

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In re: :  
POLAROID CORPORATION, et al., : Bankruptcy Case No. 01-10864 PJW  
Debtors. :

---

STEPHEN J. MORGAN, :  
Appellant, :  
v. : Civil Action No. 02-1353 JJF  
POLAROID CORPORATION, et al., :  
Appellees. :

---

Stephen J. Morgan, Pro Se Appellant.

Gregg M. Galardi, Esquire, Mark L. Desgrosseilliers, Esquire of  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, Wilmington, Delaware.  
Of Counsel: Eric W. Kaup, Esquire of SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP, Chicago, Illinois.  
Attorneys for Debtors and Debtors-in-Possession, Appellees.

Brendan Linehan Shannon, Esquire of YOUNG CONAWAY STARGATT &  
TAYLOR LLP, Wilmington, Delaware.  
Of Counsel: Fred Hodara, Esquire, Philip Dublin, Esquire, Nava  
Hazan, Esquire of AKIN GUMP STRAUSS HAUER & FELD, LLP, New York,  
New York.  
Counsel for the Official Committee of Unsecured Creditors of  
Polaroid Corporation, et al.

---

**MEMORANDUM OPINION**

February 9, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is Appellees' Joint Motion To Dismiss Appeal Filed By Stephen J. Morgan (the "Appellant"). (D.I. 22.) For the reasons discussed below, the Court will grant the Motion.

**I. Background**

The instant action is a bankruptcy appeal arising from the voluntary bankruptcy filing by Polaroid Corporation and certain of its subsidiaries and affiliates (collectively the "Debtors") in October of 2001. In April of 2002, the Debtors filed a motion for an order authorizing the sale of substantially all of their assets to OEP Imaging Corporation (the "Purchaser"). After addressing various objections to the Debtors' motion, the Bankruptcy Court issued an order authorizing the Debtors' sale of its assets. In its order, the Bankruptcy Court denied with prejudice Appellant's objections to the Debtors' motion. By his appeal, Appellant requests the Court to reverse the Bankruptcy Court's order approving the Debtors' sale of substantially all of their assets.

**II. Parties' Contentions**

The Debtors contend that the Court should dismiss Appellant's appeal because it is statutorily moot under 11 U.S.C. § 363(m). (D.I. 22.) The Debtors also contend that the instant appeal is procedurally improper and should therefore be

dismissed. Id. In response, Appellant requests the Court to favorably construe his motion as he is proceeding pro se. (D.I. 25.) Appellant also requests the Court to establish an equity committee and hold oral arguments in order to "make a full independent review of the facts" of Debtors' bankruptcy. Id.

### **III. Discussion**

In order to promote certainty and finality in bankruptcy sales, 11 U.S.C. § 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Id.; Cinicola v. Scharffenberger, 248 F.3d 110, 121-22 (3d Cir. 2001). Section 363(m) "fosters the 'policy of not only according finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.'" Cinicola, 248 F.3d at 122 n. 13 (citations omitted). In interpreting Section 363(m) of the Bankruptcy Code, the Third Circuit utilizes a two-prong test for mootness: 1) whether the bankruptcy court order authorizing the sale was stayed pending appeal; and 2) whether vacating the bankruptcy court's order would affect the validity of the sale. Id. at 122; Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc., 141 F.3d 490, 499 (3d Cir. 1998). Applying these principles to

the instant appeal, the Court concludes it must grant the Debtors' Motion.

It is undisputed that the Appellant did not stay the Bankruptcy Court's order approving Debtors' sale of substantially all of their assets. The only issue before the Court is whether vacating the Bankruptcy Court's order will affect the validity of the sale. Cinicola, 248 F.3d at 122. In evaluating whether vacating a bankruptcy court's order will affect the validity of a sale, a court must look to the relief requested by the appellant. Krebs, 141 F.3d at 499. In the instant case, Appellant does not request any specific relief from the Bankruptcy Court's order approving the sale of the Debtors' assets. After reviewing the items Appellant designated for this appeal, the Court understands that the relief requested by Appellant is a reversal of the Bankruptcy Court's order approving the sale of the Debtors' assets. Therefore, the Court concludes that the instant appeal is statutorily moot because reversing the Bankruptcy Court's order approving the sale would clearly affect the sale's validity. Thus, the Court will grant the Debtors' Motion.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In re: :  
POLAROID CORPORATION, et al., : Bankruptcy Case No. 01-10864 PJW  
Debtors. :

---

STEPHEN J. MORGAN, :  
Appellant, :  
v. : Civil Action No. 02-1353 JJF  
POLAROID CORPORATION, et al., :  
Appellees. :

**ORDER**

At Wilmington, this 9th day of February, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

NOW THEREFORE, IT IS HEREBY ORDERED that Appellees' Joint Motion To Dismiss Appeal Filed By Stephen J. Morgan (D.I. 22) is **GRANTED**.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE