them. Title to that action is now vested in the estate. Debtors cannot possibly prosecute that action for the benefit of creditors. Specifically, judgment avoiding the transfers should be entered so that the estate can recover the fraudulent transfers and disallow any claimed exemption under Section 522(g). The Debtor are subsequent transferees of the original fraudulent transfer who did not take in good faith, for value, and without knowledge of the voidability of the initial transfer. In other words, Debtors’ argument that restoring title results in no-harm, no-foul fails. But, they will never prosecute the estate’s claims for the benefit of creditors. A trustee must be appointed.

The Debtors' repeated acts of fraud and breach of fiduciary duty and conflicts of interest prevent them from being trusted to act as fiduciary for creditors in this bankruptcy. They simply cannot be trusted.

A. The Arbitration

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"),[3] 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 as one document to the Hays Declaration as Exhibit "3." 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. *Id.*, pgs. 99-102, 115-120, 127-135 and 153-160. 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 to the Hays Declaration as Exhibit "7." The Debtors have appealed the Judgment, and the appeal has been stayed pending the conclusion of the bankruptcy.

The Arbitration contained three distinct parts. *Id.*, Ex. 3, pgs. 98, 103-106. The first portion of the trial addressed issues relating to dissolution. *Id.*, Ex. 3, pgs. 98, 103-106. The second portion of the trial addressed issues relating to the parties' contentions regarding an accounting. *Id.*, Ex. 3, pgs. 98, 103-106.. The final portion of the trial addressed the parties' various tort claims. *Id.*, Ex. 3, pgs. 98, 103-106.

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

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