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IT IS SO ORDERED.

Dated: February 27, 2024

Beth A. Buchanan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re	)	
	)	
RAYMOND JOSEPH SCHNEIDER	)	**Case No. 23-10337**
	)	**Chapter 11**
Debtor-In-Possession	)	**Judge Buchanan**
	)	

MEMORANDUM OPINION GRANTING DEBTOR'S AMENDED MOTION TO VOLUNTARILY DISMISS CHAPTER 11 CASE [Docket Number 308]

[This opinion is not intended for publication]

This matter is before this Court on the Debtor Raymond Joseph Schneider's *Amended Motion to Voluntarily Dismiss Chapter 11* [Docket Number 308] (the "Motion to Dismiss"); *Responses* in support of dismissal filed by Creditors General Electric Credit Union, Civista Bank, First Merchants Bank, Transamerica Life Insurance Company, Rockland Trust Company, and Bank of America, N.A. and Merrill Lynch Pierce Fenner and Smith, Inc. [Docket Numbers 314, 319, 320, 338, 340 and 341]; and the *Objection to Dismissal* filed by Creditor The Huntington National Bank [Docket Number 323]. An evidentiary hearing was held on February 13, 2024 to come within the time limit set forth in 11 U.S.C. § 1112(b)(3).

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

I. Background Facts

A. Prepetition Relationship Between Mr. Schneider and Huntington National Bank

Raymond Joseph Schneider, who requests dismissal of his voluntary chapter 11 case, and The Huntington National Bank ("Huntington"), the creditor objecting to dismissal, have a pre-petition lending history that eventually brought the parties to litigation in state court and bankruptcy court.[1] Mr. Schneider is a self-employed entrepreneur that develops real estate and operates businesses in an array of areas, including nursing homes, pet boarding and animal hospitals, apartment complexes, and other business ventures.

Mr. Schneider started out in the nursing home business. In 1999, while in the process of bidding to acquire a nursing home in Columbus, Ohio, Mr. Schneider met Harold Sosna. The two developed a partnership and from there developed five nursing home facilities over the next 18 years. The facilities were managed by Mr. Sosna's company, Premier Health Care Management, Inc. ("Premier"). Mr. Sosna also owned other nursing home facilities managed by Premier in which Mr. Schneider had no interest. Mr. Sosna was primarily responsible for arranging the financing for the Premier managed nursing home entities, including the entities in which Mr. Schneider and Mr. Sosna each held a 50% interest. Mr. Schneider was more of a silent partner who was not involved in the day to day operations of Premier or its entities.

On November 30, 2018, Mr. Sosna moved Premier's primary lending relationship from Fifth Third Bank to Huntington. At the hearing, Mr. Schneider testified that, prior to the lending

[1] Some of the background facts are incorporated by reference from this Court's *Order Denying Emergency Motion of The Huntington National Bank for the Appointment of a Chapter 11 Trustee* [Docket Number 78]. In addition, to fulfill its obligation to determine the best interests of creditors and the estate and to provide additional background, this Court takes judicial notice of the docket in this case. *ZMC Pharmacy, LLC v. State Farm Mut. Auto. Ins. Co.,* 307 F.Supp.3d 661, 665 n.1 (E.D. Mich. 2018) (noting that a court may take judicial notice of its own docket); *Baccala Realty, Inc. v. Fink (In re Fink),* 351 B.R. 511, 517 n.1 (Bankr. N.D. Ill. 2006) (holding that a court make take judicial notice of the record in its own cases).

relationship being moved to Huntington, he originally guaranteed only a portion of the loans, specifically those related to the entities for which he was 50% owner. However, Mr. Schneider testified that Huntington hired a CPA to audit Mr. Sosna and Premier prior to establishing the lending relationship. The audit uncovered concerns regarding Mr. Sosna and Premier, including a lack of sufficient funds in bank accounts and problem checks. The audit led the CPA to conclude that Huntington should not make the loans to Mr. Sosna. According to Mr. Schneider's testimony, Huntington then changed the loan documents to make Mr. Schneider responsible as guarantor for the entirety of the loans. Although Mr. Schneider signed the documents, he says he never met a banker or other representative of Huntington. Huntington and other lenders provided a $71,191,999.90 term loan and a $5,000,000 line of credit to Premier managed nursing home entities.

Mr. Schneider testified that, unbeknownst to him, Mr. Sosna began a check kiting scheme. The scheme eventually resulted in the loss of tens of millions of dollars. Mr. Schneider testified that he did not become aware of the check kiting scheme until May 26, 2020, when he received a notice from Mr. Sosna's attorneys that Mr. Sosna had been arrested for kiting. Mr. Sosna was indicted, convicted, and sentenced to prison for his crimes.

On June 5, 2020, Huntington filed a complaint against Mr. Sosna and his wife, and Mr. Schneider seeking to enforce the guarantees on the loans. On December 13, 2022, the state court entered a judgment against Mr. Schneider in the amount of $75.6 million plus accruing interest from July 28, 2020. After crediting for Huntington's sales of collateral owned by other entities, Huntington's judgment was reduced to approximately $27 million. Soon after it was rendered, Huntington took actions to freeze Mr. Schneider's accounts and to appoint a receiver over Mr. Schneider's assets.

Mr. Schneider appealed Huntington's judgment and also filed a complaint against Huntington and certain of its officers and employees for their alleged negligence in fostering and enabling Mr. Sosna's manipulation of funds [Docket Number 342, Exs. 2 and 3].

B. Mr. Schneider's Bankruptcy Filing and Huntington's Motion to Appoint a Trustee

Mr. Schneider filed a "bare bones" chapter 11 bankruptcy petition on March 2, 2023 [Docket Number 335, Ex. A]. Mr. Schneider testified that the filing was on the eve of a garnishment hearing initiated by Huntington to seize Mr. Schneider's brokerage account. He said that the tax implications of liquidating his brokerage account would have put him out of business.

Six days after the bankruptcy filing, Huntington filed an emergency motion to appoint a chapter 11 trustee [Docket Number 13]. In it, Huntington alleged that Mr. Schneider engaged in fraudulent transfers and other tactics to remove his assets from the reach of Huntington. Huntington maintained that a chapter 11 trustee was essential to ensure the thorough, independent investigation and prosecution of the alleged fraudulent transfers and to preserve the integrity of the bankruptcy process.

Mr. Schneider disputed any allegations of fraud or other wrongdoing. He asserted that Huntington's motion to appoint a trustee was an effort to pressure him against pursuing his state court complaint against Huntington. Mr. Schneider noted that—with the exception of Huntington—the numerous other loans that he guaranteed were current and the underlying projects were performing well. He further maintained that his transfer of business interests to family gift trusts were in connection with legitimate estate planning, which he began in April of 2018 well before the issues with Huntington arose. As a man reaching his 70's and retirement, he felt it was prudent to prepare an estate plan and hired the Vorys law firm to assist in that plan. Because of his numerous business and real estate holdings, the estate plan was complex and took time to complete.

Regardless, he intended to propose a 100% plan to repay his creditors so there would be no need to pursue or recover any alleged fraudulent transfers.

Following an expedited hearing held on March 15 and 17, 2023, this Court denied Huntington's emergency motion to appoint a chapter 11 trustee [Docket Number 78]. In denying the motion, this Court noted that the facts surrounding Mr. Schneider's transfers to family gift trusts occurring sometime between April of 2018 and December of 2020 and his financial condition at the time of the transfers was vague. This was likely because of the exigencies leading to the bankruptcy filing and the filing of Huntington's emergency motion which did not allow the parties sufficient time to conduct much discovery. Given that Huntington carried the burden of proof, this Court concluded that Huntington failed to establish the transfers were fraudulent or "cause" to appoint a trustee nor did the equities favor appointing a trustee, at least at that time. Nonetheless, this Court noted that Huntington continued to have avenues available to investigate Mr. Schneider's transfers to the family gift trusts including that "Huntington can file a motion for a Rule 2004 examination of Mr. Schneider or other relevant entities and request appropriate documents in connection therewith." [*Id*., p. 22].

C. Huntington's Motion to Conduct a Rule 2004 Exam and the Parties' Discovery Issues

Following this Court's denial of its motion to appoint a trustee, Huntington filed a motion to conduct a Rule 2004 examination with respect to Mr. Schneider and third parties targeting information on his prepetition transfers to the family gift trusts as well as other issues [Docket Number 92]. By agreed order entered July 20, 2023 [Docket Number 140], Mr. Schneider agreed to answer interrogatories and produce documents by August 26, 2023.

On October 24, 2023, Huntington filed a motion to compel [Docket Number 221] asserting that Mr. Schneider failed to provide complete responses to the Rule 2004 written discovery

requests by the deadline and by the good faith extensions of the deadline granted by Huntington. At a December 12, 2023 status conference, Mr. Schneider's counsel informally agreed to turning over information to Huntington by the end of the month.

D. Reversal of Huntington's Judgment and Next Steps in State Court Litigation

On December 29, 2023, the Court of Appeals for the First Appellate District of Ohio issued its judgment entry and opinion reversing Huntington's judgment against Mr. Schneider and remanding the case back to the Hamilton County Court of Common Pleas [Docket Number 342, Ex. 1]. In its opinion, the Court of Appeals noted that the lower court had granted summary judgment in favor of Huntington on its claim against Mr. Schneider for breach of a "Guaranty" agreement. However, the Court of Appeals concluded that "Schneider is a surety under the agreements" and accordingly, the trial court erred in finding that Schneider was merely a "guarantor" [Id., pp. 9-10]. Furthermore, it held that a creditor owes a duty of disclosure to a surety when certain conditions exist. The Court of Appeals concluded that genuine issues of material fact existed regarding whether those conditions existed in this instance that were relevant to Mr. Schneider's defense to enforcement of the guaranty [*Id*., p. 14]. Accordingly, the judgment was reversed and remanded "for further proceedings consistent with this opinion and the law" [*Id*., p. 15].

At the hearing, Mr. Richard Wayne, Mr. Schneider's state court counsel, testified to the next steps in state court following the Court of Appeals' reversal of Huntington's judgment and gave his estimation as to how long the state court proceedings would take to reach a final outcome.

Mr. Wayne testified that Huntington appealed the reversal of its judgment and filed a motion requesting that the Supreme Court of Ohio take jurisdiction. He noted that this type of request is not automatically granted and, that, in his experience, the Supreme Court of Ohio takes

jurisdiction in only 7-8% of appeals. Briefing on the issue was due March 8, 2024. He expected that the Supreme Court of Ohio would then rule on whether to accept jurisdiction in 30 to 60 days. If accepted, then the parties would brief the issues which could take another two to three months. Usually, oral argument is scheduled which might occur in this instance sometime in October or November. So if jurisdiction is taken, Mr. Wayne testified that a decision might not be rendered for ten months to a year. With its decision, the Supreme Court of Ohio could reverse and reinstate Huntington's judgment, could affirm the Court of Appeals and remand for further proceedings or could reverse and remand for further proceedings.

If, instead, the Supreme Court of Ohio denies jurisdiction, which could take up to three months to decide, then the matter would be remanded back to the trial court. At that point, the parties would start discovery. A case management conference would be held to set a deposition and discovery schedule as well as a deadline for the filing of dispositive motions and a date for the trial. Mr. Wayne noted that he would likely want ten depositions of Huntington employees involved in the loan transaction. He would also need to review the document files of the individuals deposed. He thought that with three months until the remand and then conducting discovery, it would take perhaps six to nine months until summary judgment motions could be filed and then an additional 75 days for briefing and oral argument. A decision on summary judgment can take a few months or even up to a year. During that time, the case stops. If summary judgment is denied, then a trial could take an additional one to three months. So if the Supreme Court of Ohio denied jurisdiction, Mr. Wayne testified that in his estimation it could take a year to a year and a half until a final determination is reached.

E. Impact of Reversal on Discovery

The parties learned of the reversal of Huntington's judgment on the eve of the deadline for Mr. Schneider to turn over information to Huntington pursuant to the parties' informal agreement on the Rule 2004 discovery. Mr. Schneider decided not to comply with this Court's agreed order regarding discovery or the informal agreement by his counsel to turn over information to Huntington regarding the pre-petition transfers by the end of December, 2023. Later, Mr. Schneider filed a position paper stating that he did not intend to turn over any additional discovery [Docket Number 300].

F. Other Relevant Matters in the Bankruptcy Case

1. Huntington and Mr. Schneider's Competing Proposed Chapter 11 Plans

Mr. Schneider did not file a chapter 11 plan prior to the expiration of exclusivity. On October 4, 2023, Huntington filed a proposed Chapter 11 Disclosure Statement and Plan of Liquidation [Docket Number 197] along with a motion to approve the disclosure statement, establish the plan confirmation schedule, and for other relief [Docket Number 196 as amended at Docket Number 211]. Huntington amended its proposed Plan of Liquidation on October 19, 2023 [Docket Number 213]. Huntington's Plan of Liquidation proposed to pay all creditors in full (except its own judgment claim estimated to be paid at 70-90%) through the creation of a liquidating trust that would liquidate all of Mr. Schneider's non-exempt assets including his business membership interests and would investigate and potentially recover fraudulent transfers [*Id*., pp. 4-13]. In addition, Huntington's plan included a provision to settle all of Mr. Schneider's claims against Huntington, including Mr. Schneider's appeal of Huntington's judgment, in exchange for $100,000 [*Id*., p. 13].

On November 8, 2023, Mr. Schneider filed his own Disclosure Statement with a Proposed Chapter 11 Plan of Reorganization attached [Docket Number 233 and Docket Number 335, Huntington Exhibit N] and a motion to approve the disclosure statement, establish the plan confirmation schedule, and for other relief [Docket Number 250]. In the Plan of Reorganization, Mr. Schneider proposed to reaffirm liabilities on debts for which he is either the co-obligor, co-borrower, or on which he signed a personal guarantee with payments continuing in the regular course of business [*Id*., attached Proposed Plan of Reorganization, §§ 3.01 – 3.04]. Mr. Schneider proposed to pay unsecured claims in full over a three year period and any allowed claim of Huntington in full over a period of five years [*Id*., §§ 3.05-3.06]. Mr. Schneider includes a provision to retain his interests in real property and entities but to take no distribution during the term of the plan except to meet his budget and make the payments required under the Plan of Reorganization [*Id*., § 3.07].

On December 15, 2023, this Court entered a scheduling order establishing deadlines in connection with the competing proposed plans and disclosure statements [Docket Number 269]. However, those deadlines were vacated by this Court [Docket Number 293] following the reversal of Huntington's judgment and the motion to stay all proceedings [Docket Number 281] filed by Mr. Schneider in light of that reversal.

2. Questionable Accuracy of Mr. Schneider's Schedules and Operating Reports

At the hearing, Mr. Schneider was questioned regarding the accuracy of his schedules and operating reports, particularly in relation to utilities services and credit cards. In his schedules, he did not list as creditors the utility companies he paid with regard to services for his three homes in Ohio, Maine and Colorado. He said he did not realize that they were considered creditors but also that his wife paid some of those bills. He further failed to list his ownership interest in Circle

Storage Operating Company I, LLC even though he signed a document entitled "Notice of Commencement / Private Improvements" as the business's sole member approximately a year before the bankruptcy filing [Docket Number 335, Ex. R, p. 4]. However, Mr. Schneider clarified that Circle Storage was actually itself owned by another business, Grasshopper Investments so it was his signing as the sole member of Circle Storage that was incorrect. He did list his interest in Grasshopper Investments in his Schedule A/B [*Id*., Ex. B].

As of the bankruptcy filing date, Mr. Schneider testified that he had credit cards in his name including Costco, Visa, Mastercard, American Express and Capital One. However, he did not list those creditors in his schedules [*Id*.]. Mr. Schneider testified to his belief that his credit card creditors were not owed any funds after the bankruptcy filing.

However, Huntington's counsel questioned Mr. Schneider regarding his continued use of the American Express credit card following the bankruptcy filing. Mr. Schneider stated that the American Express card was actually a business card that happened to have his name on it, stated as "Dr. Raymond Schneider" because of the card's use in his veterinary clinic business. However, Huntington produced American Express credit card statements that revealed personal expenses charged to the card [*Id*., Exhibit M]. In December of 2022, prior to the bankruptcy filing, Mr. Schneider charged more than $2,500 to send his grandchildren to ski school in Vail, Colorado [*Id*., pp. 5-6]. Charges were also made, both before and after the bankruptcy filing, for a Peloton membership of roughly $47-90 per month and a Netflix subscription of approximately $20 per month [*Id*., pp. 6, 12, 13, 20, 27, 32, 33, 36, 39 and 44]. The monthly charges also include restaurants and groceries [*Id*.]. When asked whether those expenses were business related, Mr. Schneider noted that he takes employees out to lunch and dinner and has a lot of meetings and that, he, himself, has to eat. But Mr. Schneider also admitted that at least some of the charges were for

personal expenses. He stated that he would need to look at the receipts to know which ones. He said that the use of the American Express card for both business and personal expenses was a continuation of his pre-bankruptcy practice in which his office took care of paying the bills and then his accountant would reconcile the personal and business expenses at the end of the year and his personal items would get billed to his personal account. At around the time of the bankruptcy filing, the American Express card carried an approximately $57,000 balance [*Id*., p. 18]. He did not list the debt in his bankruptcy schedules.

When asked whether he had bankruptcy court approval for the continued use of the American Express card after the bankruptcy filing, he stated that he did not. Nonetheless, he used the American Express card to purchase a $72,765.00 piece of commercial equipment for one of his businesses on June 2, 2023 [*Id*., p. 36]. He stated that he did not note the purchase or his continued use of the American Express card in his operating reports because the card, and the purchase of the commercial equipment, was paid through his business.

3. Mr. Schneider's Business Operations and Prospects Upon Dismissal

At the hearing, Mr. Schneider testified to an ability to pay his creditors in full whether in bankruptcy or outside of bankruptcy and whether Huntington's judgment remains vacated or is reinstated and has to be paid. He noted that he has between 50 and 70 LLCs, one for each business venture he begins. He asserted that businesses were cash flow positive but that some of the LLCs were shell companies that would eventually be dissolved. He employs hundreds of employees, and they are paid current. A controller helps manage his entities.

He was questioned about his schedules which show liabilities totaling $178,226,460.90 and assets totaling only $35,427,931.40 [Docket Number 335, Ex. B, p. 9 (Official Form 106Sum)]. Mr. Schneider testified that the values of the business assets listed in his schedules do

not reflect the assets' full value because he was required to list their net value on the schedules. He noted that his brokerage account with Merrill Lynch alone was worth approximately $31 million but he owed about $17 million so its net value was $12 to $14 million.

While having the ability to pay his debts, Mr. Schneider testified that the bankruptcy filing has had a negative impact on his business operations. His lenders put his loans in default and, thus, he cannot obtain new loans while in bankruptcy. In addition, the lenders are adding on legal expenses that he must pay. Furthermore, the interest rates have been increased on the loans to a default rate of interest. Although he has attempted to refinance, he is unable to do so while in bankruptcy.

If the bankruptcy case were to be dismissed, Mr. Schneider testified to opportunities he would have to grow his business and develop new projects. He discussed his desire to take out a loan to finance a new development called The Blue in Blue Ash. He also testified that he was planning an additional 125 apartments at an apartment complex called the Red, which already has 298 apartments and is cash flowing with occupancy at 100%. These and other projects require loans to move forward, and Mr. Schneider testified that he could not obtain the loans while in bankruptcy. He also noted that the properties he would like to sell are on hold while in bankruptcy. Mr. Schneider testified that to continue to grow his businesses, it was in the best interests to dismiss the case.

Mr. Schneider was then questioned whether his ability to pay all creditors outside of bankruptcy included Huntington. He testified that he would pay Huntington if found to owe the bank.

II. Legal Analysis

A. Motion to Dismiss Pursuant to 11 U.S.C. § 1112(b)

Mr. Schneider seeks to dismiss his chapter 11 case "for cause" pursuant to § 1112(b). While a chapter 11 debtor is a party in interest that may seek dismissal under § 1112(b), *In re Forum Health*, 444 B.R. 848, 855 (Bankr. N.D. Ohio 2011), a chapter 11 debtor does not have an unfettered right to dismiss its case. *In re Kingbrook Dev. Corp.*, 261 B.R. 378, 379 (Bankr. W.D.N.Y. 2001). Rather, a chapter 11 debtor seeking dismissal of its case must satisfy the requirements of § 1112(b), which provides, in pertinent part:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The party seeking dismissal of a chapter 11 bankruptcy case bears the burden of proving, by a preponderance of the evidence, that cause exists for dismissal. *In re Creekside Senior Apartments, L.P.*, 489 B.R. 51, 60 (B.A.P. 6th Cir. 2013).

If the movant establishes "cause," the court is required to dismiss or convert the case, whichever is in the best interests of the creditors and the estate, unless the exception in § 1112(b)(2) applies or the court appoints an examiner or a chapter 11 trustee under § 1104. *Id*. at 63; *In re Four Wells Ltd.*, 2016 Bankr. LEXIS 1673, at *44, 2016 WL 1445393, at *15-16 (B.A.P. 6th Cir. April 12, 2016) ("Once a bankruptcy court determines that 'cause' exists under § 1112(b)(1), it is under an obligation to dismiss the case, unless [§ 1112(b)(2) applies]."); *In re Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2014) (holding where a court determines that cause exists to convert or dismiss a case, the court must also determine if § 1112(b)(2) applies and

"decide whether dismissal, conversion, or the appointment of a trustee or examiner is in the best interest of creditors and the estate").

1. Cause exists to dismiss Mr. Schneider's chapter 11 case

Whether cause exists to dismiss a case under § 1112(b) is a matter of judicial discretion to be determined based on the particular facts and circumstances of each case. *Creekside*, 489 B.R. at 60 ("In determining whether cause exists to dismiss a case under § 1112(b), a court must engage in a case-specific factual inquiry which focuses on the circumstances of each debtor." (internal citations and quotation marks omitted)); *Four Wells Ltd.*, 2016 Bankr. LEXIS 1673, at *27, 2016 WL 1445393, at *9 (observing that the existence of cause "is a question left to the sound discretion of the bankruptcy court.") (internal citations and quotation marks omitted)); *Forum Health*, 444 B.R. at 856 ("What constitutes cause is a matter of judicial discretion to be determined on a case by case basis.") (internal citations and quotation marks omitted)).

Section 1112(b)(4) provides a non-exclusive list of circumstances that may constitute "cause" for dismissal of a chapter 11 case. *In re Peak Serum, Inc.*, 623 B.R. 609, 619 (Bankr. D. Colo. 2020). Because the examples provided in § 1112(b)(4) generally are not applicable when a chapter 11 debtor seeks a voluntary dismissal of its case, courts may find cause for other equitable reasons. *Id.*; *In re Gonic Realty Trust*, 909 F.2d 624, 626 (1st Cir. 1990) (noting that a "court may consider other factors as they arise and use its powers to reach appropriate results in individual cases"). "[A] court need not provide an undue elaboration of its reasoning," *In re Brewery Park Assocs.*, 2011 Bankr. LEXIS 1596, at *45, 2011 WL 1980289, at *15 (Bankr. E.D. Pa. Apr. 29, 2011), and even one ground for dismissal may satisfy a debtor's requirement to establish cause for the voluntary dismissal of its case. *Creekside*, 489 B.R. at 60 ("One ground for cause is sufficient

standing alone to justify the 'for cause' dismissal of a Chapter 11 case." (quoting *Reagan v. Wetzel (In re Reagan)*, 403 B.R. 614, 621 (B.A.P. 8th Cir. 2009) (internal quotation marks omitted)).

The state appellate court decision vacating Huntington's judgment and remanding the case back to the state trial court serves as both the impetus for Mr. Schneider's request to dismiss this case and his asserted basis of cause for doing so. More specifically, Mr. Schneider argues that the need for a chapter 11 reorganization is now unnecessary because "Huntington is no longer a judgment creditor and cannot continue its aggressive post-judgment collection efforts[.]" [Docket Number 308, p.3].

Huntington counters that "the mere fact that a judgment can no longer be enforced is not a sufficient basis to establish 'cause.'" [Docket Number 323, p. 17]. In addition, Huntington argues that Mr. Schneider has not set forth any other grounds that establish cause to dismiss this case. Noting that some courts have identified examples of how a chapter 11 debtor might establish cause to voluntarily dismiss its case,[2] Huntington maintains that Mr. Schneider has not even addressed these considerations let alone established that his situation falls within one of these enumerated examples of cause.

Addressing Huntington's latter point first, like the illustrations of cause set forth in § 1112(b)(4), the examples of cause identified by some courts to demonstrate how a chapter 11 debtor might establish cause to voluntarily dismiss its case are just that—examples. Mr. Schneider does not need to address those examples unless he is attempting to use those examples to establish cause.

[2] The examples include: "because of postpetition actions there may no longer be any business to reorganize, or there may be a lack of assets to administer, in chapter 11; there may have been a material change in circumstances postpetition such that confirmation of a chapter 11 plan is no longer possible; the legitimate purpose intended by the debtor's chapter 11 bankruptcy filing may have been achieved through settlement of litigation; or all interested parties may agree that continuation of the chapter 11 case is not in their respective best interests." *Peak Serum*, 623 B.R. at 619 (quoting *Brewery Park*, 2011 Bankr. LEXIS 1596, at *46-47, 2011 WL 1980289, at *16).

Instead, Mr. Schneider is focusing solely a material change in circumstances resulting from the reversal of Huntington's judgment. Huntington is correct in that some courts have found that a debtor's request to dismiss its chapter 11 case because a judgment can no longer be enforced was not cause for dismissal. *In re Cont'l Holdings*, 170 B.R. 919, 927 (Bankr. N.D. Ohio 1994) (holding that a state appellate court stay of execution on a judgment involving the debtor's largest creditor does not represent cause for dismissal); *In re Just Plumbing & Heating Supply, Inc.*, 2011 Bankr. LEXIS 4021, at *7-8, 2011 WL 4962993, at *3-4 (Bankr. S.D.N.Y. Oct. 18, 2011) (where the impending execution of a judgment precipitated the filing of the debtor's chapter 11 case, the court held that payment of a judgment creditor during the course of a chapter 11 case from non-debtor assets did not justify the debtor's request to dismiss the case). Other courts have held to the contrary. *In re Turboff*, 120 B.R. 849, 851-52 (Bankr. S.D. Tex. 1990) (conditionally granting dismissal of chapter 11 case where the state court judgment was reversed and remanded on appeal).

While each of the foregoing cases are distinguishable on the facts (and to some degree the law), Huntington's focus on the enforceability (or lack thereof) of its judgment in this case as Mr. Schneider's asserted basis of cause for dismissal too narrowly construes Mr. Schneider's position. The essence of Mr. Schneider's argument is that the reversal of Huntington's judgment and its ability to enforce that judgment represent a material change in circumstances which Mr. Schneider asserts is cause to dismiss his chapter 11 case.

A material change in a debtor's circumstances may form the basis of cause for dismissal under § 1112(b). *Forum Health*, 444 B.R. at 854-56 (finding sufficient cause under § 1112(b) where there was a change in the debtors' circumstances based on the satisfaction from other sources of the debtors' joint and several obligations that led to the filing of the debtors' bankruptcy petitions such that the debtors no longer needed bankruptcy protection); *OptInRealBig.com, LLC*,

345 B.R. 277, 283-84 (Bankr. D. Colo. 2006) (finding sufficient cause under § 1112(b) where there was a material change in the debtors' circumstances since the petition date based on the settlement of litigation with the debtors' "primary litigation nemesis" such that reorganization was no longer necessary); *see supra*, n.2. This Court recognizes that the facts in the foregoing cases are not on all fours with the facts of this case. That does not mean, however, that this Court cannot determine that cause is present under the facts and circumstances of this case. Indeed, that is precisely what this Court is tasked with doing—conducting a case-specific factual inquiry that focuses on the circumstances of this debtor. *Creekside*, 489 B.R. at 60.

In this case, Mr. Schneider's financial difficulties with Huntington were precipitated to a large degree by the criminal acts of his business affiliate, Mr. Sosna. Mr. Schneider vehemently denies any involvement in Mr. Sosna's wrongful acts, and no one argues otherwise. It is undisputed that the sole reason Mr. Schneider filed this chapter 11 case was to stop Huntington's execution on its judgment, including the garnishment of Mr. Schneider's significant investment accounts and Huntington's request to appoint a state court receiver over all of Mr. Schneider's assets. Nor is it reasonably disputed that—with the exception of Huntington—Mr. Schneider had no material issues with his creditors that warranted seeking bankruptcy relief. Accordingly, with the reversal of Huntington's judgment, Mr. Schneider has no present need to restructure his financial affairs to satisfy Huntington's judgment or to protect his liquidity, assets, or business operations from the collection efforts of Huntington. While this Court will later address the issue of whether Mr. Schneider's request to dismiss this case is in the best interests of creditors and the estate, this Court finds, under the facts and circumstances of this case, that the reversal of Huntington's judgment is a material change in circumstances such that Mr. Schneider has met his burden to establish cause under § 1112(b).

2. The § 1112(b)(2) exception to dismissal is not implicated in this case

Congress enacted significant amendments to Section 1112(b) in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). *In re Red Door Lounge, Inc.*, 559 B.R. 728, 732 (Bankr. D. Mont. 2016); *OptInRealBig.com*, 345 B.R. at 282. One of the material changes to § 1112(b) was the addition of the "unusual circumstances" exception to dismissal or conversion as currently reflected in § 1112(b)(2). Section 1112(b)(2) provides that a court may not dismiss or convert a chapter 11 case—

> if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—
>
> > (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
> >
> > (B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—
> >
> > > (i) for which there exists a reasonable justification for the act or omission; and
> > >
> > > (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2).

Huntington, as the party opposing dismissal, "has the burden to establish that all the factual elements of § 1112(b)(2) exist." *Four Wells*, 2016 Bankr. LEXIS 1673, at *44-45, 2016 WL 1445393, at *16; *Efron v. Candelario (In re Efron)*, 529 B.R. 396, 411 (B.A.P. 1st Cir. 2015) ("Once cause is found, the burden shifts to the opposing party to demonstrate 'unusual circumstances' that establish conversion or dismissal is not in the best interests of the creditors and the estate.").

Huntington did not address § 1112(b)(2). Huntington did not identify any "unusual circumstances" as to why this case should not be dismissed, nor has this Court been able to specifically identify any such "unusual circumstances." Huntington did not establish there is a reasonable likelihood that a plan will be confirmed within a reasonable period of time. Huntington argued that confirmation of a plan is not impossible, however, Huntington also acknowledged that it would have to "go back to the drawing board" to amend Huntington's proposed plan in light of the state appellate court's decision.[3] Accordingly, this Court concludes that § 1112(b)(2) exception to dismissal is not implicated in this case. *Four Wells*, 2016 Bankr. LEXIS 1673, at *45, 2016 WL 1445393, at *16 ("[A]s no evidence was introduced at the Dismissal Hearing by any party, it is without question that [the opposing party] failed to establish the existence of the factual elements of § 1112(b)(2).").

3. Dismissal is in the best interests of creditors and the estate

Another significant change brought about by the BAPCPA amendments to § 1112(b) is the discretion afforded a court when faced with a motion to dismiss a chapter 11 case. Prior to BAPCPA, § 1112(b) provided that a court "may" convert or dismiss a chapter 11 case for cause. Under this more permissive standard, even if the movant satisfied the cause requirement under § 1112(b), a court had the latitude to deny the motion if dismissal or conversion was not in the best interests of creditors. *See, e.g.*, *Cont'l Holdings*, 170 B.R. at 927 ("The express language of

[3] Where a debtor is the partying moving to dismiss a chapter 11 case under § 1112(b), at least one court has required the opposing party to also establish the elements of § 1112(b)(2)(B), namely that "(ii) the grounds for granting dismissal include an act or omission of the debtor (other than in paragraph 4(A)) for which there exists reasonable justification; and (iii) the act or omission will be cured within a reasonable period of time fixed by the court." *Forum Health*, 444 B.R. 848, 860 (Bankr. N.D. Ohio 2011) (". . . an objecting party is not free to re-write § 1112(b)(2) to exclude two-thirds of the elements necessary to defeat dismissal"). Because Huntington has neither established, nor has this Court found, "unusual circumstances" as to why dismissal or conversion is not in the best interests of creditors and the estate and that there is a reasonable likelihood that a plan will be confirmed within a reasonable period of time, this Court need not address whether § 1112(b)(2)(B) is applicable in the context of a debtor seeking to voluntarily dismiss its case.

§ 1112(b) indicates that a debtor's motion to dismiss should not reflexively be granted whenever cause exists." (internal quotation marks and citations omitted)). Huntington advocates for this analytical framework as a basis for this chapter 11 case to continue. Specifically, while not conceding cause for dismissal, Huntington argues that dismissal would be prejudicial to its interests as a creditor such that the Motion to Dismiss should be denied and this chapter 11 case should move forward.

However, the BAPCPA amendments to § 1112(b) materially changed the alternatives available to a court if the movant establishes cause for conversion or dismissal. Section 1112(b) currently provides that, if cause is established, a court "shall" convert or dismiss a chapter 11 case, whichever is in the best interests of the creditors and the estate, unless the exception in § 1112(b)(2) applies or the court appoints an examiner or a chapter 11 trustee under § 1104. Having found cause for relief and no exception under § 1112(b)(2), the options available to this Court are limited to dismissal, conversion, or appointment of a chapter 11 trustee or examiner—whichever is in the best interests of creditors and the estate. *In re Cal. Palms Addiction Recovery Campus, Inc.*, 2022 Bankr. LEXIS 1628, at *38, 2022 WL 2116643, at *15 (Bankr. N.D. Ohio June 10, 2022) ("After a finding of cause, the court's discretion is limited; it must grant some form of relief unless § 1112(b)(2) applies." (internal citations and quotation marks omitted)).

Mr. Schneider advocates for dismissal of this chapter 11 case. Seven of his creditors affirmatively support his request.[4] Huntington is the only creditor opposing dismissal. Having advocated for a straight denial of the Motion to Dismiss, Huntington does not address whether

[4] General Electric Credit Union [Docket Number 314], Civista Bank [Docket Number 319], First Merchants Bank [Docket Number 320], Transamerica Life Insurance Company [Docket Number 338], Rockland Trust Company [Docket Number 340], Bank of America, N.A. and Merrill Lynch Pierce Fenner and Smith, Inc. [Docket number 341].

The United States Trustee took no position on the Motion to Dismiss.

conversion or the appointment of a chapter 11 trustee or an examiner would be preferable to dismissal. Regardless, this Court has an independent obligation to evaluate each alternative and, therefore, will consider the parties arguments with regard to the best interests of creditors and the estate in that light. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612-13 (B.A.P. 9th Cir. 2014).

(i) Mr. Schneider's and other creditors' position

Mr. Schneider and the seven supporting creditors maintain that dismissal is in the best interests of creditors and the estate for several reasons. They note that Mr. Schneider's bankruptcy filing caused a technical default of the loans that Mr. Schneider guarantees or cosigns. As a result, these lenders are hampered from freely conducting business with Mr. Schneider and his business entities. Certain of the lending relationships are operating under the terms of a forbearance agreement. In addition, the default under the terms of the loan documents makes management of the loans more complex, time-consuming and costly. The lenders have and will continue to incur significant legal fees and costs to monitor and protect their interests in this chapter 11 proceeding.

They argue that Mr. Schneider's bankruptcy filing has also disrupted the operations of his non-filing business entities, in no small part due to the uncertainty about the outcome in this chapter 11 case. They maintain that new and existing development projects are more challenging to complete given the obstacles that a chapter 11 bankruptcy case presents. This creates risk that these projects will not be successfully completed, putting the viability of Mr. Schneider's business entities—and the lenders' collateral—at risk.

Huntington's proposed plan of liquidation, they argue, adds to that risk. Huntington's plan contemplated removal of Mr. Schneider from control of his business entities and replacing him with a third party selected and possibly controlled by Huntington. These creditors express concern

about placing Mr. Schneider's business entities in the hands of a third party who may or may not have the necessary skills to develop and operate the projects that serve as these lenders' collateral.

Mr. Schneider notes that Huntington's claim of almost $29 million represents only 17% of the roughly $165 million in total proofs of claim filed. Given the reversal of Huntington's judgment, Mr. Schneider and these creditors argue that creditors should not have to bear the uncertainties and expense of this on-going chapter 11 case where there is a non-bankruptcy forum that can address what is essentially a two-party dispute between Mr. Schneider and Huntington.

(ii) Huntington's position

Huntington argues that there is clear prejudice to Huntington if this case is dismissed. Specifically, Huntington identifies the following ways in which its interests will be prejudiced:

- Huntington will lose the material bankruptcy protection of preventing Mr. Schneider from fraudulently conveying or secreting more assets to hinder the collection efforts of Huntington.
- Huntington will lose the material bankruptcy protection of being treated equally with other similarly situated creditors.
- Huntington will be left with the state law remedy of a charging order which is inferior to the remedies available to Huntington in bankruptcy.
- It will take much longer for Huntington to resolve its claim in state court when compared to bankruptcy court.
- Huntington will be at risk of being time barred from pursuing valuable fraudulent conveyance claims.
- Huntington will lose the ability to pursue its adversary proceeding to object to Mr. Schneider's discharge and will lose the hundreds of thousands of dollars it has spent in this bankruptcy to protect its interests.

(iii) This Court's analysis

While a court is required to dismiss or convert a chapter 11 case once cause for relief is shown under § 1112(b), a court has wide discretion to determine which alternative is in the best

interests of creditors and the estate. *Sullivan*, 522 B.R. at 612 ("If cause is established, the decision whether to convert or dismiss the case falls within the sound discretion of the court."); *Cal. Palms*, 2022 Bankr. LEXIS 1628, at *43, 2022 WL 2116643, at *17 ("[A] bankruptcy court has wide discretion to either convert or dismiss [a chapter] 11 case." (citations omitted)).

Mr. Schneider, as the movant, has the burden to show that dismissal is in the best interests of creditors and the estate. *SWJ Mgmt., LLC v. Coan*, 551 B.R. 93, 98 (D. Conn. 2015) ("When a party moves for one of conversion or dismissal rather than the other, the movant bears the burden to show that its preferred action is in the best interests of the creditors and the estate."(citations omitted)). The phrase "best interests of creditors and the estate" is not defined in the Bankruptcy Code. As a result, courts have articulated various reasons for deciding whether dismissal or conversion is in the best interests of creditors and the estate. *Id.* (identifying factors such as prejudice to creditors, debtor misconduct, likelihood that the case would be refiled following dismissal); *Efron*, 529 B.R. at 413 (listing factors typically considered by courts when determining whether dismissal or conversion is in the best interests of creditors and the estate).

Before considering the relevant factors in this case, the Court must first address Huntington's contention that a court may not, as a matter of law, dismiss a chapter 11 case if there is any prejudice (or even possible prejudice) to a creditor that could result from dismissal of the case. Huntington maintains that "if any one creditor will be prejudiced by dismissal, the Court cannot dismiss the case even if every other creditor in this case supports dismissal and will not be prejudiced by dismissal." [Docket Number 323, p. 1]. Huntington argues that it is legal error for a court to simply poll whether the majority of creditors support dismissal and issue a ruling based on that poll.

This Court agrees with Huntington's latter point—the test is not one of majority rule. *See, e.g.*, *Sullivan*, 522 B.R. at 613 ("When determining the best interest of the creditors under § 1112(b), the Code's fundamental policy of achieving equality among creditors must be a factor considered, 'and it is not served by merely tallying the votes of the unsecured creditors and yielding to the majority interest.'" (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

This Court does not agree, however, that the interests of other creditors are wholly irrelevant if one creditor could be prejudiced by dismissal. As certain cases cited by Huntington reflect,[5] while a court may ultimately conclude that prejudice to less than all creditors weighs against dismissal of a chapter 11 case based on the particular facts and circumstances of a case, it is nonetheless incumbent upon the bankruptcy court to determine which alternative is the better choice considering the best interests of creditors and the estate as a whole. *Superior Siding*, 14 F.3d at 243 (noting that a court "must consider the interests of *all* of the creditors") (emphasis in original)); *Efron*, 529 B.R. at 413 ("In essence, the court should evaluate and choose the alternative that would be most advantageous to the parties and the estate as a whole." (internal quotation marks and citations omitted)); *OptInRealBig.com*, 345 B.R. at 287 ("[T]he Court must make its determination based on the best interests of all creditors."). Accordingly, this Court will consider

[5] *See, e.g.*, *Superior Siding*, 14 F.3d at 242-43 (holding that conversion versus dismissal of the case was appropriate where the majority of the creditors favoring dismissal held judgment liens that may be avoidable preferential transfers such that dismissal would result in inequitable treatment to the one objecting creditor who had not levied on the debtor's assets prepetition).

Huntington cites several chapter 7 cases in support of its assertion that prejudice to even one creditor bars dismissal of a chapter 11 case. While the best interests of creditors and the estate is a consideration—although not a statutory one—where a party in interest seeks to dismiss a chapter 7 case, a court may deny a motion to dismiss "even upon cause shown—if prejudice to creditors or other factors weigh against dismissal." *In re Murphy*, 2022 Bankr. LEXIS, 1761, at *33, 2022 WL 2288241, at *10 (Bankr. C.D. Ill. June 23, 2022). This permissive standard in chapter 7 differs from the mandatory standard under § 1112(b) where cause for dismissal is shown. Accordingly, while the best interests of creditors and the estate factors considered in a chapter 7 case may be similar and instructive in a § 1112(b) analysis, a court's conclusion on whether to dismiss a chapter 7 case where cause for dismissal has been shown is not.

the interests of all creditors when determining whether dismissal of this case or another alternative is in the best interests of creditors and the estate.

Huntington Argument #1: Dismissal Will Deprive Huntington Of Bankruptcy Protection Against The Continued Fraudulent Conveyance Of Assets, The Secreting Of Assets Out Of The Reach Of Huntington Or Other Improper Actions By The Debtor To Hinder The Collection Activities Of Huntington.

An issue from the outset of this case has been whether Mr. Schneider's prepetition transfers of millions of dollars in business holdings into family gift trusts were, as Huntington asserts, fraudulent transfers intended to hinder or delay Huntington's collection efforts or, as Mr. Schneider claims, were legitimate transfers as part of Mr. Schneider's estate plan which he claims began well before the issues with Huntington arose. Huntington observes that if these prepetition transfers were fraudulent transfers, this chapter 11 case should not be dismissed. Huntington notes that Mr. Schneider indicates in his Motion to Dismiss that he intends to introduce evidence at the hearing that the transfers were not improper as well as evidence regarding his solvency. Huntington argues that it would be manifestly unjust for Mr. Schneider to present evidence on these matters at the hearing given Mr. Schneider's on-going failure to comply with Huntington's discovery requests on this subject.

This is the same issue raised in Huntington's separately filed *Emergency Motion to Continue Evidentiary Hearing or in the Alternative, to Exclude Evidence at Hearing* [Docket Number 325]. This Court issued an oral ruling on the emergency motion prior to proceeding with the hearing on the Motion to Dismiss. In summary, as a sanction for Mr. Schneider's unilateral decision to further disobey a standing discovery order containing a deadline that had expired months prior, Mr. Schneider was precluded from introducing evidence regarding the prepetition transfers to the family gift trusts or his solvency at the time of those transfers. Fed. R. Civ. P. 37(b), applicable in bankruptcy proceedings pursuant to Fed. R. Bankr. P. 7037. This Court wishes to

reemphasize here, as was stated in the oral ruling, that this Court does not condone dilatory practices in discovery, which serve to increase litigation costs, delay proceedings, hamper a party's ability to defend its position, and importantly undermine the integrity of the court.

Huntington Argument #2: Dismissal Will Deprive Huntington Of Bankruptcy Protection Against The Disparate Treatment of Creditors.

Huntington argues that if this case is dismissed Mr. Schneider will continue to pay all of his other creditors, including other unsecured creditors, but not Huntington. This reordering of priorities, Huntington maintains, is deeply prejudicial to its interests and goes against the fundamental bankruptcy principal of equality of distribution within the priority system established by the Bankruptcy Code. Moreover, Huntington asserts that the dismissal of this case would in essence be a structured dismissal prohibited by *Cyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017).

The bankruptcy policy of equality among creditors is indeed a factor courts consider when determining the best interests of creditors and the estate under § 1112(b). *Superior Siding*, 14 F.3d at 243. This Court questions, however, Huntington's premise of inequitable treatment. While this Court agrees that Huntington is a creditor based on the Bankruptcy Code's broad definition of "claim," 11 U.S.C. § 101(5), Huntington has no present right to payment as Mr. Schneider disputes Huntington's claim and the parties are actively litigating that issue in state court. That situation is the same inside or outside of bankruptcy.

The cases that Huntington cites regarding inequality of treatment are similarly distinguishable. In *Superior Siding*, seven judgment creditors filed a motion to dismiss the debtor's chapter 11 case on the grounds of bad faith and the debtor's inability to reorganize. 14 F.3d at 242. The debtor's largest unsecured creditor, Rollex Corporation ("Rollex"), objected to dismissal arguing that the liens held by the judgment creditors (including liens on inventory purchased from

Rollex), were voidable preferences. *Id*. at 242-43. Rollex argued that dismissal of the bankruptcy case would afford these judgment creditors an unfair advantage under state law that they would not enjoy in bankruptcy. *Id*. Reversing the bankruptcy court's dismissal of the case, which was based on the consensus of the majority of the creditors, the Court of Appeals for the Fourth Circuit noted that equality of treatment among creditors is a factor the bankruptcy court should have considered. *Id*. at 243. Had the bankruptcy court considered the creditors' status in bankruptcy and their status outside of bankruptcy, as well as the interests of all creditors, the Fourth Circuit believed that the bankruptcy court would not have dismissed the case. *Id*.

These are not the facts in this case. Huntington holds a disputed claim under bankruptcy law and under state law. Arguably, Mr. Schneider's undisputed unsecured creditors are the ones prejudiced by not dismissing this case because, at a minimum, these creditors will have to wait for confirmation of a plan before being paid. This Court will not go so far as to say that this is a two-party dispute between Mr. Schneider and Huntington, but this Court is mindful that the interests of all other creditors would be held captive to resolution of the dispute between Mr. Schneider and Huntington if this chapter 11 case is not dismissed. *Cf. Efron*, 529 B.R. at 402 (reciting the bankruptcy court's observation that the debtor's chapter 11 case was "being held hostage by the excessive litigation involving the Debtor and [his former spouse]."); *OptInRealBig.com*, 345 B.R. at 288-89 (recognizing that the interests of creditors holding smaller claims "would remain hostage to the resolution of the two larger claims" if the chapter 11 case was not dismissed based on a settlement with one of the larger claimants).

Dzierzawski, a case on which Huntington places particular emphasis, is likewise not instructive under the circumstances of this case. *In re Dzierzawski*, 528 B.R. 397 (Bankr. E.D. Mich. 2015). Dzierzawski, a chapter 7 debtor, sought to dismiss his chapter 7 case "with prejudice"

and allow creditors to pursue collection of his debts outside of bankruptcy. *Id*. at 402. The chapter 7 trustee and the debtor's largest creditor, Vulpina, LLC ("Vulpina") objected. *Id*. at 399. The debtor settled the objection with the chapter 7 trustee by agreeing to pay administrative expenses and the claims of two creditors in full, while leaving the claims of Vulpina (whose $1 million plus judgment represented over 99% of the liquidated allowed claims) and the unliquidated claims of Vulpina's affiliates unpaid. *Id*. at 417. The bankruptcy court noted that dismissing the case on such terms would be "clearly contrary to the distribution scheme under 11 U.S.C. § 726(a)(2), which would require that an equal percentage dividend be paid to each creditor with an allowed non-priority unsecured claim." *Id*.

This Court again observes that Huntington holds a disputed claim, unlike Vulpina which held a liquidated undisputed claim. Moreover, *Dzierzawski* more closely resembles the *Jevic* structured dismissal concern that Huntington maintains is applicable in this case. Mr. Schneider, however, is not making a deal to pay certain creditors and not others as a condition of dismissal. He is seeking to dismiss his case and return all parties to the pre-petition status quo before Huntington had a judgment—a perfectly acceptable result that is embedded in the Bankruptcy Code and recognized by the Supreme Court in *Jevic*. 11 U.S.C. § 349; *Jevic Holding Corp.*, 580 U.S. at 456 (recognizing that a dismissal under § 1112(b) typically "aims to return to the prepetition financial status quo.").

The final case cited by Huntington, *In re Just Plumbing & Heating Supply, Inc.*, is also not on point with the facts of this case. The chapter 11 debtor in *Just Plumbing* offered no justification for its request for voluntary dismissal of its case. 2011 Bankr. LEXIS 4021, at *7-8, 2011 WL 4962993, at *3 (Bankr. S.D.N.Y. Oct. 18, 2011). Having satisfied its secured debt from other sources, the debtor simply indicated that it preferred to negotiate payment arrangements with its

unsecured creditors outside of bankruptcy. *Id*. The court expressed concern that any such "deals" negotiated outside of bankruptcy by a debtor that was still "experiencing significant financial difficulty" may not comport with the priority and equality of distribution that such creditors would be afforded in bankruptcy. *Id.*, 2011 Bankr. LEXIS 4021, at *8-10, 2011 WL 4962993, at *3-4.

In the present case, Mr. Schneider has established cause. As a result of the reversal of Huntington's judgment, Mr. Schneider is merely seeking to return to his prepetition (and prejudgment) financial status and resume his ordinary course dealings with his creditors while he continues to litigate the disputed claim of Huntington. *In re Camann*, 2001 Bankr. LEXIS 581, at *13-14, 2001 WL 1757075, at *4 (Bankr. D.N.H. Mar. 19, 2001) (observing that dismissal of the debtor's chapter 11 case would permit the debtor to pay undisputed third party claims without further delay).

Accordingly, the factor of equal treatment of creditors does not weigh against dismissal.

Huntington Argument #3: Dismissal Will Require Huntington To Pursue State Law Charging Lien Remedies Which Are Not As Effective As Huntington's Bankruptcy Remedies.

Huntington maintains that if this case is dismissed it will be forced to go through a lengthy litigation process in state court to obtain a judgment. At that point in time, Huntington's only method to reach Mr. Schneider's substantial net worth in his limited liability company membership interests would be through a charging order, which it argues has limited efficacy. Huntington notes that under Ohio law, a charging order is limited to member distributions which a limited liability company can easily manipulate to result in little to no distributions. Anticipating the argument that it would be no worse off than it was prepetition since Huntington was similarly constrained by these same charging order limitations, Huntington maintains that it cannot be restored to its pre-bankruptcy position due to the passage of time and expenditure of hundreds of thousands of dollars in this bankruptcy case.

In contrast, if this case is not dismissed Huntington maintains that it stands to receive a substantial recovery on its claim under either Mr. Schneider's proposed plan of reorganization—which proposed to pay Huntington in full within five years—or under Huntington's competing plan of liquidation—which contemplated a trustee would be appointed to expeditiously liquidate Mr. Schneider's limited liability company membership interests to pay a substantial portion of Huntington's claim.

Huntington's argument is not persuasive. Huntington's remedies are equally limited whether this case is dismissed or not. Huntington has no right to payment in bankruptcy or outside of bankruptcy unless and until a judgment is rendered in its favor. Huntington may actually incur more attorney fees and expenses by litigating competing plans in this bankruptcy case where liability and/or the amount of the liability of its claim has yet to be established than it would if this case is dismissed, and those issues are resolved elsewhere.

Huntington is correct in that dismissal will not restore Huntington to its prepetition status but that is primarily a result of the state court of appeals vacating Huntington's judgment. This Court cannot speculate regarding the parties' relative positions had Mr. Schneider not sought bankruptcy relief. He did seek bankruptcy relief and he did so in a legitimate effort to reorganize his financial affairs to address Huntington's large and unexpected judgment claim. During the course of the bankruptcy proceedings, circumstances changed.

That was not the case in *Dzierzawski*, which Huntington relies on for its worsening position argument. In *Dzierzawski*, the objecting creditor held a liquidated, undisputed claim when the bankruptcy case was filed and held a liquidated, undisputed claim when the debtor sought to dismiss his bankruptcy case. 528 B.R. at 399, 417. This Court sees the inequities in *Dzierzawski* of holding this objecting creditor (who held 99% of the claims in the case) in abeyance for two

years only for the debtor to subsequently change his mind about needing bankruptcy relief for no specific reason—particularly given that *Dzierzawski* was a chapter 7 case where the debtor never intended to reorganize his financial affairs to address the claim of this creditor in the first place.

Accordingly, this argument does not weigh against dismissal.

Huntington Argument #4: Dismissal Will Deprive Huntington of A Faster Resolution Of Its Claim And Will Create The Risk Of More Delay And Expense From Another Chapter 11 Filing After Huntington Obtains A New Judgment.

Huntington argues that it will be worse off if forced to return to state court to resolve its claim dispute with Mr. Schneider. It maintains that this Court can easily resolve the claim issues within the next six months and that remaining in bankruptcy would avoid the delays associated with a new chapter 11 filing by Mr. Schneider once Huntington obtains a new judgment.

Mr. Schneider disagrees, arguing that the state court is the proper forum to address the claims between he and Huntington.

While Huntington is correct that bankruptcy courts are frequently called upon to determine state law issues, the litigation between Huntington and Mr. Schneider in state court has an established history. At this stage of the litigation, this Court would be ill-advised to insert itself into this litigation—particularly given Huntington's pending appeal before the Supreme Court of Ohio. The recent complaint filed in state court by Mr. Schneider against Huntington and certain officers and employees of Huntington further mitigates against this Court interceding. [Docket Number 342, Ex. 2].

Moreover, this Court does not share Huntington's optimism that this Court could more speedily resolve the dispute between the parties than the state court would be able to do. Mr. Wayne testified regarding the next steps to be taken in state court litigation, including depositions, document discovery, briefing, oral argument and so forth. His projected timeline was twelve to

eighteen months. Huntington has not explained how the litigation would progress any differently before this Court.

This Court recognizes that Mr. Schneider may seek future relief in bankruptcy if he is unsuccessful in defending the Huntington lawsuit and in prosecuting his lawsuit against Huntington. The if's and when's of the outcome between Mr. Schneider and Huntington are not sufficient prejudice to warrant all creditors remaining in this bankruptcy case while those matters run their course in state court.

Huntington Argument #5: Dismissal May Result In The Loss Of Valuable Fraudulent Transfer Claims.

To further support that dismissal should be denied, Huntington alleges that Mr. Schneider fraudulently conveyed millions of dollars in assets to family gift trusts prior to the bankruptcy filing. Huntington asserts that it did not receive discovery on this critical issue, and specifically the timing of those transfers, despite having served Mr. Schneider with Rule 2004 discovery requests targeting this information over six months ago. Consequently, Huntington asserts that dismissal of this bankruptcy case could put it at risk of the statute of limitations expiring on state law fraudulent conveyance claims, a statute of limitations which remains preserved for two years while a debtor is in bankruptcy under 11 U.S.C. § 546(a). *See Cobra Pipeline Co., Ltd. v. 2412 N. Newton Falls Road, LLC (In re Cobra Pipeline Co., Ltd.)*, 2021 Bankr. LEXIS 2612, at *8-9, 2021 WL 4343270, at *3 (Bankr. N.D. Ohio Sept. 23, 2021) (noting that if a state law limitation period governing a fraudulent transfer action has not expired at the commencement of a bankruptcy case, then a trustee may bring the action pursuant to 11 U.S.C. § 544(b), provided that it is commenced within the two-year window provided under § 546(a)).

Although not specifically referenced in its briefing, this Court assumes that the state law statute of limitations to which Huntington refers is the limitation to bring an action pursuant to the

Ohio Uniform Fraudulent Transfer Act ("Ohio UFTA"), Ohio Rev. Code §§ 1336.01 *et seq.* Under the Ohio UFTA, an action must generally be brought within four years after a fraudulent transfer is made. Ohio Rev. Code § 1336.09. *See also Bash v. Textron Fin. Corp. (In re Fair Fin. Co.)*, 834 F.3d 651, 670 (6th Cir. 2016).[6]

Of all of Huntington's arguments, this is the argument that troubles this Court the most for the simple fact that Mr. Schneider has dragged his feet in providing discovery to Huntington regarding these alleged fraudulent transfers. Huntington's ability to conduct discovery in this bankruptcy proceeding was one of the factors this Court considered when it denied Huntington's motion to appoint a chapter 11 trustee at the outset of this case. [Docket Number 78, p. 22] ("Huntington's risks are more manageable. There is nothing that prevents Huntington from continuing to investigate the transfers to the gift trusts.").

However, this Court cannot find that this potential prejudice (if any) of the statute of limitations expiring on possible unknown transfers outweighs other factors that this Court must consider when looking to the best interests of creditors and the estate. Moreover, it seems that Huntington has information pertaining to transfers to family gift trusts that appear to have been made in late 2020. In a pending adversary proceeding, *The Huntington National Bank v. Schneider*, Adversary Proceeding Number 23-1036, Huntington dedicates seven pages of its complaint to

[6] Huntington further argues that, without discovery produced by Schneider, there could be other unknown transfers on which the statute of limitation is running. With respect to unknown transfers involving actual fraud, the Ohio UFTA contains a discovery rule that may extend the statute of limitations beyond four years. *See* Ohio Rev. Code § 1336.09(A) (stating that "[a] claim for relief with respect to a transfer or an obligation that is fraudulent . . . is extinguished unless [the] action is brought . . . within four years after the transfer was made or the obligation was incurred *or, if later, within one year after the transfer or obligation was or reasonably could have been discovered by the claimant.*"). *See also Bash v. Textron Fin. Corp. (In re Fair Fin. Co.)*, 834 F.3d 651, 672 (6th Cir. 2016) ("Ultimately, while direct guidance is limited or altogether absent, in light of Ohio's broader statute of limitations and discovery rule case law, jurisprudence from other courts, and the purpose of the Ohio UFTA, we hold that, if the Ohio Supreme Court were presented with this issue, it would conclude that the discovery rule starts to run, and a claim accrues, for purposes of § 1336.09(A) when the plaintiff reasonably could have discovered the transfer's fraudulent nature"); *Estate of Cruz v. Peffley*, 218 N.E.3d 1021, 1039 (Ohio Ct. App. 2023) ("We agree with the trial court and the *Fair Finance* court that Plaintiffs needed to know of both the transfers and their likely fraudulent nature before the one-year period began to run.").

detailing over $16 million in transfers. [Adv. Proc. 23-1036, Docket Number 1, pp. 7-13].

While it is true that the state law statute of limitation is preserved in a bankruptcy case for a period of two years under 11 U.S.C. § 546(a), given the four-year statute of limitation under the Ohio UFTA, it would appear that Huntington would have at least several months to file potential fraudulent conveyance claims under the Ohio UFTA following dismissal of Mr. Schneider's bankruptcy case. This mitigates any alleged prejudice—particularly considering the totality of interests of creditors and the estate that this Court must factor into its decision.

Huntington Argument #6: Huntington Will Be Prejudiced by The Dismissal Of The Pending Adversary Proceeding In Which Huntington Objects To A Discharge And The Loss Of All Huntington's Other Efforts In This Bankruptcy Case.

Huntington argues that it will suffer prejudice upon dismissal because of its lost efforts in this case, including those in its pending adversary proceeding. In particular, Huntington maintains that a dismissal of this case would "wash away" Mr. Schneider's false disclosures in this case and Mr. Schneider could file a new case and avoid the consequences of his misconduct.

Huntington filed its adversary complaint to object to Mr. Schneider's discharge pursuant to 11 U.S.C. §§ 727(a)(2), (a)(3), (a)(4) and/or (a)(5) or, alternatively, request its claim be excepted from Mr. Schneider's discharge pursuant to 11 U.S.C. § 523(a)(2) [Adv. Proc. 23-1036, Docket Number 1]. As it relates to the § 727 causes of action in the complaint, Huntington asserts that Mr. Schneider's schedules and operating reports contained false or omitted information and that he made unauthorized post-petition transfers.

Mr. Schneider was asked about some of these matters at the hearing, such as his missing utility and credit card creditors in his schedules and his undisclosed post-petition use of a credit card for personal expenses. As to the utility creditors, Mr. Schneider testified that he did not consider utilities creditors because those are obligations that either he or his wife pay in the

ordinary course. With respect to the credit card, Mr. Schneider testified that the card is used for both personal and business expenditures. He provides receipts to his office staff and the office staff pays the business expenses. Mr. Schneider did testify that he had made a mistake by paying an accountant from his debtor in possession account and was "yelled at" by his attorney for doing so. This expenditure, he testified, was paid back to the estate. He further addressed his failure to disclose an ownership interest in Circle Storage Operating Company I, LLC. Although he did sign a document indicating he was the sole member of the company approximately a year prior to the bankruptcy filing, Mr. Schneider testified that the signature was in error. Instead, the company was owned by Grasshopper Investments, LLC and his ownership interest in that business was disclosed in his schedules.

This Court is not going to characterize these actions on the brief record that is before this Court. This Court, however, disagrees with Huntington's premise that such actions—if improper—would be washed away if this case is dismissed. A debtor's conduct in a prior case can certainly be raised in a subsequent case.

As far as wasted efforts, the adversary proceeding is in its infancy. Furthermore, the relief requested in the complaint, whether denial of Mr. Schneider's bankruptcy discharge or excepting the debt to Huntington from discharge, will be similarly accomplished through dismissal of Mr. Schneider's bankruptcy case. Upon dismissal, Huntington will be free to pursue its state law remedies against Mr. Schneider to the full extent of the law.

Finally, this Court cannot ignore the significant impact that reversal of Huntington's judgment has on the status of matters in this case. Regardless of Huntington's efforts up to this point, the reversal forces Huntington "back to the drawing board" to establish a right to payment that takes into account the determinations made by the Court of Appeals for the First Appellate

District of Ohio and the outcome of its appeal of those determinations.

Accordingly, this argument does not weigh against dismissal.

Dismissal Over Conversion or Appointment of a Chapter 11 Trustee or Examiner

Having considered the parties' respective arguments, this Court must now determine if Mr. Schneider has met his burden to establish that dismissal of this case is in the best interests of creditors and the estate, or whether conversion or the appointment of a chapter 11 trustee or an examiner would best serve the interests of creditors and the estate. This Court has already addressed Huntington's claims of prejudice if this case is dismissed. Upon consideration of the interests of all creditors, including Huntington, and the estate as a whole, this Court finds that dismissal of this case is the appropriate alternative for the following reasons.

This bankruptcy proceeding provides no current benefit to creditors. This bankruptcy was filed to preserve the interests of all creditors. The objective of this case, as demonstrated by Mr. Schneider's proposed plan of reorganization, was to restructure his finances in a way that he could satisfy all of his financial obligations, including Huntington's claim.[7] But the circumstances have changed since the petition was filed. Because Huntington's judgment has been vacated and Mr. Schneider's liability to Huntington—and Huntington's potential liability to Mr. Schneider—remain the subject of at least two pending state court proceedings, it is an entirely wasteful and futile effort to attempt to restructure Mr. Schneider's obligations at this juncture. Until the litigation with Huntington is resolved in state court, which this Court believes to be the proper forum for doing so, the formulation and approval of any plan of reorganization will effectively be on hold. In the meantime, chapter 11 administrative expenses will continue to accrue, which

[7] This Court is expressing no opinion regarding the merits of Mr. Schneider's proposed plan of reorganization. This Court is merely observing that Mr. Schneider's plan, on its face, proposed to pay all creditors in full.

reduces funds available to pay creditors. Creditors will continue to incur legal fees and expenses from monitoring this chapter 11 case and advocating for their interests as may be appropriate. Creditors will continue to be limited in their normal business dealings with Mr. Schneider and his companies. On balance, this Courts sees no legal or practical benefit for this bankruptcy proceeding to continue.

No party in interest advocates for conversion or the appointment of a chapter 11 trustee or an examiner; nor does this Court believe that any of these alternatives would be in the best interests of creditors and the estate.

With respect to conversion, while Huntington's proposed plan of liquidation contemplates appointing a trustee to control and possibly liquidate Mr. Schneider's membership interests, there is no evidence in the record to suggest that liquidating Mr. Schneider's assets would best maximize the return to creditors. Indeed, such precipitous actions may impact the overall going concern value of the businesses and thereby negatively impact the value of Mr. Schneider's membership interests. Creditors have already expressed concern about appointing a third party to control Mr. Schneider's membership interests where such individual may or may not have the necessary skills to develop and operate the projects that serve as these lenders' collateral. Moreover, there would be significant administrative expenses associated with a chapter 7 trustee's (and any estate professionals') administration of Mr. Schneider's 70 plus limited liability companies, which operate in a variety of industries.

The same concerns hold true if this Court were to appoint a chapter 11 trustee. In addition, the chapter 11 estate would have to absorb the quarterly UST fees and expenses associated with formulating and soliciting a plan.

While a chapter 7 trustee, a chapter 11 trustee, or an examiner could investigate the circumstances surrounding Mr. Schneider's transfers to family gift trusts, that reason alone does not justify the risks and expenses associated with further bankruptcy proceedings under the facts and circumstances of this case. And, as stated previously, Huntington has avenues to pursue such claims in state court.

For these reasons, this Court finds that dismissal of this chapter 11 case is in the best interests of creditors and the estate.

B. Motion to Dismiss Pursuant to 11 U.S.C. § 305(a)

Having found that dismissal of this chapter 11 case is warranted under § 1112(b), this Court need not address Mr. Schneider's alternate grounds for dismissal under § 305(a). *In re Fortran Printing, Inc.*, 297 B.R. 89, 84 (Bankr. N.D. Ohio 2003) ("The application of § 305(a) is an extraordinary remedy[.]"); *In re L & M Video Products*, 2007 Bankr. LEXIS 2172, at *16, 2007 WL 1847387, at *6 (N.D. Ohio June 25, 2007) ("[Section 305(a)] is an extraordinary remedy that should be used sparingly and not as a substitute for a motion to dismiss under other sections of the Bankruptcy Code." (internal quotation marks and citations omitted)).

C. Request to Bar the Filing of Future Bankruptcy Cases

Huntington requests that any dismissal of this chapter 11 proceeding be conditioned on prohibiting Mr. Schneider from filing another bankruptcy petition for at least five years. In support, Huntington states that Mr. Schneider should not be permitted to "freely toggle back and forth between state and federal court based on judgment execution risk." [Docket Number 323, p. 37]. To the extent that such request is appropriate in a responsive pleading, this Court finds that Huntington has not established sufficient abuse of the bankruptcy process to warrant imposition of a bar to refiling, particularly abuse sufficient as to warrant a five year bar to refiling. *In re Four Wells Ltd.*, 2016 Bankr. LEXIS 1673, at *45-47, 2016 WL 1445393, at *16 (B.A.P. 6th Cir. April

12, 2016) (holding that a bankruptcy court abused its discretion in barring debtors from refiling a bankruptcy petition for one year where the bankruptcy court did not find bad faith or that the debtors otherwise abused the bankruptcy process).

III. Conclusion

For the foregoing reasons:

A. Debtor Raymond Joseph Schneider's *Amended Motion to Voluntarily Dismiss Chapter 11* [Docket Number 308] is granted pursuant to 11 U.S.C. § 1112(b).

B. The Huntington National Bank's request to bar Debtor Raymond Joseph Schneider from refiling a bankruptcy petition for five years is denied.

C. An order of dismissal will be entered in conjunction with this opinion.

SO ORDERED.

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