SO ORDERED.

SIGNED this 15th day of October, 2021.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:	)	
	)	
Aronowitz Delaware 2 Family Limited Partnership,	)	Case No. 21-50464
	)	
	)	
Debtor.	)	Chapter 11
	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING MOTION TO DISMISS

This case came before the Court for hearing on October 6, 2021, on the *Motion to Dismiss the Debtor's Case or Convert to a Case Under Chapter 7 of the Bankruptcy Code* filed by PLDHC Acquisitions, LLC ("PLDHC") on August 27, 2021. ECF No. 30 ("Motion to Dismiss").[1] Aronowitz Delaware 2 Family Limited Partnership ("Debtor") filed a response and supplemental response to the motion. ECF Nos. 36 and 43, respectively. Under Fed R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr.

[1] On September 1, 2021, PLDHC filed its waiver of the requirement under 11 U.S.C. § 1112(b)(3) that a hearing be held on a motion to dismiss within 30 days after the filing of the motion. ECF No. 32.

P. 7052, the Court makes the following findings of fact and conclusions of law.[2] For the reasons set forth below, the Court will grant the Motion to Dismiss or Convert and dismiss the case.

I. Jurisdiction and Authority

The Court has jurisdiction over the subject matter of this case under 28 U.S.C. § 1334(a) and over this proceeding under 28 U.S.C. § 1334(b). Under 11 U.S.C. § 157(a), the United States District Court for the Middle District of North Carolina has referred this case and this proceeding to this Court by its Local Rule 83.11. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and 157(b)(2)(A), in which this Court has statutory authority to enter final judgments. The Court has constitutional authority to enter final judgment in this proceeding.

II. Findings of Fact

Debtor is a limited partnership formed under the laws of the State of Deleware. Debtor's general partners are Jack L. Aronowitz ("Aronowitz"), who individually owns 49.5% of the interests of the Debtor; the Jeanette Aronowitz Family Trust, which owns 49.5% of the interests; and Aronowitz Management Second, LLC, which owns 1%. Debtor owns property located at 406 Meadows Lane, Banner Elk, Avery County, North Carolina 28604 (the "Real Property"). Debtor owns no other property or assets. ECF No. 1, Schedule A/B. The

[2] To the extent any findings of fact are determined to be conclusions of law, the Court adopts them as such, and *vice versa*.

Real Property is used by Aronowitz as his summer home and a vacation home for his family. Aronowitz formed Debtor for estate planning and tax purposes with the intention of passing the Real Property to his grandchildren. The Real Property has never had any other material business operations, activities, use, or purpose. Debtor has not rented the Real Property to non-family members. Debtor does not have any income or employees and never has. Aronowitz did not purchase the Real Property for purposes of speculation, and he does not speculate in other real properties.

On January 6, 2011, Debtor executed a Promissory Note (the "Original Note") evidencing an indebtedness to Royal Bank of Canada ("RBC"), in the amount of $1,237,000.00. As security for the Original Note, the Debtor executed and delivered to RBC a Deed of Trust Securing Future Advances, which RBC caused to be recorded on January 6, 2011 in the Avery County, North Carolina Register of Deeds at Book 453, Page 514 (the "Original Deed of Trust").

In October of 2016, PLDHC and Health-Chem Diagnostics, LLC ("Health Chem") entered into certain agreements for PLDHC to acquire all the assets of Health Chem. In addition to the Health Chem assets, PLDHC entered into a Consulting Services Agreement with Aronowitz and Leon Services, LLC ("Leon"), a Patent and Intellectual Property Assignment Agreement with Aronowitz, and a Non-Competition, Non-Solicitation and Non-Disclosure Agreement with Health Chem, Aronowitz, and Leon. Collectively, the

transactions reflected in these documents and the other related documents shall be referred to as the "Health Chem Transaction."

In connection with the Health Chem Transaction, RBC assigned the Original Note and Original Deed of Trust to PLDHC through an Assignment of Note and Deed of Trust that PLDHC caused to be recorded on October 31, 2016 in the Avery County, North Carolina Register of Deeds at Book 504, Page 1187. Also, on October 31, PLDHC and Debtor amended the Original Deed of Trust and Original Note through a Modification of Promissory Note and Deed of Trust (the "Modified Deed of Trust") and executed a First Modification Promissory Note (the "Modified Note"). According to the Modified Note, the outstanding principal indebtedness owed to PLDHC as of October 31, 2016 was $1,000,000.00. The Modified Note requires that "interest only on the then-outstanding principal balance . . . be paid quarterly, beginning February 1, 2017, and continuing on each May 1, August 1, and November 1 thereafter, until the entire principal balance and all accrued interest hereunder is paid in full." The Modified Note further provides that the payments shall be made pursuant to the consulting agreement and intellectual property agreements executed in connection with the Health Chem Transaction. These agreements contemplate that, in the event of a default in payment under the Modified Note, PLDHC has the right to offset any consulting fees or royalties owed by PLDHC to

Aronowitz "if, as, and when due or payable to [Aronowitz] . . . to cure such Default." Exhibit 2, § 3.6.

Numerous disputes arose between the parties soon after the Health Chem transaction. On August 24, 2020, Aronowitz and Leon commenced a civil suit[3] (the "New York Litigation") against PLDHC[4] in the Supreme Court of New York, County of Nassau (the "New York Court") alleging claims for an accounting, breach of contract, and fraudulent inducement. The New York Litigation remains pending, although the New York Court dismissed certain of Aronowitz's claims for relief, including fraud in the inducement. See Exhibit 20.

Aronowitz never made any payments on the Modified Note, but PLDHC set off certain consulting fees against the amounts due under its terms.[5] On October 22, 2020 PLDHC caused the substitute trustee under the Deed of Trust (the "Substitute Trustee") to commence a foreclosure action against the Real Property in the North Carolina General Court of Justice (the "North Carolina State Court"). On appeal from an order by the clerk of the North Carolina State Court authorizing the foreclosure sale, the Superior Court of North

[3] Aronowitz and Leon allege in the complaint filed in the New York Litigation that Aronowitz is the sole member and manager of Leon. Exhibit 9, ¶ 3.

[4] The complaint also asserted claims against Mitchell Singer and Evan Singer, individually, which are not relevant for purposes of this order.

[5] The parties dispute whether these offsets were authorized under the terms of the agreements, but Aronowitz concedes that his attorney consented to at least a portion of these offsets, and a resolution of that dispute is not relevant for purposes of this order.

Carolina, Avery County, entered its April 26, 2021 order (the "Sale Order") determining the validity of the debt, the default, and authorizing the Substitute Trustee to sell the Real Property. Exhibit 12. Neither Debtor, nor Aronowitz appealed the Sale Order.

On or about March 9, 2021, Aronowitz requested that the New York Court preliminarily enjoin the foreclosure proceeding, which the New York Court set for hearing on April 29, 2021. While the New York Court considered the request, Aronowitz and Debtor also commenced an action in the North Carolina State Court against PLDHC and the Substitute Trustee, requesting that the State Court enjoin the foreclosure sale on equitable grounds under N.C. Gen. Stat. §§ 1A-1, Rule 65, and 45-21.34. On July 2, 2021, the North Carolina State Court denied the injunction and dismissed the complaint with prejudice, finding, inter alia, that plaintiffs failed to demonstrate a likelihood of success on the merits. Exhibit 19, ¶ 10.[6] On the same day, the New York Court similarly denied Aronowitz's motion for a preliminary injunction, finding that Aronowitz had failed to demonstrate by clear and convincing evidence that he was likely to succeed on the merits in the New York Litigation.[7]

[6] On July 9, 2021, Debtor and Aronowitz filed a Notice of Appeal to the North Carolina Court of Appeals but have not taken any further action to perfect the appeal. Exhibit 21.

[7] On July 27, 2021, Aronowitz and Leon appealed the order denying the preliminary injunction but have not taken any further action to perfect the appeal. Exhibit 22.

The foreclosure sale was held on July 12, 2021, and the last date for an upset bid was on July 22. On July 21, 2021, Debtor commenced this case under chapter 11 of title 11.

III. Conclusions of Law

PLDHC requests that the Court dismiss or convert this case under § 1112(b). Absent limited exceptions, "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 appointment of a chapter 11 trustee is in the best interest of either creditors or the estate.[8] 11 U.S.C. § 1112(b)(1). The movant bears the burden of proving cause by a preponderance of the evidence. If the movant establishes cause by a preponderance of the evidence, the burden then shifts to the respondent to demonstrate unusual circumstances under § 1112(b)(2) which show that converting or dismissing the case is not in the best interests of creditors and the estate. In re MF Glob. Holdings Ltd., 465 B.R. 736, 742 (Bankr. S.D.N.Y. 2012). The court has broad discretion in determining whether conversion or dismissal is in the best interests of creditors and the estate. Id.; see also In re Creech, 538 B.R. 245, 248 (Bankr. E.D.N.C. 2015).

[8] No party in interest has requested appointment of a trustee or examiner, and there is no purpose to do so in this case.

1. PLDHC has established cause to dismiss or convert.

While the Code does not explicitly define "cause" for purposes of § 1112(b)(1), § 1112(b)(4) provides a "non-exhaustive list of enumerated examples of facts that would constitute cause." In re Landmark Atl. Hess Farm, LLC, 448 B.R. 707, 711 (Bankr. D. Md. 2011). As explained by the First Circuit:

> Although the language of section 1112(b) provides a list of possible circumstances for "cause," this is not an exhaustive list, and in fact "the court is not limited to the enumerated grounds in making its determination of some 'cause.'" Thus, in determining "cause" for dismissal the court may consider other factors as they arise and use its powers to reach appropriate results in individual cases. The court, however, must exercise its sound judgment in reaching a determination and must ascertain that the decision is in the best interest of creditors.

In re Gonic Realty Tr., 909 F.2d 624, 626-27 (1st Cir. 1990) (citations omitted).[9] A single "cause" is sufficient to warrant

[9] Congress substantially revised section 1112(b) in 2005. See Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. 109-8, § 442 92005 (2005). Former section 1112(b) provided that the court "may" dismiss or convert a case for cause. Under the prior standard, courts were permitted to exercise broad discretion to determine whether any demonstrated cause was sufficient to dismiss or convert. See, e.g., In re Lumber Exch. Bldg. Ltd. P'ship, 968 F.2d 647, 648 (8th Cir. 1992) (citing Gonic Realty Trust, 909 F.2d at 626-27)). The revisions altered this rubric. See Collier, ¶ 1112.04[4] ("the statute does not appear to provide unfettered discretion in determining whether cause exists . . . [i]f one of the enumerated examples of cause set forth in section 1112(b)(4) is proven by the movant by a preponderance of the evidence"). The revisions separated former section 1112(b) into four subsections, and provided that, where one of the enumerated bases for cause is established by a preponderance of the evidence, the court "shall" convert or dismiss a case, whichever is in the best interests of the creditors and the estate, unless the court appoints a chapter 11 trustee or the exception in newly created section 1112(b)(2) applies. Debtor did not argue that the exception under section 1112(b)(2) applies or establish any unusual circumstances that would prohibit dismissal. In any event, the statute makes clear that the exception under section 1112(b)(2) does not apply where cause is established under section 1112(b)(4)(A), as it has been here. See 11 U.S.C. § 1112(b)(2)(B).

dismissal or conversion. In re Creekside Sr. Apartments, L.P., 489 B.R. 51, 60 (B.A.P. 6th Cir. 2013) (citing Reagan v. Wetzel (In re Reagan), 403 B.R. 614, 621 (8th Cir. BAP 2009)); see also Hoover v. Harrington (In re Hoover), 828 F.3d 5, 9 (1st Cir. 2016) (Where the bankruptcy court found three bases for cause, the appellate court only reached the first because "one cause is enough.").

In this case, PLDHC asserts that cause exists under § 1112(b)(1) because Debtor filed this case in bad faith, and under § 1112(b)(4)(A) due to a substantial continuing loss or diminution of the estate and absence of a reasonable likelihood of rehabilitation. For the reasons set forth below, and mindful of the purposes of chapter 11 relief, the Court finds that PLDHC has established cause on both bases.

a. PLDHC has produced sufficient evidence to prove bad faith.

PLDHC asserts that there is cause under § 1112(b)(1) because the Debtor filed this bankruptcy case in bad faith. It is well settled in this circuit that there is "a generalized 'good faith filing' requirement . . . in § 1112(b)." Carolin Corp. v. Miller, 886 F.2d 693, 699 (4th Cir. 1989).[10] To dismiss a case for cause

[10] Stating further:

> It is of course obvious that "if there is not a potentially viable business in place worthy of protection and rehabilitation, the Chapter 11 effort has lost its raison d'etre . . . ." In re Winshall Settlor's Tr., 758 F.2d 1136, 1137 (6th Cir. 1985) (quoting In re

due to an absence of good faith in filing, a court must find "*both* objective futility and subjective bad faith . . .." Id. at 700–01 (emphasis in original); see also In re SUD Prop., Inc., 462 B.R. 547, 551 (Bankr. E.D.N.C. 2011) ("The Fourth Circuit utilizes a two-prong test for determining whether a Chapter 11 petition should be dismissed for lack of good faith."); and In re Crown Fin., Ltd., 183 B.R. 719, 721-22 (Bankr. M.D.N.C. 1995) (same). While "separate inquiries into each are required, proof inevitably will overlap." Carolin, 886 F.2d at 701. Courts "consider the totality of the circumstances." Crown Fin., 183 B.R. at 721-22 (noting that "there is no exhaustive list of factors which should be considered; there is no single factor that will necessarily lead to a finding of bad faith"). "The overall aim of the two-pronged inquiry is to determine whether the purposes of the Code would be furthered or advanced by permitting the Chapter 11 petition to proceed past filing." Id. at 722.

In assessing objective futility, the court should "concentrate on assessing whether 'there is no going concern to preserve . . . and . . . no hope of rehabilitation, except according to the debtor's 'terminal euphoria.'" Carolin, 886 F.2d at 701-

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> Ironsides, 34 B.R. 337, 339 (Bankr. W.D. Ky. 1983)), and the ability of bankruptcy courts to inquire into that critical matter at the very threshold would seem indispensable to proper accomplishment of the basic purposes of Chapter 11 protection.

Id. at 698.

02 (quoting In re Little Creed Development Co., 779 F.2d 1068, 1073 (5th Cir. 1986)). In this case, there is no ongoing business for which bankruptcy can protect its value, and there is no hope of rehabilitation.

Debtor argues that it can propose a plan that will liquidate the Real Property if it loses the New York Litigation, and that liquidating plans are permissible under chapter 11.[11] This may be true as far as it goes, but it does not constitute a hope of rehabilitation or a proper purpose for a chapter 11 bankruptcy and the invocation of the automatic stay. Rehabilitation and reorganization are not interchangeable concepts. Liquidating plans facilitate maximizing the value of a going concern. As explained by Collier on Bankruptcy:

> Rehabilitation is not another word for reorganization. Rehabilitation means to reestablish a business. Whereas confirmation of a plan could include a liquidation plan, rehabilitation does not include liquidation.

Collier ¶ 1112.04[6][a][ii] (discussing cause under § 1112(b)(1)(A)) (footnotes omitted); see also In re Paterno, 511 B.R. 62, 68 (Bankr. M.D.N.C. 2014) ("Rehabilitation is a more demanding standard than reorganization, and is defined by whether

[11] Mr. Aronowitz articulated the purpose of filing as follows:

> Delay any sale, which is in error, until the lawsuit in New York is adjudicated, at which point, I'm sure we will find out that I don't owe PLDHC anything and they have no right to foreclose.

Transcript of August 20, 2021 Chapter 11 341 Meeting, at 14, lines 1-5.

the debtor will be able to reestablish his business on a firm, sound basis[;]" and "Where a debtor proposes a plan of pure liquidation, there is no likelihood of rehabilitation.").

There is no going concern here and there is no business to rehabilitate. Debtor argues that it has business operations because the property is owned through an artificial entity, the partners expend funds to maintain the property, and hope that its value will appreciate. The evidence demonstrates that the Real Property is used solely for the personal use of Aronowitz and his family members. The mere fact that the Real Property is owned through an artificial entity created for the estate planning purposes of its principal, and that the family maintains the property and hopes that its value will appreciate does not create an ongoing business operation for which chapter 11 is intended to preserve value.

Debtor has no assets other than the Real Property. According to Schedule A/B, there is no cash, deposit accounts, accounts receivable, inventory, or equipment. There are no employees or jobs to protect. The Real Property does not generate any rental or other revenue. The only way Debtor can pay the expenses necessary to maintain the Real Property is through unstructured cash infusions by Mr. Aronowitz. See ECF No. 38. Therefore, there is no purpose in this case to preserve going concern value or to rehabilitate a viable business, and the case was filed with

objective futility under the standards of Carolin. See also Crown Fin., 183 B.R. at 722.

The overarching consideration for subjective bad faith is closely related. "The subjective bad faith inquiry is designed to insure that the petitioner actually intends 'to use the provisions of Chapter 11 . . . to reorganize or rehabilitate an existing enterprise, or to preserve going concern values of a viable or existing business.'" Carolin, 886 F.2d at 702 (citation omitted). The aim of this inquiry is "to determine whether the petitioner's real motivation is 'to abuse the reorganization process' and 'to . . . delay creditors . . . without an intent or ability to reorganize the debtor's financial affairs.'" Id.; see also Crown Fin., 183 B.R. at 722 (citing Carolin, 886 F.2d at 702).

Debtor filed this case with subjective bad faith. Debtor is not an operational business, but merely holds a single asset for purposes of Aronowitz's estate planning. There is no viable business to rehabilitate. Debtor did not file with intent to use the provisions of chapter 11 to reorganize, and in fact concedes that the purpose of the filing was solely to invoke the automatic stay so that the foreclosure could be delayed until he hopes to prevail in the New York Litigation. Further, PLDHC is Debtor's

only scheduled creditor with the exception of putative debts owed to Aronowitz, a family member, and Leon.[12]

This case represents nothing more than a state court dispute in which one of the parties has attempted to utilize the automatic stay in bankruptcy as a litigation tactic after failing to obtain an injunction in either of the state fora. This situation is precisely the type of abuse of the bankruptcy system described by Judge Stocks in Crown Financial:

> What has happened in this case is that a bitter, hotly contested controversy has boiled over from the state court into the bankruptcy court. Chapter 11 was not intended to provide an additional forum for the continuation of litigation over what is essentially a two-party dispute. An attempt to do so is an abuse of the bankruptcy process which warrants the dismissal of a Chapter 11 filing. Where a debtor's reorganization effort involves essentially a two-party dispute which can be resolved in state court, and the filing for relief under Chapter 11 is intended to frustrate or delay the legitimate efforts of creditors to enforce their rights against the debtor, dismissal for cause is warranted.

[12] Although scheduled, neither Aronowitz, nor Leon have filed claims in the case, and neither offered any evidence of the basis for their putative claims. Debtor also scheduled the Elk River Property Owner Association (the "POA") as a secured debt in an "unknown" amount. The POA has not filed a proof of claim. On August 16, 2021, Debtor filed its motion to permit Aronowitz to fund Debtor's expenses, including any POA assessments, property maintenance expenses, and any county real estate taxes. ECF No. 23. In the motion, Debtor states that "[t]o date, the POA charges and the County Taxes are current and there are no outstanding maintenance bills." Id. at ¶ 7. The Court authorized Aronowitz to fund such amounts on an interim basis, but he has no obligation to do so, and the Court expressly ordered that any such payments shall "not constitute a loan from [Aronowitz] to the Debtor." ECF No. 38 at 1. On August 2, 2021, the IRS filed its proof of claim asserting an estimated unsecured claim of $4,086.45 against the partnership as a result of the partnership's failure to file tax returns. Claim No. 1 (the claim reflects estimated taxes for all applicable years at $0, and the claimed amount is comprised solely of $456.45 in interest for the 2011 tax year, and $3,630 in penalties).

Crown Fin., 183 B.R. at 723. As in Crown Fin., and as conceded by Aronowitz, the filing was not intended for any purpose of corporate reorganization, but to delay the efforts of PLDHC to enforce the Modified Note and Deed of Trust during related litigation. The North Carolina State Court has established the validity of the debt and the default, a determination that neither Debtor, nor Aronowitz appealed. This is not a proper bankruptcy purpose. Therefore, this case was filed with objective futility and subjective bad faith, and cause exists to dismiss or convert.

b. PLDHC has shown also a substantial or continuing loss or diminution of the estate and an absence of likelihood of rehabilitation.

PLDHC also contends that there is cause to dismiss this case under § 1112(b)(4)(A) in that Debtor does not generate income and there is no likelihood of a rehabilitation. Having determined that cause to dismiss or convert for bad faith, the Court does not need to consider additional cause. Nevertheless, so that there is a full record and resolution, the Court will consider whether additional cause exists under § 1112(b)(4)(A). To establish cause under this section, the movant must establish both: (1) a substantial or continuing loss to the estate postpetition;[13] and (2) the absence of a reasonable likelihood of rehabilitation. Paterno, 511 B.R. at 66.

[13] The enumerated bases for cause under section 1112(b)(4) each focus on the postpetition circumstances of a debtor and its postpetition progress toward reorganization. See Collier ¶ 1112.07[1].

The estate is suffering continuing loss. As recognized by the Eighth Circuit, "[i]n the context of a debtor who has ceased business operations and liquidated virtually all of its assets, any negative cash flow—including that resulting only from administrative expenses— . . . is enough to satisfy the first element of § [1112(b)(4)(A)]." Loop Corp. v. U.S. Tr., 379 F.3d 511, 516 (8th Cir. 2004). In this case, Debtor has never operated a business, does not generate income, and continues to incur expenses. Thus, Debtor suffers continuing loss as contemplated by § 1112(b)(4)(A).[14]

As explained above, there is no hope of rehabilitation in this case. Debtor never has operated a business and does not intend to do so. Thus, there is no likelihood of rehabilitation.

[14] Debtor presented into evidence, without objection, two appraisal reports of the Real Property. One appraisal reflected a purported value as of October 16, 2016 of $1,268,000. Ex. 36. The other appraisal reflects a value as of September 22, 2021 of $1,500,000. Ex. 37. However, the 2021 appraisal states that its estimated value "is not to be used for litigation of any sort what so ever. [sic]" Id. at 3. There was very little evidence about the condition of the property other than Aronowitz testified that it was in need of significant updating, and Debtor offered no evidence of the value of the Real Property on the petition date.

Debtor argues that this putative increase in value since 2016 demonstrates that the Real Property is continuing to appreciate and that there is equity. As discussed above, § 1112(b)(4)(A) focuses solely on postpetition conditions. Debtor offered no evidence that the property has appreciated in the two and one half months since the July 21, 2021 petition date. PLDHC's credit bid $1,344,836.29 at the foreclosure sale. ECF No. 30, Ex. M. Therefore, there is no evidence of continuing postpetition appreciation of the Real Property and insufficient evidence of any equity in the property that would ameliorate the continued expenses of maintaining the property and the costs of administering this chapter 11 case. Regardless, Debtor concedes that it has no intention of selling the Real Property unless and until it loses the New York Litigation.

Because Debtor is suffering continuing loss and has no hope of rehabilitation, cause exists under § 1112(b)(4)(A).

2. Dismissal or Conversion

Having determined that cause exists, the Court must decide whether dismissal, conversion, or the appointment of a trustee is in the best interests of creditors and the estate. 11 U.S.C. § 1112(b)(1); In re NOA, LLC, 578 B.R. 534, 541 (Bankr. E.D.N.C. 2017) (quoting In re Sydnor, 431 B.R. 584, 600 (Bankr. D. Md. 2010)). The court has broad discretion in making this determination. In re Helmers, 361 B.R. 190, 196 (Bankr. D. Kan. 2007). "In deciding whether dismissal or conversion is warranted, the court is mindful of the twin goals of a chapter 11 reorganization: preserving viable businesses and maximizing creditors' returns." Creech, 538 B.R. at 248. The court further should consider the expressed preference of the creditors since "'parties will be the best judge of their own interests[.]'" Lakefront Inv'rs LLC v. Clarkson, 484 B.R. 72, 82 (D. Md. 2012), aff'd sub nom. Lakefront Inv'rs, LLC v. Sydnor, 520 F. App'x 221 (4th Cir. 2013) (quoting Collier § 1112.04[7]).

In exercising its discretion, a court should consider various factors including:

> (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal; (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted; (3)

> whether the debtor would simply file a further case upon dismissal; (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of the creditors; (5) in assessing the interests of the estate, whether conversion or dismissal would maximize the estate's value as an economic enterprise; (6) whether any remaining issues would be better resolved outside the bankruptcy forum; (7) whether the estate consists of a "single asset;" (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests; (9) whether a plan had been confirmed and whether any property remains in the estate to be administered; and (10) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns.

Id. at 83 (citing Collier § 1112.04[7] (citing cases)); see also Andover Covered Bridge, LLC v. Harrington, 553 B.R. 162, 177 (B.A.P. 1st Cir. 2016). In its analysis, a court reviews each remedy and its "impact on the creditors and on the estate . . . ." In re Superior Siding & Window, Inc., 14 F.3d 240, 243 (4th Cir. 1994). Dismissal is appropriate where a "Chapter 7 liquidation would likely produce little to no benefit to creditors and the estate." In re Washington, No. C/A 09-08248-DD, 2010 WL 5128955, at *4 (Bankr. D.S.C. Sept. 27, 2010).

Here, (1) Debtor has never operated, and there is no indication of any potentially recoverable transfers that could benefit creditors if a trustee were appointed; (2) dismissal would not result in any loss of rights; (3) further filings upon dismissal are unlikely unless such filings are also in bad faith, which is not a reason to retain jurisdiction in a chapter 7 case;

(4) there is insufficient evidence that a chapter 7 trustee could sell the Property for an amount sufficient to satisfy the secured claim of PLDHC, the chapter 11 administrative expenses, the administrative expense in a chapter 7, and the fees and commissions of a chapter 7 trustee and counsel; (5) the state courts can timely adjudicate the issues between the parties; (6) no non-insider creditor appeared to contest PLDHC's request for dismissal; (7) the estate consists of a single asset; (8) with the exception of PLDHC, there are no other material, non-insider creditors that need protection;[15] (9) no plan has been confirmed; and (10) there are no environmental or safety concerns apparent from the record. For these reasons, and to prevent a manifest abuse of the bankruptcy system, the case will be dismissed.

IV. Conclusion

For the reasons set forth above, the Court will enter its order granting the Motion to Dismiss.

[End of Document]

[15] Any non-compensatory penalty claim by the IRS would be subordinated in a chapter 7 case under § 726(a)(4), leaving only one non-insider unsecured claim in the amount of $456.45.