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IT IS SO ORDERED.

Dated: April 26, 2024



Mina Nami Khorrami
Mina Nami Khorrami
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re:)	Case No. 24-50449
)	Chapter 11
Pure Repair and Trucking LLC,)	Subchapter V
)	Judge Nami Khorrami
Debtor.)	
)	
)	

MEMORANDUM OPINION AND ORDER, WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW, GRANTING THE MOTION OF THE UNITED STATES TRUSTEE TO DISMISS OR CONVERT CASE AND MEMORANDUM IN SUPPORT (DOC. 30)

I. Introduction

Before the Court is the *Motion of the United States Trustee to Dismiss or Convert Case and Memorandum in Support* (Doc. 30) (the “Motion”) that was filed on March 14, 2024. The

debtor-in-possession, Pure Repair and Trucking LLC (the “Debtor”) filed its *Memorandum Contra Motion of the United States Trustee to Dismiss or Convert Case* (Doc. 39) (the “Objection”) on March 28, 2024.

The Court held a hearing to consider the Motion and the Objection on April 11, 2024, (the “Hearing”). Present at the Hearing were Nathan Wheatley and Laura Atack on behalf of the United States Trustee and Joy Marshall on behalf of the Debtor. For the reasons stated herein, the Court finds that the United States Trustee has sustained its burden of establishing cause for conversion due to the failure to maintain appropriate insurance, so the Court will grant the Motion.

A. Positions Of the Parties

The United States Trustee in his Motion seeks an order pursuant to 11 U.S.C. § 1112(b)(1) dismissing this case or converting it to one under chapter 7. As cause for this relief, the United States Trustee asserts that the Debtor has failed to maintain appropriate insurance that poses a risk to the estate or to the public pursuant to 11 U.S.C. § 1112(b)(4)(C). He further asserts a non-statutory basis for the Court to find cause, namely that the Debtor commenced this case in bad faith, thereby warranting conversion or dismissal. Finally, the United States Trustee asserts that the Debtor’s assets appear to have sufficient value to pay all creditors in full, and therefore he requests conversion to chapter 7 rather than dismissal as the preferred remedy.

In response, the Debtor states that it made a diligent attempt to obtain insurance and succeeded in obtaining property insurance on its primary asset, the real property located at 104 W. Moler St., Columbus, Ohio 43207 (the “Real Property”). Further, the Debtor asserts that it filed this case for the valid bankruptcy purposes of restructuring the Debtor’s business and preserving the value of its assets. The Debtor also asserts that Dominic Adjei (“Mr. Adjei”), its sole member, did not fully understand the import of the cognovit note that he signed. The Debtor also denies

that it was properly served with the foreclosure action that caused the Debtor to file this chapter 11 case. The Debtor asserts that it filed for relief under chapter 11 to prevent foreclosure and provide itself a breathing spell to determine its best course of action, which it asserts is a permissible use of the provisions of chapter 11 and is not evidence of bad faith. In support of this assertion, the Debtor articulated several potential alternative scenarios it is considering for its business to reorganize, ranging from the sale of its Real Property and relocation of operations to a new rental space, to leasing out portions of the Real Property, to changing its business model, or a complete liquidation. All of these the Debtor claims are sound and valid reasons for seeking relief under chapter 11.

B. Procedural Background of the Debtor's Chapter 11 Case

The Debtor filed a voluntary petition (“Petition”) (Doc. 1) for relief under chapter 11 of the Bankruptcy Code on February 8, 2024 (the “Petition Date”). As originally filed, the Debtor indicated that it was a small business debtor, as that term is defined in 11 U.S.C. § 101(51D), but did not elect to proceed under the provisions of subchapter V. On March 21, 2024, the Debtor filed an *Amended Petition* (Doc. 34) which removed the small business debtor designation. Thereafter, the Court held a status conference on March 25, 2024 (the “March 25 Status Conference”), pursuant to 11 U.S.C. § 105(d). During the March 25 Status Conference, counsel for the Debtor, the representative of the Debtor, and the United States Trustee discussed the status of the case, including the insurance issues raised in the Motion and the Debtor’s intentions and timeline regarding filing a plan with the Court.¹ On April 9, 2024, the Debtor filed a *Second Amended Petition* (Doc. 49) to change its designation back to being a small business debtor and electing to proceed under subchapter V of chapter 11.

¹ At the March 25 Status Conference, the Court warned that the lack of insurance was a major concern for the Court and that the Debtor needed to have that issue rectified by the Hearing or the case may not proceed far.

C. The Hearing

Prior to the Hearing, the parties filed *Stipulations of Fact for Hearing on April 11, 2024*. (Doc. 48) (“Stipulations”). At the Hearing, testimony was taken from Jeffrey L. Pfriem (“Mr. Pfriem”), an auditor with the Office of the United States Trustee, and Mr. Adjei, the Debtor representative and sole member and employee of the Debtor. Joint Exhibits 1, 6, 7, 8, 9, 10, and 11 were offered and admitted into evidence without objection. Joint Exhibits 13 and 14 were admitted into evidence over objection of the United States Trustee for the limited purpose of showing that the Real Property had been listed for sale on a couple of occasions before the Petition was filed to show the Debtor’s efforts to salvage its business and to to avoid having to file a bankruptcy petition. Stipulations 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 15, 16, 17, and 18 were read into the record.²

At the conclusion of final arguments, the Court again impressed upon the Debtor the importance of having liability insurance and granted the Debtor fourteen (14) additional days from the date of the Hearing to obtain general liability insurance and provide proof of same to the United States Trustee. The Court further stated that if the Debtor was unable to obtain liability insurance during that time, the case would likely be converted to one under chapter 7. The Court then took the Motion under advisement.³

² Although not all the Stipulations were read into the record, the Court notes that the Stipulations were filed of record (Doc. 48), and the Court has considered all of them as part of its decision herein.

³ On April 11, 2024, shortly after the conclusion of the Hearing, the United States Trustee filed a *Notice of Appointment of Trustee* (Doc. 54), appointing Donald Mallory as the Subchapter V Trustee. Given that the Trustee was not appointed until after the Hearing had concluded, the Court held a telephonic Status Conference on April 19, 2024 (*see Notice of Hearing*, Doc. 62). At this Status Conference, the Court discussed its inability to hold the mandatory status conference under 11 U.S.C. § 1188 since Debtor made the election under subchapter V on day 61 after the Petition was filed. The Court also reiterated to the Debtor that the failure to obtain liability insurance would be “fatal” to its prospects of staying in chapter 11.

II. Facts Relevant to the Motion⁴

A. The Debtor, its Operations, and Events Leading to Bankruptcy

The Debtor is an Ohio limited liability company that was formed in 2019, and Mr. Adjei is its sole owner and operator. Mr. Adjei has twenty years of experience repairing commercial trucks and automobiles. Approximately four of these years have been as the owner and operator of the Debtor.

Prior to 2022, the Debtor operated its business from leased premises, and during that time, the business did well enough that it was able to pay substantial monthly rent. Because the Debtor encountered issues with its landlords when operating from its leased premises due to the large number of trucks on the leased property, Mr. Adjei decided to purchase a property for the Debtor's operations where he would not have these issues with a landlord. In 2022, the Debtor purchased the Real Property for \$516,000.

The Real Property purchase was funded with the proceeds of a loan the Debtor had obtained from the United States Small Business Administration (the "SBA") in the amount of \$258,000, all of which went toward the purchase price of the Real Property. The balance of the purchase price was funded by the seller of the Real Property, Build 24, LLC ("Build 24"), which holds a mortgage on the Real Property. The mortgage has a balance as of the Petition Date of \$243,889. The monthly payment on the mortgage is \$3,300 per month. Mr. Adjei testified that the documents, including the mortgage, cognovit note, and personal guarantee by Mr. Adjei, were all prepared by counsel for Build 24 and that he did not have the documents reviewed by any counsel. He also stated that he was unfamiliar with a cognovit note and did not understand that in the event of default, Build 24 would be able to obtain an immediate judgment against the Debtor. Debtor's business began

⁴ Many, though not all, of the facts underlying the Motion are undisputed and are reflected in the parties' Stipulations.

to decline after the Debtor purchased the Real Property in 2022 due partly to the Covid pandemic and the slowdown of business. As a result, the Debtor fell behind on its mortgage payments. The last payment the Debtor made on the mortgage was in July 2023.

AS it was having difficulty making the monthly mortgage payments, the Debtor began considering changing its business or adding a new line of business, as well as selling the Real Property. The Debtor listed the Real Property for sale twice, once in May and again in November of 2023. Mr. Adjei testified that he had listed the Real Property for \$700,000, which he knew was above its market value, hoping to make a profit on the sale that he could use to pay off his creditors and fund the reorganization of his business. The Debtor did not receive any offers for the purchase of the Real Property.

In September 2023, Build 24 commenced a foreclosure action in the Franklin County Court of Common Pleas, captioned *Build 24, LLC v. Pure Repair and Trucking, LLC, et al.*, Case No. 23 CV 6862 (the “Foreclosure Action”). Judgment on the cognovit provision of the note and Mr. Adjei’s guaranty was entered on October 10, 2023. Thereafter, a decree of foreclosure (the “Decree”) was entered by the state court on December 12, 2023. The docket from the Foreclosure Action reflects that the Debtor filed a motion to set aside the Decree on January 24, 2024, which was denied on February 6, 2024. The Debtor filed an appeal in the Foreclosure Action on February 8, 2024, which has been stayed due to this bankruptcy case. The Real Property was scheduled to be sold at a sheriff’s sale on February 9, 2024; the sheriff’s sale has also been stayed by the bankruptcy.

At the Hearing, Mr. Adjei explained that he was never served with the summons and complaint in the Foreclosure Action. The parties stipulated that “[a]s reflected in the docket of the Foreclosure Action, there was no request for service of the foreclosure complaint upon the

debtor or Mr. Adjei at the business and property address of 104 W. Moler St., Columbus, Ohio 43206.” which was the Debtor’s only place of business.⁵ Without making any determination as to whether service of process in the Foreclosure Action complied with Ohio law, the Court found Mr. Adjei’s testimony to be credible and that found that he did not learn of the Foreclosure Action until sometime in December of 2023 or January of 2024, after judgment had been entered and the sheriff had started the sale process. Accordingly, the Court finds that the Debtor first learned of the Foreclosure Action at some point after judgment was entered on December 12, 2023, and before the Debtor first appeared in the Foreclosure Action on January 22, 2024.

B. Potential Risks to the Estate and the Status of Insurance on the Debtor’s Assets and Its Operations

The Debtor’s ownership of the Real Property and its business operations present a number of potential liabilities. The Debtor’s response to the Motion and Mr. Adjei’s testimony at the hearing, make clear that the Debtor has ongoing business operations. Further, the Debtor leases a portion of the Real Property to a tenant by the name of Martin Denney (“Mr. Denney”). Mr. Adjei testified that Mr. Denney pays the Debtor \$500 per month for use of a portion of its space, where Mr. Denney carries out operations including sandblasting and similar activities, and he has people who come onto the Real Property. Mr. Adjei did not know whether Mr. Denney maintains any kind of insurance of his own. In addition, the Debtor testified that motor vehicle parts which belong to someone else, Augustine Owusu, valued at approximately \$30,000 is also stored at the Debtor’s Real Property.

⁵ While Joint Exhibit 8, which was admitted at the Hearing, makes it possible to trace the procedural history of the Foreclosure Action, it does not provide sufficient evidence for the Court to resolve any questions about whether the service of process upon the Debtor in the Foreclosure Action was proper under Ohio law. The Court understands that one of the issues pending before the Franklin County Court of Appeals as part of the Debtor’s appeal in the Foreclosure Action, deals with the lack of proper service on the Debtor and Mr. Adjei. This issue is not before this Court and the Court does not need to address this issue to resolve the Motion.

It is undisputed that, on the Petition Date, the Debtor did not have loss or liability insurance on the Real Property, or on the truck repair equipment (the “Equipment”) owned by the Debtor (Stipulations, ¶ 12). Subsequently, the Debtor was able to obtain loss insurance on the structure on the Real Property in the amount of \$227,000 with a \$2,500 deductible. Joint Exhibit 7, an insurance certificate, shows an effective date of March 30, 2024, for this coverage.⁶ Mr. Pfriem, who testified about the Debtor’s insurance, did not state any issue with the adequacy of the loss insurance on the Real Property. Finally, the parties stipulated that as of April 9, 2024, the Debtor did not have loss insurance on the Equipment or liability insurance, which had not changed as of the Hearing. Nor has the Debtor submitted anything to the Court suggesting that it was able to procure insurance during the 14-day window allowed by the Court at the conclusion of the Hearing.

C. Values of the Estate’s Assets and Liabilities

Mr. Adjei testified that the Real Property’s value is \$612,000 based upon a sheriff’s appraisal conducted under Ohio foreclosure law. Solely for purposes of the Motion, the Court finds that the value of the Real Property is \$612,000 as of the Petition Date.

On April 9, 2024, the Debtor filed an *Amended Schedule B* (Doc. 51) which showed that the Equipment has a value of \$24,500. Mr. Adjei confirmed this valuation in his testimony. No evidence was offered disputing this valuation. Accordingly, solely for purposes of the Motion, the Court finds that the Equipment has a value of \$24,500 as of the Petition Date. In addition to the foregoing real and personal property, the Debtor also had \$3,000 in its bank account on the petition date. Accordingly, when it filed its chapter 11 case, the Debtor had assets (the Real Property, the Equipment, and its cash on hand) totaling \$639,500.

⁶ Joint Exhibit 7 is described as a “Printout of Policy Details for Ohio FAIR Plan Underwriting Association Policy # 7302384,” but is not the policy itself. The insurance policy was not offered into evidence.

The parties stipulated that the Debtor has three creditors: Build 24 with a secured claim of \$243,889, the SBA with an unsecured claim in the amount of \$256,000,⁷ and the Franklin County Auditor with an unsecured claim in the amount of \$10,737 (Stipulations, ¶ 11). The total claims against the Debtor are \$510,626.

Reviewing the value of the Debtor's assets as compared to its liabilities, it is clear that the Debtor's assets exceed its liabilities.

D. The Debtor's Motivations in Commencing this Case

Mr. Adjei testified credibly and without contradiction that his motivation in filing this chapter 11 case was to preserve the value of the Real Property through a private sale as opposed to a public auction. He believed that a private sale would generate sufficient proceeds to pay off all the Debtor's creditors and generate a surplus from which the Debtor could fund its ongoing operations. Mr. Adjei further testified that he did not intend to hinder or delay the Debtor's creditors beyond what would be required to sell the Real Property in an orderly manner under the Bankruptcy Code. He added that a sheriff's sale in the Foreclosure Action would bring a significantly lower price for the Real Property. The Court found Mr. Adjei's testimony credible.

III. Conclusions of Law

A. Jurisdiction and Venue

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. A motion to dismiss or convert under 11 U.S.C.

⁷ Although the document was not introduced into evidence at the Hearing, the United States Trustee acknowledged at closing argument that the SBA filed a proof of claim asserting that its claim is secured in the Debtor's personal property.

§ 1112 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O) and 28 U.S.C. § 1334(b). Venue properly lies in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Standards Governing Motions Under 11 U.S.C. § 1112(b)

Section 1112(b) governs motions to dismiss or convert in chapter 11 cases, including cases under subchapter V. *Cal. Palms Addiction Recovery Campus, Inc. v. Vara (In re Cal. Palms Addiction Recovery Campus, Inc.)*, 87 F.4th 734, 741 (6th Cir. 2023) (holding that section 1112(b) applies in subchapter V because 11 U.S.C. § 1181(a) does not include it in its list of title 11 provisions that are inapplicable in subchapter V).

Section 1112(b) provides:

- (1) Except as provided in paragraph (2) and subsection (c), 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 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.
- (2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter 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).

Section 1112(b) thus establishes a two-step process for the Court to follow. *See, e.g., In re 1121 Pier Vill. LLC*, 635 B.R. 127, 137 (Bankr. E.D. Pa. 2022). The Court must first determine whether there is cause for conversion or dismissal. If the Court finds cause, it must then consider whether the unusual circumstances exception of section 1112(b)(2) has been established by the Debtor. *In re Four Wells Ltd.*, 2016 Bankr. LEXIS 1673, at *44-45 (B.A.P. 6th Cir. Apr. 12, 2016).

Section 1112 does not define “cause,” but section 1112(b)(4) sets forth 16 examples. This list is not exclusive, and the Court may find non-statutory bases for cause as well. *Trident Assocs. Ltd. P’ship v. Metro. Life Ins. Co. (In re Trident Assocs. Ltd. P’ship)*, 52 F.3d 127, 131 (6th Cir. 1995) (recognizing bad faith as a basis for bankruptcy courts to find cause under section 1112(b)). The Court is charged with engaging in a case-specific factual inquiry which focuses on the circumstances of each debtor. *In re Creekside Senior Apts. L.P.*, 489 B.R. 51, 60 (B.A.P. 6th Cir. 2013) (quoting *United Savs. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 371-72 (5th Cir. 1987) (*en banc*), *aff’d*, 484 U.S. 365 (1988)). The Court has wide discretion in determining what constitutes cause adequate for conversion or dismissal. *Creekside*, 489 B.R. at 60 (quoting *AMC Mortg. Co. v. Tenn. Dep’t of Revenue (In re AMC Mortg. Co.)*, 213 F.3d 917, 920 (6th Cir. 2000)); *see also In re Schneider*, 2024 Bankr. LEXIS 558, *23 (Bankr. S.D. Ohio Feb. 27, 2024) (quoting *In re Forum Health*, 444 B.R. 848, 856 (Bankr. N.D. Ohio 2011)). Even a single ground for cause is sufficient for conversion or dismissal. *Cal. Palms*, 87 F.4th at 740.

Here, the United States Trustee has asserted one statutory ground for cause under 11 U.S.C. § 1112(b)(4)(C), failure to maintain appropriate insurance that poses a risk to the estate or to the

public. He has also asserted one non-statutory ground for cause, the Debtor's alleged bad faith in filing this chapter 11 case.

C. Burden of Proof

The burden of establishing cause for conversion or dismissal is on the United States Trustee, by a preponderance of the evidence. *Creekside Senior Apartments*, 489 B.R. at 60 (citation omitted). This is also true when the moving party asserts the debtor's bad faith as cause for dismissal or conversion. *In re Lee*, 467 B.R. 906, 917 (B.A.P. 6th Cir. 2012) ("The party seeking dismissal of a case under § 1112(b) must demonstrate a debtor's bad faith by a preponderance of the evidence.") (citation omitted). If the movant establishes cause, the burden then shifts to the debtor under Section 1112(b)(2) to establish that the "unusual circumstances" exception applies. *See In re McTiernan*, 519 B.R. 860, 864 (Bankr. D. Wyo. 2014) (citation omitted).

D. The Court Finds Cause for Failure to Maintain Appropriate Insurance

The first ground for cause asserted by the United States Trustee is the Debtor's failure to maintain appropriate insurance under Section 1112(b)(4)(C). Although the Debtor obtained appropriate casualty insurance on the Real Property, there is no dispute that the Debtor does not have casualty insurance on the Equipment or general liability insurance on the business. At the Hearing, the Debtor attempted to persuade the Court that it has all the "appropriate" insurance required by the statute and that the lack of liability insurance and casualty insurance for the Equipment does not constitute cause for dismissal or conversion.

1. Appropriate Insurance Includes Liability Insurance

When determining what constitutes "appropriate insurance" under § 1112(b)(4)(C), courts take into consideration the circumstances of the particular debtor and the risks that may be posed

to the public and to the estate. See *In re M.A.R. Designs & Constr., Inc.*, 653 B.R. 843, 861 (Bankr. S.D. Tex. 2023) (“Section 1112(b)(4)(C) is designed to safeguard against a debtor's failure to maintain proper insurance that exposes the estate to liabilities that threaten creditors' recoveries, the stability of the bankrupt entity, or the public generally.”) (citation omitted). Thus, cause exists under section 1112(b)(4)(C) when the failure to maintain insurance exposes the estate to liabilities that threaten creditors’ recoveries, the stability of the bankrupt entity, or the public generally, based upon the inherent risks present in the circumstances of that particular debtor. *In re Honx, Inc.*, 2022 Bankr. LEXIS 3651, at *9 (Bankr. S.D. Tex. Dec. 28, 2022) (citing *In re Delta AG Grp., LLC*, 596 B.R. 186, 196 (Bankr. W.D. La. 2019)). When a chapter 11 debtor owns improved real property, section 1112(b)(4)(C) requires that it maintain casualty and liability insurance to protect the estate and the public. *Delta*, 596 B.R. at 196; *Gilroy v. Ameriquest Mortg. Co. (In re Gilroy)*, 2008 Bankr. LEXIS 3968 at *13-14 (B.A.P. 1st Cir. Aug. 1, 2008); *In re Van Eck*, 425 B.R. 54, 59-61 (Bankr. D. Conn. 2010) (citations omitted).

In addition, courts interpret section 1112(b)(4)(C) to require liability insurance when a debtor-in-possession is engaged in ongoing business operations that may reasonably be expected to present a risk of liability. *In re Lorraine Hotel 2017 LLC*, 2018 Bankr. LEXIS 3264, at *5 (Bankr. N.D. Ohio Oct. 22, 2018). In this case, the Debtor’s business operations involve repairing commercial trucks and automobiles, and the Debtor is engaged in operating its business. Although specific evidence was not introduced before the Court, a potential claim could be brought against a truck repair business in the event that a vehicle the Debtor had serviced was later involved in an accident, or a truck owner whose truck is being repaired by the Debtor falls on the Real Property and is injured, or any other scenario where the Debtor’s business can be at risk of loss. Accordingly, the Court concludes that, under the facts and circumstances of this case, “appropriate

insurance” includes liability insurance that provides coverage against claims arising out of the Debtor’s ownership of its real property and/or its business operations.

2. The Debtor’s Failure to Obtain Liability Insurance Establishes Cause Under 11 U.S.C. § 1112(b)(4)(C)

At the Hearing, the Debtor did not dispute the lack of liability insurance coverage (Stipulations, ¶ 18). Nor has the Debtor given notice that it procured such insurance during the 14-day period that the Court provided for it to continue to seek liability insurance. The Debtor did not provide any evidence giving any meaningful detail regarding its attempts to obtain insurance coverage or any information regarding why it has been unable to obtain liability coverage and loss coverage for its Equipment.⁸ Rather, the Debtor contends that the loss coverage on the Real Property is all that is needed under the circumstances and constitutes appropriate insurance pursuant to 11 U.S.C. § 1112(b)(4)(C). The Court disagrees.

It is undisputed that the Debtor owns the Real Property and that there is a structure on the Real Property, which was described at the Hearing to be in poor condition. It is further undisputed that the Debtor is engaged in a variety of activities, including (1) operation of a truck repair business, (2) ownership of the Real Property, (3) renting space at the Real Property to a tenant that operates a sandblasting business, and (4) storing motor vehicle parts belonging to someone else on the Real Property. Each of these business activities exposes the estate and its assets to a potential claim for liability in the event a claim arises post-petition, and such a claim could subject the Debtor to thousands of dollars in potential liability, as well as the costs of defending against such a claim. In the event such a claim arises, the current equity cushion that exists in the Real Property could quickly dissipate.

⁸ Courts have held that the reason a debtor has been unable to procure insurance is not relevant to whether cause exists. *Gilroy*, 2008 Bankr. LEXIS 3968, at *15.

Conversely, the Debtor proposes that it could mitigate some of these risks by notifying the tenant to leave and notifying the owner of the personal property that is being stored on the Real Property to remove it. These remedies would take time to accomplish, and they would only partially mitigate the liability risks. The Debtor is a property owner and a business operator and needs liability insurance in order to protect the estate, creditors, and the public against any of the myriad risks that confront an operating business and real property owner. Therefore, the Court concludes that the Debtor **must** have liability insurance under the circumstances of this case to satisfy the statutory requirements of maintaining appropriate insurance under 11 U.S.C. § 1112(b)(4)(C).

3. The Debtor Failed to Establish the Unusual Circumstances Exception

The Debtor has not shown the presence of any unusual circumstances that would justify permitting it to remain in chapter 11 despite its failure to procure what the Court finds to be the appropriate insurance for its operations. The Debtor was advised of this requirement almost as soon as it filed its Petition and it was warned by the Court of the seriousness of the issue on several occasions, including at the Hearing. The Court also allowed the Debtor to use the time it took for this Court to prepare this Opinion as a 14-day “window” during which it could make a final effort to obtain liability insurance.⁹

The Debtor attempted to present evidence regarding its efforts to obtain liability insurance and casualty insurance on the Equipment, but that evidence was vague and unclear. Nonetheless, difficulties in obtaining insurance are not a justification for waiving the insurance requirement. Even if it were, the Court has already given the Debtor a reasonable amount of time to cure the

⁹ At the April 19, 2024, status conference, the Court reiterated to the Debtor that the failure to obtain liability insurance would be “fatal” to its prospects of staying in chapter 11.

insurance issue under 11 U.S.C. § 1112(b)(2)(B) and the Debtor has been unable to do so. Accordingly, the Court concludes that the Motion is well-taken on the issue of liability insurance.

E. The Court Declines to Address the Issues of Bad Faith and Insurance on the Equipment

Conversion or dismissal is warranted upon the finding of even one of the grounds for cause under 11 U.S.C. § 1112(b). *Cal. Palms*, 87 F.4th at 740; *Creekside*, 489 B.R. at 60 (citing *Reagan v. Wetzel (In re Reagan)*, 403 B.R. 614, 621 (B.A.P. 8th Cir. 2009)). Given that the Court has determined that the Motion should be granted based upon the lack of appropriate liability insurance, the Court declines to address the United States Trustee’s arguments concerning the lack of loss insurance on the Equipment or that the Debtor commenced this case in bad faith.

F. Conversion to Chapter 7, Rather than Dismissal, is in the Best Interests of Creditors and the Estate

Because the Court has found that cause exists in view of the Debtor’s failure to maintain appropriate insurance and that there are no unusual circumstances that would prevent dismissal or conversion, the Court must consider whether dismissal or conversion to chapter 7 is in the best interests of creditors and the estate. 11 U.S.C. § 1112(b)(1); *Cal. Palms*, 87 F.4th at 741. The Bankruptcy Code does not establish a clear test for what is in the best interests of creditors and the estate, so the issue is entrusted to the Court’s discretion. *In re Exigent Landscaping, LLC*, 656 B.R. 757, 774 (Bankr. E.D. Mich. 2024) (citing *In re Ozcelebi*, 639 B.R. 365, 425 (Bankr. S.D. Tex. 2022)). Creditors “are generally ‘best served by the course of action that results in the largest number of [them] being paid the largest amount of money in the shortest amount of time.’” *Exigent Landscaping*, 656 B.R. at 774 (quoting *In re Aurora Memory Care, LLC*, 589 B.R. 631, 643 (Bankr. N.D. Ill. 2018) (alteration in original)). Applying these considerations, in this case, a foreclosure sale (the inevitable result of dismissal) would only benefit Build 24 but not any of the

other creditors. It would provide no mechanism for payment to other creditors who do not have liens on the Real Property. A chapter 7 trustee, in contrast, would be able to sell the Real Property and distribute the proceeds to all creditors.

The Court agrees with the United States Trustee that, given the undisputed surplus of assets over liabilities, it is in the best interests of all parties for the case to be converted to chapter 7 so that a trustee may oversee the liquidation of the Debtor's assets. At the Hearing, the Debtor did not make any arguments against the United States Trustee's request to convert the case to chapter 7.

This Court notes that on April 26, 2024, the Debtor filed a *Motion to Dismiss Petition* (Doc. 68), requesting that this case be dismissed under 11 U.S.C. § 1112(b)(4)(A) (the "Debtor's Motion to Dismiss"). The Debtor's Motion to Dismiss asserts that the "petitioner desires that the petition be dismissed, as in the best interest of the creditors and its own survival," but does not assert any facts that would support that conclusion. The Debtor's Motion to Dismiss appears to suggest, for the first time, that the Debtor would prefer dismissal to conversion, an argument the Debtor did not make either in its Objection or at the Hearing. In fact, at the Hearing, the Debtor took the position that it has a reasonable likelihood of reorganizing, contrary to its position, as stated in the Debtor's Motion to Dismiss. Although the Debtor's Motion to Dismiss is not ripe for decision before this Court, the filing of the same does not persuade the Court to change its conclusion that conversion is preferable to dismissal.

The Debtor's Motion to Dismiss relies upon 11 U.S.C. § 1112(b)(4)(A), but entirely fails to make the required showing. Under that section, "the moving party must demonstrate that there is both (1) a [substantial or] continuing loss to or diminution of estate assets and (2) an absence of a reasonable likelihood of rehabilitation." *Exigent Landscaping*, 656 B.R. at 765 (quoting *In re*

Westgate Props., Ltd., 432 B.R. 720, 723 (Bankr. N.D. Ohio 2010)) (alteration in original). The Debtor's Motion to Dismiss does not address either of these criteria and is contrary to its position at the Hearing.

Moreover, the Debtor provides no argument to support its implied assertion that dismissal is a better outcome for the estate and the creditors than conversion, nor does it address the fact that dismissal, and the resulting foreclosure sale under Ohio law, will not result in any payment to unsecured creditors. This is a significant fact given that there is equity in the Real Property. This case is thus unlike *In re Costa Bonita Beach Resort, Inc.*, 513 B.R. 184, 201 (Bankr. D.P.R. 2014), where the court initially determined that conversion, rather than dismissal, was in the best interests of the estate and creditors, but then granted the debtor's post-hearing motion for dismissal. In that case, the conclusive factors were that several creditors supported the request for dismissal and that the debtor's assets were all fully encumbered so that there was no equity for unsecured creditors. *Id.* Here, no party, other than the Debtor, has supported dismissal, and there is equity for unsecured creditors.¹⁰

IV. Conclusion

Accordingly, the Court concludes that the United States Trustee has met its burden to establish cause under section 1112(b). The Court further concludes that there are no unusual circumstances establishing that conversion or dismissal is not in the best interests of creditors and the estate. Finally, the Court concludes that, in this case, conversion to chapter 7, rather than dismissal is in the best interests of creditors and the estate.

¹⁰ The Court is not ruling upon the Motion to Dismiss at this time as it is not ripe for decision. The Court references it simply to address the Debtor's belated expression of interest in dismissal rather than conversion. The Motion to Dismiss will be addressed by the Court in due course as provided in LBR 9013-1.

Therefore, **IT IS ORDERED** that the Motion is granted, and this case is converted to one under chapter 7 of title 11, effective as of the date of entry of this Opinion and Order. The United States Trustee shall submit an order to Court consistent with this Opinion and Order.

IT IS SO ORDERED.

Copies to: All Creditors and Parties in Interest