This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Beth A. Buchanan
Beth A. Buchanan
United States Bankruptcy Judge

Dated: August 23, 2011

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re	)	
	)	
AB MARKETING LLC	)	**Case No. 11-14421**
	)	**Chapter 11**
	)	**Judge Buchanan**
Debtor in Possession	)	

ORDER GRANTING MOTION TO DISMISS

This matter is before this Court on the *Motion of Martini on Ice, LLC to Dismiss* ("Motion to Dismiss") filed by Creditor Martini on Ice, LLC ("Movant") [Docket Number 29]. An expedited hearing was held on August 23, 2011. Eric Goering, Esq. appeared on behalf of the Movant, Donald Mayer, Esq. appeared on behalf of the Debtor in Possession, and Doug Hawkins, Esq. appeared on behalf of the United States Trustee. In accordance with the decision rendered from the bench, the Motion to Dismiss is hereby GRANTED.

Movant leases a 250,000 square foot facility to the Debtor, which includes two ice rinks, an inline skating rink, an adult daycare, a child daycare, six basketball courts, a pro shop, bar and grill, and office space. The parties stipulated to the following facts:

1. Rent for the facility is $63,000 per month;
2. The Debtor in Possession has paid $8,500 of the post-petition pro-rated July rent;
3. No August rent has been paid;
4. There is no liability insurance on the leased property;
5. There is no property insurance on the leased property;

6. The Debtor in Possession has not paid the post-petition deposit to Duke Energy.

The Debtor in Possession did not file a response to the Motion to Dismiss, and generally agreed with the Movant's assessment of the case. The Debtor in Possession will not be able to meet its obligations to both Movant and to Duke Energy, and is unable to pay the premiums for the required insurance.

The Office of the United States Trustee supported the Movant's Motion to Dismiss, focusing on the lack of insurance and potential liability as cause to dismiss this case.

Section 1112(b) of Title 11 of the United States Code (the "Bankruptcy Code") provides that absent unusual circumstances specifically identified by the court, or a finding that appointment of a trustee or an examiner would be a better remedy for the estate and creditors, "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, if the movant establishes cause." *See* 11 U.S.C. §1112(b)(1).

This Court finds that Movant has established cause to dismiss or convert this case pursuant to Section 1112(b)(4)(A) of the Bankruptcy Code in that there is a substantial or continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation. The Debtor in Possession has unpaid post-petition rent obligations in the approximate amount of $78,887. The Debtor in Possession has no viable business plan to pay the rent arrearages or to continue to fund and rehabilitate its operations in the near term.

In addition, cause exists pursuant to Section 1112(b)(4)(C) of the Bankruptcy Code for failure to maintain appropriate insurance, which poses a risk to both the estate and the public. The Debtor in Possession operates a bar and grill, multiple sports facility–which service several youth leagues–and an adult and child day care. The Debtor in Possession has no liability or property insurance. Both the Movant and the Office of the United States Trustee have expressed acute concerns about personal liability and public risk in light of the lack of insurance. In addition, the Debtor in Possession is unable to pay the utility deposit required by Duke Energy pursuant to Section 366 of the Bankruptcy Code. If utility services are disconnected, the facility is at risk for substantial damage due melting of the ice rink facility.

The Debtor in Possession has not established any unusual circumstances to preclude conversion or dismissal of this case.

In this instance, this Court finds that dismissal versus conversion of this case is in the best interests of creditors and the estate. The Debtor in Possession has minimal assets to administer for the benefit of creditors if the case were to be converted. The major creditor, the Movant, supports dismissal. Furthermore, the Office of the United States Trustee supports dismissal, particularly in light of the lack of property and liability insurance.

Accordingly, this Court hereby orders that this chapter 11 case is dismissed for cause pursuant to Section 1112(b) of the Bankruptcy Code.

SO ORDERED.

Distribution list:
Default List

# # #