

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

In re:	)	
	)	
Sky-Skan Incorporated,	)	Chapter 11
	)	Case No. 17-11540-BAH
Debtor.	)	
	)	

**COASTAL CAPITAL LLC’S MOTION TO DISMISS DEBTOR’S  
CHAPTER 11 CASE OR FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE**

Coastal Capital LLC (“Coastal”), a secured creditor and party in interest in the above-referenced bankruptcy case, by and through undersigned counsel, hereby moves this Court to dismiss Sky-Skan Incorporated (“Debtor”)’s case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) because cause exists for dismissal given that Debtor’s continued operation of its business, based on its own cash collateral budget and admissions, will cause substantial loss to and diminution of the estate with no likelihood of reorganization or rehabilitation. See 11 U.S.C. § 1112(b)(4)(A) (2012). Further, dismissal is in the best interest of the creditors, as Coastal and the Internal Revenue Service (the “IRS”) hold all-asset security interests, i.e. no other creditor will receive any value in a chapter 7 liquidation, and therefore should be allowed to exercise their rights and remedies outside of bankruptcy.

In particular, based on Debtor’s own submissions, it is indisputable that:

- (i) any prospect of positive future cash flows is imaginative and Debtor’s operations create liabilities equal to or greater than any cash deposits brought in;
- (ii) by Week 13 of the Debtor’s Budget, all of Coastal and IRS’s cash collateral will be depleted;
- (iii) Debtor admitted pre-petition that a chapter 11 bankruptcy offers no hope of reorganization;

(iv) it is not only probable, but certain, that the bankruptcy estate and the value therein will be non-existent by February 2, 2018; and

(v) applicable case law construing the pertinent provisions of the Bankruptcy Code compels immediate dismissal or conversion of this case.

If Debtor's bankruptcy case is not immediately dismissed, Debtor will imminently burn through all of Coastal and the IRS's cash collateral during the period leading up to the December 6, 2017 hearing on Debtor's Motion for Interim and Final Authority to Use Cash Collateral (the "Motion to Use Cash Collateral") [ECF No. 36], leaving nothing to liquidate and distribute when reorganization, as Debtor's own bankruptcy counsel concluded, eventually fails. Therefore, the Court should protect Coastal and the IRS's cash collateral, waste no further judicial resources on Debtor's bankruptcy case and immediately dismiss the case.

Alternatively, if the Court finds that Debtor has a reasonable likelihood of reorganization, the Court should appoint a chapter 11 trustee under Section 1104 of the Bankruptcy Code for cause due to the gross mismanagement of Debtor by Debtor's principals. See 11 U.S.C. § 1104(a)(1) (2012).

In support of the Motion, Coastal respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).
2. Venue of this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are §§ 1112(b)(1) and 1112(b)(4) of the Bankruptcy Code and Rules 1017 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

## **FACTUAL BACKGROUND**

### **The Bankruptcy Case**

4. On November 1, 2017, Debtor filed a voluntary bankruptcy petition under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”). The principals of Debtor are Steven and Virginia Savage (collectively, the “Savages”).

5. Coastal is a secured creditor of Debtor, as it holds a valid and enforceable security interest in all of Debtor’s assets, including, but not limited to, Debtor’s cash and accounts receivable. See Affidavit of Richard Gleicher, ¶3 [hereinafter Gleicher Aff.]. Coastal’s all-asset security interest arises from its purchase of a series of loans from Bank of America on April 4, 2017 (the “Bill of Sale”). See Gleicher Aff., Exhibit A. The Bill of Sale assigned Bank of America’s security interest, which was perfected by filing on August 5, 2011, in all Debtor’s assets to Coastal. Id. A valid UCC-3, thereby assigning Bank of America’s security interest to Coastal was filed on May 15, 2017. Id.

6. Coastal holds a first-priority security interest in all Debtor’s assets, including, but not limited to, its accounts receivable and cash. Additionally, on or around February 2016, the IRS filed a series of liens against the assets of Debtor. Debtor alleges that the IRS also has a security interest in Debtor’s assets.

7. As of the filing of this Motion, Debtor has not closed pre-petition bank accounts or opened and maintained debtor-in-possession bank accounts as required by the United States Trustee’s Operating Guidelines and Reporting Requirements for Chapter 11 Cases.

### **State Court Proceedings**

8. Prior to the filing of the Bankruptcy Case, Coastal filed a *Verified Ex-parte Petition for Relief under NH RSA 382-A:9-609 and for Further Relief under Law* (the “Petition

for Relief”) in Hillsborough County Superior Court South against Debtor and the Savages. See Gleicher Aff., ¶5. In pertinent part, the Petition for Relief requested that the Court “order that forthwith the Respondents shall not move, conceal, encumber, waste and/or alter the Collateral, including but not limited to the conversion of any Account to cash . . . .” See Gleicher Aff., Exhibit C.

9. On August 17, 2017, the Court ruled that Coastal had made a satisfactory showing that it was properly secured with respect to the Collateral, and that immediate and irreparable injury, loss or damage will result if Coastal’s request relief was not granted. See Gleicher Aff., Exhibit D. The Court ordered that “Sky-Skan Incorporated, Steven T. Savage and Virginia Savage shall not move, conceal, encumber, waste and/or alter the Collateral . . . .” Id.

10. The Court issued a second Order on the Petition for Relief on September 22, 2017. See Gleicher Aff., Exhibit B. In pertinent part, the Order stated that “Coastal Capital LLC is defined as a Secured Party under NH RSA 382-A:9-102(a)(72),” and that “Coastal acquired an immediate possessory interest in the collateral upon Sky-Skan’s default.” Id.

11. The Order further allowed Coastal “to secure and/or move the Collateral, take possession of all bank accounts, and conduct a secured party sale of its collateral pursuant to NH RSA 382-A:9-610 . . . .” Id.

### **The Savages Management of Debtor**

12. Thereafter, Coastal learned that Debtor, although required by Court Order, concealed from, and refused to release to, Coastal approximately \$476,000.00 of the Collateral. See Gleicher Aff., ¶6.

13. Specifically, immediately prior to the filing of the Bankruptcy Case, the Savages, in conjunction with their counsel, refused to turn over approximately \$476,000.00 in cash and

checks that the state court had ordered be turned over. Id. Pursuant to the state court order, the sheriff attempted to seize the check, but the Savages and Debtor's counsel feigned ignorance of its whereabouts. See Gleicher Aff., Exhibit F.

14. Coastal also learned that, between January 2017 and July 2017, Virginia Savage transferred \$439,050.00 from Debtor to herself. See Gleicher Aff., Exhibit G. During that same period, Steven Savage transferred \$47,117.48 from Debtor to himself, much of which was used to pay his personal credit card. Id.

15. From August 1, 2017 to August 31, 2017, the Savages also transferred approximately \$67,787.00 from Debtor's Bank of America Operating Account to themselves. See Gleicher Aff., ¶7. Between September 1, 2017 and October 19, 2017, the Savages further transferred \$97,058.37 out of Debtor's Bank of America Operating Account to themselves. Id.

16. In total, the Savages diverted at least \$652,000.00 from Debtor to themselves from January 1, 2017 to October 19, 2017. Id.

17. On November 1, 2017, immediately prior to the filing of Debtor's bankruptcy petition, Coastal filed the *Plaintiff's Ex Parte Motion for Contempt and Immediate Injunctive Relief against Sky-Skan Incorporated, Virginia Savage, and Steven T. Savage* (the "Motion for Contempt"). See Gleicher Aff., Exhibit H. In pertinent part, the Motion for Contempt requested that Debtor and the Savages be held in contempt of the Court's prior orders for their concealment and failure to release the Collateral. Id.

18. On November 6, 2017, the Court found the Savages in contempt of the Court's prior Orders. See Gleicher Aff., Exhibit I. Specifically, the Court "[found], based on the offers of proof, that the defendants did not comply with the plaintiff's request to take possession of collateral, as provided by both the security agreement and this court's previous orders, they are

in contempt.” Id. In its Order on the Motion for Contempt, the Court stated: “Apparently, very shortly after the events that gave give to the Court’s *ex parte* temporary order, defendant Sky-Skan Inc. filed for bankruptcy protection. As a result, the plaintiff is no longer asking for a contempt finding against that defendant.” Id. Soon after, the Savages paid Coastal the damages owed under the Contempt Order. Id.

## **PROCEDURAL BACKGROUND**

### **Adequate Protection Proceeding**

19. On November 7, 2017, Debtor filed its *Motion for Authority to Pay Pre-petition Priority Wages* (the “Motion to Pay Wages”) [ECF No. 19]. Coastal filed its objection thereto on November 9, 2017 on the basis that Debtor did not provide Coastal with adequate protection for the use of its cash collateral (the “Objection”).

20. The Court held a hearing on the Motion and the Objection on November 9, 2017. At the hearing, the Court ordered that Debtor provide Coastal with adequate protection for the use of its cash collateral and directed Debtor to file a proposed order for interim use of cash collateral providing Coastal with such protection.

21. In addition, Debtor admitted at the hearing that it had not opened its debtor-in-possession bank account.

### **Debtor’s Motion to Use Cash Collateral**

22. That same day, Debtor filed its Motion to Use Cash Collateral and the budget thereto (the “Budget”). A hearing on Debtor’s Motion to Use Cash Collateral is scheduled for December 6, 2017.

23. In pertinent part,<sup>1</sup> the Motion to Use Cash Collateral states that:

[T]he Debtor intends to: (i) continue fulfilling orders, servicing its customers and performing all aspects of its operations; (ii) continue to make payroll and to pay its necessary suppliers, utilities, insurance premiums and service providers as shown on Exhibit A [the Budget]; (iii) and pay its professionals according to Exhibit A (upon approval by this Court of appropriate fee applications.)

24. The Budget proposes the use of \$1,207,000.00 over a thirteen (13) week period.

It provides that Debtor will collect \$337,054.00 in accounts receivable. The Budget also represents that it will be bring in \$886,503.00 in “New Sales” in ten (10) weeks.<sup>2</sup> Neither the Motion for the Use of Cash Collateral nor the Budget provide the sources of the “New Sales.” In fact, counsel for Debtor admitted to Coastal that **“I wish we could do an 11 [i.e., file for chapter 11 bankruptcy protection], but I have been convinced that no customer would do business with us after we file, so it would be the end of us,” and that customers “won’t put money down on a system where the builder or designer is in bkcy [bankruptcy].”** See Gleicher Aff., Exhibit J.

25. The Budget provides that Debtor will have a cumulative negative cash flow of \$51,456.00 through December 22, 2017, the seventh week of the Budget. However, Debtor anticipates – and its only hope is – “New Sales” in the total amount of \$501,236.00 from the

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<sup>1</sup> The Motion to Use Cash Collateral also threatens litigation against Coastal for taking “possession of approximately \$126,329” and for “prohibiting the Debtor from making the first installment of an approved offer in compromise with the IRS . . . .” What the Motion to Use Cash Collateral does not state is that Coastal took possession of its cash pursuant its security interest in such cash and a Court Order granting possession pursuant to Coastal’s security interest. Debtor also fails to mention that the Offer in Compromise with the IRS was to be wholly and completely funded by a loan from Coastal.

<sup>2</sup> **Weeks Eleven, Twelve and Thirteen of the Budget show that Debtor anticipates the collection of \$0.00 in old accounts receivable and “New Sales.”**

week ending December 29, 2017 to the week ending January 12, 2018, thereby creating a supposed positive cash flow of \$56,556.00 by February 2, 2018.

26. The Budget also states that more than \$137,000.00 will be paid to insiders and professionals during the thirteen (13) week period, including (i) \$60,000.00 to Peter Tamposi and the Tamposi Law Group<sup>3</sup> and Cheryl Deshaies of Deshaies Law for legal services; (ii) \$24,000.00 to Steven Savage for rent of the property; and (iii) \$53,760.00 to SquareTail Advisors, LLC for financial and accounting services.

### **RELIEF REQUESTED**

27. The Court should dismiss Debtor's Bankruptcy Case because there is cause for such dismissal, and dismissal is in the best interests of creditors and the estate.

#### **A. Applicable Legal Standard**

28. § 1112(b)(1) of the Bankruptcy Code states that:

[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 interest of creditors and the estate.

11 U.S.C. § 1112(b)(1) (2012) (emphasis added).

29. Therefore, under Section 1112(b)(1), the court: (i) must find cause to convert or dismiss the case; and (ii) if cause is found, shall determine whether conversion or dismissal of the case is in the best interest of creditors and the estate. Hoover v. Harrington (In re Hoover), 828 F.3d 5, 8 (1st Cir. 2016). "The bankruptcy court has broad discretion to determine . . . whether conversion or dismissal is in the best interest of creditors and the estate." Andover

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<sup>3</sup> This figure is in addition to the over \$200,000.00 that was transferred to Peter Tamposi and the Tamposi Law Group's escrow account in March and April of 2017.

Covered Bridge, LLC v. Harrington (In re Andover Covered Bridge, LLC), 553 B.R. 162, 172 (B.A.P. 1st Cir. 2016).

30. Section 1112(b)(4) of the Bankruptcy Code provides instances where “cause” exists for the purposes of dismissal of a case under § 1112(b)(1). § 1112(b)(4). Pursuant to that subsection, “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation” constitutes cause for dismissal. Id.

31. Cause under § 1112(b)(4)(A) entails a two-fold inquiry:

(1) Whether after the commencement of the case, the debtor has suffered or continued to experience a negative cash flow, or, alternatively, declining asset value; and (2) whether there is any reasonable likelihood that the debtor, or some other party, will be able to stem the debtor’s losses and place the debtor’s business enterprise back on a solid financial footing within a reasonable amount of time.

In re Peña, Case No. 14-09799 (ESL), 2016 WL 1043736, at \*4 (Bankr. D.P.R. Mar. 15, 2016) (Lamoutte, J.).

32. To establish cause under § 1112(b)(4)(A) of the Bankruptcy Code, “[a]ll that **need be found is that the estate is suffering some diminution in value.**” In re Andover Covered Bridge, LLC, 553 B.R. at 174 (internal quotations omitted) (emphasis added).

“**Obviously, if the debtor has a negative cash flow after entry of the order for relief in the chapter 11 case, the elements of § 1112(b)(1) are satisfied.**” In re Peña, 2016 WL 1043736 at \*5 (internal quotations omitted) (emphasis added); see 11 U.S.C. § 301(b) (2012) (“The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.”). Accordingly, “[c]ourts have held that a debtor’s post-petition negative cash flow and/or an inability to pay current expenses satisfied the elements of § 1112(b)(4)(A).” In re Andover Covered Bridge, LLC, 553 B.R. at 174.

33. “Once the court finds that there is a diminution of the bankruptcy estate, it must then consider whether the debtor has a reasonable likelihood of rehabilitation.” Id.

34. “‘Rehabilitation’ in this context means whether the debtor will be able to reestablish its business.” Id. at 174–75. Accordingly, “the debtor still must have sufficient business prospects to justify continuance of [a] reorganization effort.” Hoover v. Harrington (In re Hoover), 828 F.3d 5, 10 (1st Cir. 2016).

35. “Section 1112(b)(1) provides that court *must* convert or dismiss the case if the movant establishes cause, unless the court determines that unusual circumstances exist and the court enumerates the circumstances.” DCNC N.C. I, L.L.C. v. Wachovia Bank, N.A., Nos. 09-3775, 09-3776, 2009 WL 320928, at 6 (E.D. Pa. Oct. 5, 2009) (Shapiro, J.).

**B. Cause Exists for Immediate Dismissal of this Case**

36. Based on Debtor’s Budget and counsel for Debtor’s admissions, cause exists under § 1112(b)(4)(A) of the Bankruptcy Code to dismiss Debtor’s case.

37. Immediately prior to the filing of Debtor’s bankruptcy case, the Savages stated that Debtor had critical cash needs of \$508,082.23 to pay certain expenses, including certain equipment costs and travel expenses. See Gleicher Aff., ¶10. Further, Debtor’s invoices evidence that it requires approximately \$3,286,969.00 to complete current projects. Id. Debtor represents in the Budget that, as of November 10, 2017, it has only \$153,426.00 in cash on hand. Debtor also represents that it will bring in only \$377,054.00 in accounts receivable from the week end November 10, 2017 to the week end February 2, 2018. Therefore, the Budget contains **a short fall of approximately \$2,756,489.00**, as Debtor does not account for the costs to complete its current projects in the Budget. Id. This is likely due to the fact that inclusion of such costs would doom the Budget and Debtor’s hopes of reorganizing.

38. The Budget proposes the use of \$1,207,000.00 over a thirteen (13) week period – all of which is Coastal’s cash collateral – while alleging that it will collect \$1,263,557.00 in old accounts receivable and “New Sales.”

39. From Week 1 (the week ending November 10, 2017) to Week 7 (the week ending December 22, 2017, i.e. more than two weeks after the hearing on the Motion to Use Cash Collateral) of the Budget, Debtor expects to use \$668,407.00 in Coastal’s cash collateral, including \$70,360.00 to insiders and professionals, thereby accumulating negative cash flow of \$51,456.00 during that same period. Under the standard articulated in In re Andover Covered Bridge, LLC and the cases cited therein, Debtor’s negative cash flow after the filing of its voluntary chapter 11 petition alone establishes cause for dismissal under §§ 1112(b)(1) and 1112(b)(4) of the Bankruptcy Code. See In re Andover Covered Bridge, LLC, 553 B.R. at 174 (“Courts have held that a debtor’s post-petition negative cash flow and/or an inability to pay current expenses satisfied the elements of § 1112(b)(4)(A).”).

40. Any positive cash flow after Week 7 of the Budget is created by creative and imaginative – and likely fraudulent – financial projections. For example, Debtor represents that in Week 8 of its Budget it will collect \$409,206.00 in “New Sales.” Yet nowhere in its Motion to Use Cash Collateral or its Budget does it identify where these “New Sales” will come from. That glaring omission is because Debtor cannot identify any “New Sales,” let alone over \$500,000.00 in “New Sales” in the stated three-week period. See Gleicher Aff., ¶10. Further, any “New Sales” do not generate cash, as Debtor takes a deposit on a contract, and then designs, manufactures and otherwise fulfills the terms of the contract. See Gleicher Aff., ¶9. The remainder of the payment is only made, and the “New Sale” is only earned by Debtor, when the finished product is delivered to the customer. Thus, any new sales constitute a liability to

Debtor. See Gleicher Aff., ¶9. Accordingly, the projections for Week 11 through Week 13 that Debtor will collect \$0.00 in accounts receivable and “New Sales” is a more accurate representation of Debtor’s business prospects.

41. In fact, counsel for Debtor stated as much on October 24, 2017. Specifically, he stated that “I wish we could do an 11, but I have been convinced that no customer would do business with us after we file so it would be the end of us,” **a mere eight (8) days prior to the filing the Bankruptcy Case.** See Gleicher Aff., Exhibit J.

42. Further, if Debtor’s pipe dream that it will see a positive cash flow of \$56,556.00 at the end of Week 13 is taken as true – and it is not – the risk of burning through Coastal’s cash collateral is too great not to dismiss the Bankruptcy Case. Even if Debtor is able to collect on ninety-five (95) of the projected “New Sales” – and it cannot – there will still be negative cash flow of \$6,620.85 for the entire thirteen (13) week period. See Gleicher Aff., ¶10.

43. Accordingly, the Court should find that the continuation of the Bankruptcy Case will create a substantial loss to and diminution of the estate with no reasonable likelihood of rehabilitation, and therefore, cause under § 1112(b)(1) of the Bankruptcy Code to dismiss Debtor’s case.

**C. Dismissal of the Case Is in the Best Interests of Creditors**

44. Once the court has found cause to convert or dismiss a debtor-in-possession’s chapter 11 case – which exists in this case – it **must** determine whether conversion of the case to a case under chapter 7 or dismissal of the case is in the best interests of creditors and the estate. See In re Colón Martinez, 472 B.R. 137, 145 (B.A.P. 1st Cir. 2012) (“[T]he bankruptcy court still retains broad discretion to determine whether either conversion or dismissal is in the best interests of creditors and the estate after finding cause.”) (internal quotations omitted).

45. In determining whether dismissal or conversion is in the best interest of creditors, courts consider:

(i) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal; (ii) whether there would be a loss of rights granted in the case if it were dismissed rather than converted; (iii) whether the debtor would simply file a further case upon dismissal; (iv) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors; (v) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise; (vi) whether any remaining issues would be better resolved outside the bankruptcy forum; (vii) whether the estate consists of a "single asset"; (viii) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests; (ix) whether a plan has been confirmed and whether any property remains in the estate to be administered; and (x) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns.

Efron v. Candelario (In re Efron) 529 B.R. 396, 413 (B.A.P. 1st Cir. 2015).

46. The factors weigh in favor of dismissing Debtor's chapter 11 case.

47. First, although Debtor alleges that Coastal "took possession of approximately \$126,239" from Debtor, neither it, nor a chapter 7 trustee, can succeed on any cause of action under the Bankruptcy Code. See In re 360Networks (USA) Inc., 327 B.R. 187, 190 (Bankr. S.D.N.Y. 2005) ("Under § 547(b)(5), a transfer to a fully secured creditor is immunized from preference attack because the creditor would have been paid in full in a hypothetical Chapter 7 liquidation by virtue of its realization on its collateral."). To the extent Debtor believes it has any claim against Coastal – and it does not – Debtor is not prejudiced by dismissal and may pursue its claims in state court.

48. Because Coastal and the IRS hold all-asset security interests, there will be no assets left to distribute to any other creditor in a chapter 7 liquidation. Further, there will be no loss of rights to either Coastal or the IRS, as both would be able to fully exercise their rights and remedies under New Hampshire law. In fact, prior to the Bankruptcy Case, Hillsborough County

Superior Court South allowed Coastal “to secure and/or move the Collateral, take possession of all bank accounts, and conduct a secured party sale of its collateral pursuant to NH RSA 382-A:9-610 . . . .”

49. Additionally, conversion of the Bankruptcy Case and the appointment of a chapter 7 trustee would only increase administrative expenses, thereby draining the collateral to be returned to Coastal and the IRS. See In re Pittsfield Weaving Co., 393 B.R. 271, 276 (Bankr. D.N.H. 2008) (finding that dismissal is in the best interests of creditors and the estate where “the appointment of a trustee will cost the estate additional administrative expenses”).

50. Based on the foregoing factors, the Court should find that dismissal of Debtor’s Bankruptcy Case is in the best interest of creditors.

51. Ultimately, the Court should find that there is cause to dismiss Debtor’s chapter 11 case pursuant to 11 U.S.C. § 1112(b)(4)(1). The Court should further find that dismissal of the case, rather than conversion, is in the best interests of Debtor’s creditors and the estate.

52. Alternatively, if the Court finds that Debtor has a reasonable likelihood of reorganization, the Court should appoint a chapter 11 trustee under 11 U.S.C. § 1104(a)(1) for cause due to the gross mismanagement of Debtor by the Savages for the reasons set forth more fully above.

53. Specifically, the appointment of a chapter 11 trustee is appropriate given that: (i) between January 1, 2017 and October 19, 2017, the Savages diverted \$652,000.00 from Debtor to themselves; (ii) the Savages were found in contempt in the proceedings prior to the Bankruptcy Case for their violation of the Court’s Order, i.e.

for their failure to turnover Coastal's collateral to Coastal; (iii) Debtor, under the Savage's management, has a budgetary short fall of approximately \$2,756,489.00 (which they failed to articulate in the Budget); and (iv) the Savages have continuously failed to pay Debtor's debts and expenses as they come due.

**CONCLUSION**

54. **WHEREFORE**, Coastal respectfully requests that the Court allow this motion and enter an Order: (i) dismissing Debtor's Bankruptcy Case; or (ii) appointing a chapter 11 trustee; and (ii) granting such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

COASTAL CAPITAL LLC,

By its attorney,

/s/ Peter Antonelli \_\_\_\_\_

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Dated: November 15, 2017

**CERTIFICATE OF SERVICE**

I, Peter Antonelli, hereby certify that on the 15th day of November 2017, a copy of the foregoing was filed electronically. Notice of this filing be by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Peter Antonelli \_\_\_\_\_  
Peter Antonelli