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SUBMISSION TYPE:	RESUBMISSION
NATURE OF CONVEYANCE:	Final Order Granting Motion to Dismiss Bankruptcy Proceedings After Disposition of Assets to Secured Party along with underlying Motion
RESUBMIT DOCUMENT ID:	900443721

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Eidolon Brands, LLC		07/27/2017	Corporation: TEXAS

RECEIVING PARTY DATA

Name:	ExWorks Capital Fund I, L.P.
Street Address:	333 West Wacker Drive, Suite 1620
City:	Chicago
State/Country:	ILLINOIS
Postal Code:	60606
Entity Type:	Limited Partnership: DELAWARE

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	2968156	V SOLE

CORRESPONDENCE DATA

Fax Number: 7344184213
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

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ATTORNEY DOCKET NUMBER:	264167-415788
NAME OF SUBMITTER:	Angela Alvarez Sujek
SIGNATURE:	/angela alvarez sujek/
DATE SIGNED:	04/16/2018


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**CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS**

ENTERED

**THE DATE OF ENTRY IS ON
THE COURTS DOCKET**


Russell F. Nelms
U.S. Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

EIDOLON BRANDS, LLC,
BEN HOGAN GOLF EQUIPMENT
COMPANY, LLC

Debtors.

§
§
§
§
§
§
§
§

CASE NO. 17-40300-rfn-11

CASE NO. 17-40301-rfn-11

Jointly Administered Under
Case No. 17-40300-rfn-11

**ORDER GRANTING MOTION TO DISMISS
THE CHAPTER 11 BANKRUPTCY CASES OF EIDOLON BRANDS, LLC
AND BEN HOGAN GOLF EQUIPMENT COMPANY, LLC**

Upon consideration of the motion (the “Motion”)¹ of Eidolon Brands, LLC (“Eidolon”) and Ben Hogan Golf Equipment Company, LLC (“BHGEC” and collectively with Eidolon, the

¹ Capitalized terms used but no otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

“Debtors”), both debtors and debtors in possession, for entry of an order, pursuant to sections 1112(b) and 105(a) of the Bankruptcy Code, Bankruptcy Rule 1017(a), dismissing their Chapter 11 Cases and granting such other and further relief as requested in the Motion or as the Court otherwise deems necessary or appropriate; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion will benefit the estates, and their creditors, and all other parties in interest; and due and proper notice of the Motion having been provided, and a hearing having been held to consider the relief requested in the Motion and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is GRANTED pursuant to section 1112(b) of the United States Bankruptcy Code; it is further

ORDERED that the *In re Eidolon Brands, LLC*, Case No. 17-40300, bankruptcy case is hereby dismissed; it is further

ORDERED that the *In re Ben Hogan Golf Equipment Company, LLC.*, Case No. 17-40301, bankruptcy case is hereby dismissed; it is further

ORDERED that the Bankruptcy Clerk is directed to file a copy of this Order in Case No. 17-40300 and Case No. 17-40301.

###END OF ORDER###

Submitted by:

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ATTORNEYS FOR DEBTORS
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:	§	
	§	
EIDOLON BRANDS, LLC,	§	CASE NO. 17-40300-rfn-11
BEN HOGAN GOLF EQUIPMENT	§	
COMPANY, LLC	§	CASE NO. 17-40301-rfn-11
	§	
Debtors.	§	Jointly Administered Under
	§	Case No. 17-40300-rfn-11

**MOTION TO DISMISS OR IN THE ALTERNATIVE
CONVERT THE CHAPTER 11 BANKRUPTCY CASES OF
EIDOLON BRANDS, LLC AND BEN HOGAN GOLF EQUIPMENT COMPANY, LLC**

TO THE HONORABLE RUSSEL F. NELMS, U.S. BANKRUPTCY JUDGE:

COMES NOW, Eidolon Brands, LLC (“Eidolon”) and Ben Hogan Golf Equipment Company, LLC (“BHGEC”) (each a “Debtor” in the above-captioned bankruptcy case and collectively the “Debtors”) and respectfully submit by and through their undersigned attorneys, this Motion to Dismiss or in the Alternative Convert the Chapter 11 Bankruptcy Cases of Eidolon Brands, LLC and Ben Hogan Golf Equipment Company, LLC (the “Motion”) and respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these Chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. The statutory basis for the relief requested herein is 11 U.S.C. §§ 1112(a), (b), and 105(a).

RELIEF REQUESTED

3. By this Motion, Eidolon, Case No. 17-40300, and BHGEC, Case No. 17-403010 request entry of an order pursuant to sections 1112(b) and 105(a) of the Bankruptcy Code, and Bankruptcy Rule 1017(a), dismissing their Chapter 11 bankruptcy cases (together, the “Bankruptcy Cases”) or, in the alternative, an order pursuant to section 1112(a) of the Bankruptcy Code converting the Bankruptcy Cases to cases under Chapter 7 of the Bankruptcy Code.

BACKGROUND

4. In January 2017, Eidolon Brands and the Hogan Golf Company were in default under the terms of, among other agreements, their building lease, license agreement, and two lending agreements. They had thousands of golf club components sitting at their facility in Fort Worth, Texas, thousands more in China, and no cash to complete assembly. Faced with a pending liquidation a financing agreement was negotiated with the Debtors’ pre-petition lender, ExWorks Capital Fund I, LP (“ExWorks”), to attempt a full-scale restructuring of the business under the protection of the bankruptcy court.
5. On January 28, 2017 (the “Petition Date”), each of the Debtors filed a

voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors are currently operating what business they have left as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these Bankruptcy Cases. These Bankruptcy Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. No committees have been appointed in these Bankruptcy Cases.

6. Issues relating to the use of cash collateral and debtor in possession financing were ultimately resolved through the Final Order (I) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lender; (II) Granting Adequate Protection for Use Thereof; (III) Authorizing the Debtors to Obtain Postpetition Financing Pursuant to Section 364(b), 364(c), and 364(d) of the Bankruptcy Code; and (IV) Modifying the Automatic Stay to Allow for the Relief Requested Herein [Docket No. 40] (the "Cash Collateral Order").

7. Post-petition, the Debtors had to perform significant work to create a business plan to restructure a company that had cashflow problems since its inception. The Debtors worked hard to cut costs and reduce overhead by rejecting their burdensome building lease and negotiating a lease at a much smaller facility that reduced their rent by roughly 50%. The Debtors created a much leaner business model to preserve or increase value as a going concern and maximizing asset value with the hopes of emerging from bankruptcy or attracting a potential buyer to purchase the company out of bankruptcy. The Debtors' business model achieved some initial success, but was unable to support a full-scale reorganization or attract any serious third-party buyers despite significant efforts by

everyone involved. However, ExWorks was convinced enough by the success to make a go at a new business venture. ExWorks declared a default under the terms of the Cash Collateral Order that the Debtors could not cure. ExWorks conducted a sale under Article 9 of the Uniform Commercial Code and pursuant to the terms of the Cash Collateral Order. ExWorks was the only bidder at the sale. Following the sale, the Debtors began the process of winding down the cases because they no longer had any assets—and by extension—any business to operate.

Basis for Relief

A. Cause Exists to Dismiss the Bankruptcy Cases because the Debtors Have Ceased Business Operations, Have No Assets for Distribution, and Are Likely Unable to Confirm Chapter 11 Plans.

8. The Debtors submit that cause exists to dismiss their Bankruptcy Cases. With ExWorks already having conducted a sale and purchase (credit bid) of all of the assets of the Debtors in accordance with the Cash Collateral Order, the Debtors no longer have any assets. Additionally, ExWorks has terminated the Cash Collateral Order which included debtor in possession financing. Without access to cash, the Debtors have no hope of operating. Further, Perry Ellis has terminated the license agreement with the Debtors, pursuant to which the Debtors had authority to utilize the Ben Hogan name. Without this license and without any inventory, the Debtors essentially have no business to operate. Finally, the real property lease for the location of the Debtors will expire on its own terms at the end of June.

9. Section 1112(b)(1) provides that “on 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 estate ...” 11 U.S.C. § 1112(b)(1). Section 305(a)(1) provides that “The Court, after notice and a hearing, may

dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if – (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or” 11 U.S.C. § 305(a)(1). Section 1112(b) provides that a court may dismiss a debtor’s chapter 11 case “for cause.” 11 U.S.C. § 1112(b); See *In re Albany Partners, Ltd.*, 749 F.2d 670, 674 (11th Cir. 1984); *In re Blunt*, 236 B.R. 861, 864 (Bankr. M.D. Fla. 1999). A determination of cause is made by the court on a case-by-case basis. See *Albany Partners*, 749 F.2d at 674. Further, the Court is not required to explain its dismissal of a case in detail because such a decision is made in the Court’s sound discretion. *In re Atlas Supply Corp.*, 857 F.2d 1061, 1063 (5th Cir. 1988) (stating that a court may be guided by equitable principals in determining a motion to dismiss and that the decision whether to grant a motion to dismiss a petition in bankruptcy lies within the discretion of the bankruptcy judge). Whether cause exists under section 1112(b) of the Bankruptcy Code “rests in the sound discretion” of the bankruptcy court. *In re Sullivan Cent. Plaza I, Ltd.*, 935 F.2d 723, 728 (5th Cir. 1991); *In re Koerner*, 800 F.2d 1358, 1367 & n.7 (5th Cir. 1986).

10. Section 1112(b)(4) of the Bankruptcy Code provides a nonexclusive list of 16 grounds for dismissal. See 1112(b)(4)(A)-(P). One such ground is the “inability to effectuate substantial consummation of a confirmed plan.” 11 U.S.C. §1112(b)(4)(M). The inability to effectuate a plan arises when a debtor “lacks the capacity to formulate a plan or to carry one out.” See *In re Preferred Door Co.*, 990 F.2d 547, 549 (10th Cir. 1993) (quoting *Hall v. Vance*, 887 F.2d 1041, 1044 (10th Cir. 1989)). An additional ground to dismiss a chapter 11 case is “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A).

11. Given the sale of all of their assets, the loss of the Ben Hogan license and the loss

of their office space, the Debtors have no assets left to administer and no operations to continue undertaking. Therefore, the continuance of the Bankruptcy Cases will only result in the potential incurrence of unnecessary administrative expenses that the Debtors will be unable to pay. Accordingly, the Debtors submit that cause exists to dismiss their Bankruptcy Cases under section 1112(b) of the Bankruptcy Code in light of their inability to effectuate a chapter 11 plan.

12. Under section 1112(b) of the Bankruptcy Code, “cause” to dismiss a chapter 11 case also includes “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). Courts have interpreted a “reasonable likelihood of rehabilitation” to refer to the debtor’s “ability to restore the viability of its business.” *Loop Corp. v. U.S. Trust*, 379 F.3d 511, 516 (8th Cir. 2004); see also *In re Gonic Realty Trust*, 909 F.2d 624, 627 (holding that “with no business left to reorganize, Chapter 11 proceedings were not serving the purpose of rehabilitating the debtor’s business.”).

13. In their current state, the Debtors have no operations or incoming revenue. Their continued chapter 11 cases only serve to incur additional administrative expenses. Therefore, cause exists to dismiss the Debtors’ chapter 11 cases under section 1112(b) of the Bankruptcy Code because they have no prospects of rehabilitation via the chapter 11 process.

B. Dismissal of the Bankruptcy Cases is Necessary and Appropriate and in the Best Interests of the Their Creditors and Estates

14. Once a court determines that cause exists to dismiss a chapter 11 case, the court must also evaluate whether dismissal is in the best interests of creditors and the estate. 11 U.S.C. § 1112(b). The Debtors have no tangible assets and no ongoing businesses to reorganize, which constitutes sufficient cause for dismissal.

15. Dismissal of the Debtors' bankruptcy cases is warranted because the alternative—conversion to a chapter 7—would not serve the best interests of their estates or creditors. The dismissal of the Bankruptcy Cases would allow the Debtors and their respective estates to avoid the unnecessary accrual of potential chapter 7 administrative expenses that would be associated with any conversion of the Bankruptcy Cases to cases under chapter 7. There are no liquid assets or hard assets available to monetize to fund these expenses.

C. In the Alternative, the Debtors Request that the Bankruptcy Cases be Converted to Cases Under Chapter 7

16. Although the Debtors maintain that sufficient cause exists under section 1112(b) of the Bankruptcy Code to dismiss the Bankruptcy Cases as their businesses are no longer in operation, cannot propose a confirmable plans of reorganization, have no prospects for rehabilitation and doing so would be in the best interest of the their estates, should the Court find that dismissal is improper at this juncture, they respectfully request that the Court convert the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code.

17. Section 1112(a) of the Bankruptcy Code provides that:

The debtor may convert a case under this chapter to a case under chapter 7 of this title unless –

- 1) the debtor is not a debtor in possession;
- 2) the case originally was commenced as an involuntary case under this chapter; or
- 3) the case was converted to a case under this chapter other than on the debtor's request

11 U.S.C. § 1112(a) (emphasis added).

18. Congress has indicated that section 1112(a) “gives the debtor the absolute

right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case.” In re Schuler, 119 B.R. 191, 192 (Bankr. W.D. Mo. 1990) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 405 (1977)). Other courts have also suggested that, provided the explicit exceptions set forth in section 1112(a) do not exist, a debtor has an absolute right to convert its case from a chapter 11 to one under chapter 7. See In re Texas Extrusion Corp., 844 F.2d 1142, 1161 (5th Cir. 1988); In re Marill Alarm Systems, Inc., 100 B.R. 606, 607 (Bankr. S.D. Fla. 1989).

19. As a threshold matter, none of the limitations outlined in section 1112(a) apply to the Debtors’ cases. Each Debtor is a debtor in possession. Their Bankruptcy Cases were commenced by filing voluntary petitions for relief, and there have been no prior conversions. Furthermore, no unusual circumstances exist that would warrant denial of this Motion.

20. Finally, the Debtors do not currently have sufficient funds available to formulate and seek confirmation of chapter 11 plans. It is in the judgment of Eidolon and BHGEC that, under the circumstances, the goal of maximizing the net recoveries to creditors will best be achieved through an orderly process that may be administered by a chapter 7 trustee.

Conclusion

21. Based on the foregoing, Eidolon and BHGEC submit that cause exists under section 1112(b) of the Bankruptcy Code to dismiss the Bankruptcy Cases because Eidolon and BHGEC have no ongoing business operations, no business to reorganize or liquidate, and de minimis assets. The Court also may grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, which provides that “[t]he

court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

22. In the alternative, although Eidolon and BHGEC maintain that sufficient cause exists under sections 1112(b) and 105(a) of the Bankruptcy Code to dismiss the Bankruptcy Cases, if the Court finds that dismissal is improper at this juncture, Eidolon and BHGEC respectfully request that the Court convert their Bankruptcy Cases to cases under chapter 7 pursuant to section 1112(a) of the Bankruptcy Code.

WHEREFORE premises considered, Eidolon and BHGEC respectfully request that the Court enter an order (a) dismissing the Eidolon and BHGEC Bankruptcy Cases pursuant to sections 1112(b) and 105(a) of the Bankruptcy Code, or in the alternative, (b) converting the Bankruptcy Cases to cases under chapter 7 pursuant to section 1112(a) of the Bankruptcy Code, and (c) granting such other and further relief as this Court may deem just and proper.

Dated: June 27, 2017

Respectfully Submitted,

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