

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11  
POLAROID CORPORATION, et al., : Bankruptcy Case No. 01-10864-PJW  
Debtors. :

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STEPHEN J. MORGAN, :  
Appellant, :  
v. : Civil Action No. 03-1168-JJF  
WIND DOWN ASSOCIATES, LLC, as :  
Plan Administrator of :  
Reorganized Polaroid, :  
Appellee. :

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Stephen J. Morgan, Pro Se Appellant.

Brendan Linehan Shannon, Esquire, Joseph A. Malfitano, Esquire  
and Maribeth L. Minella, Esquire of YOUNG CONAWAY STARGATT &  
TAYLOR, LLP, Wilmington, Delaware.  
Of Counsel: Fred Hodara, Esquire and Nava Hazan, Esquire of AKIN  
GUMP, STRAUSS, HAUER & FELD, LLP, New York, New York.  
Counsel to the Plan Administrator.

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**MEMORANDUM OPINION**

September 30, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is a Motion To Dismiss Appeal (D.I. 12) filed by Wind Down Associates, LLC ("Wind Down") as Plan Administrator of the Reorganized Debtor, Polaroid Corporation and its affiliates and a Request For Reconsideration In Case 02-1353, Required Brief In Case 03-1168 And Request For Consolidation Under Case 02-1353 (D.I. 37) filed by Stephen J. Morgan. For the reasons discussed below, the Court will grant Wind Down's Motion To Dismiss. The Court will also deny the request for consolidation filed by Stephen J. Morgan.<sup>1</sup>

**I. Background**

This action is related to Plaintiff's appeal in Civil Action No. 02-1353 (the "2002 Appeal"). In that action, Mr. Morgan appealed the Bankruptcy Court's Order Authorizing And Approving (1) Asset Purchase Agreement, (2) Sale of Substantially All Of The Debtors' Assets Free And Clear Of Liens, Claims and Encumbrances To OEP Imaging Corporation, (3) Assumption And Assignment To OEP Imaging Corporation Of Certain Executory Contracts And Unexpired Leases, And (4) Certain Related Relief (the "Sale Order"). The Court dismissed Mr. Morgan's 2002 Appeal on grounds of statutory mootness.

In the instant action (the "2003 Appeal"), Mr. Morgan has

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<sup>1</sup> To avoid procedural confusion, the Court will take up Mr. Morgan's request for reconsideration in the context of Civil Action No. 02-1353, where it is also pending.

appealed three orders entered by the Bankruptcy Court: (1) Findings Of Fact, Conclusions Of Law & Order Confirming The Third Amended Joint Plan Of Reorganization (the "Plan") Of Primary PDC, Inc. (f/k/a Polaroid Corporation) And Its Debtor Subsidiaries And The Official Committee Of Unsecured Creditors (the "Confirmation Order"); (2) Order Denying Motion Of Stephen J. Morgan For Expansion Of Scope Of Independent Examiner And Appointment Of Equity Committee (the "Expansion Order") and (3) Order Denying Stephen J. Morgan's Notice And Request For Motion Regarding Rule 3018 And Objecting To Plan Confirmation And Disallowance Of Claim (the "3018 Order"). Since the entry of these Orders by the Bankruptcy Court, Mr. Morgan's motion to stay the Confirmation Order was denied, and the Plan became effective on December 17, 2003. All allowed administrative and priority claims have been paid by Wind Down as Plan Administrator, and the first distribution to unsecured creditors has been made.

By its Motion, Wind Down contends that the 2003 Appeal should be dismissed for three reasons. Specifically, Wind Down contends that the 2003 Appeal is statutorily moot, equitably moot, and moot under the theory of res judicata as a result of the Court's decision in the 2002 Appeal.

In response, Mr. Morgan acknowledges that his 2003 Appeal raises the same issues raised by virtue of his 2002 Appeal. Specifically, Mr. Morgan raises concerns about the sale process

and the validity of the Sale Order entered by the Bankruptcy Court. Mr. Morgan requests the Court to consolidate this appeal with the 2002 Appeal, and to reconsider the Court's ruling in the 2002 Appeal.

## **II. DISCUSSION**

After reviewing Wind Down's Motion To Dismiss in light of the claims raised by Mr. Morgan in the 2003 Appeal, the Court concludes that the 2003 Appeal should be dismissed on grounds of statutory and equitable mootness. Although Mr. Morgan appeals the Confirmation Order and other related orders, it is evident to the Court based on Mr. Morgan's representations that the crux of his appeal rests on his continued challenge to the validity of the Sale Order. Mr. Morgan challenges the Bankruptcy Court's finding that the sale was in good faith and contends that there was fraud in the sale, because among other reasons, "only a net of that \$7.1 million cash was paid for the assets of over \$900 million." (D.I. 37 at 5).

As the Court discussed in its previous decision with respect to Mr. Morgan's 2002 Appeal, his challenges to the validity of the Sale Order are statutorily moot under Section 363(m) of the Bankruptcy Code. In pertinent part, 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.

Cinicola v. Scharffenberger, 248 F.3d 110, 121-22 (3d Cir. 2001).

With respect to the "good faith purchaser" requirement, the Bankruptcy Court expressly found that OEP was a good faith purchaser based on the fact that the Debtors' assets had been effectively shopped before the petition was filed, a rigorous auction process was undertaken in which nothing was withheld from the market and all bidders had the opportunity to buy the business, and based on the rigorous efforts of the various constituencies, including the Committee of Unsecured Creditors, to maximize their returns. In making these findings, the Bankruptcy Court overruled the objections of Mr. Morgan and others that the Debtors undervalued their assets and that the Debtors' assets should have been valued higher. Based on the record in this case, the Court is persuaded that the Bankruptcy Court's findings were not clearly erroneous and were supported by the record. See e.g. In re Trans World Airlines, Inc., 2002 WL 500569, \*2 (D. Del. 2002) (affirming bankruptcy court's finding that § 363(m) purchaser acted in good faith where finding was based on careful examination of record); see also In re PWS Holding Co., 228 F.3d 224, 242 (3d Cir. 2000) (recognizing that fact determinations relating to good faith are reviewed for clear error).

The Court further concludes that the remaining requirements

for the application of Section 363(m) are met in this case. As the Court concluded in Mr. Morgan's 2002 Appeal, the Bankruptcy Court's order authorizing the sale was not stayed pending appeal and vacating the Bankruptcy Court's order would undermine the validity of the sale. Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc., 141 F.3d 490, 499 (3d Cir. 1998).

In the alternative, the Court also concludes that the 2003 Appeal is equitably moot. "Under the doctrine of equitable mootness, an appeal should be dismissed, even if the court has jurisdiction and could fashion relief, if the implementation of that relief would be inequitable." In re Continental Airlines, 203 F.3d 203, 209 (3d Cir. 2000). In applying this doctrine to determine whether the Court should reach the merits of a bankruptcy appeal, the Court must consider: "(1) whether the reorganization plan has been substantially consummated; (2) whether a stay has been obtained; (3) whether the relief requested would affect the rights of parties not before the court; (4) whether the relief requested would affect the success of the plan, and (5) the public policy affording finality to bankruptcy judgments." In re Continental Airlines, 91 F.3d 553, 560 (3d Cir. 1996) (citations omitted).

In this case, the Court concludes that each of the five factors for equitable mootness weighs in favor of dismissal of the 2003 Appeal. The Plan has been substantially consummated,

because the Debtors' assets have been transferred and the Debtor's successor has assumed management of the Debtor's business. In addition, distribution under the plan has commenced with all administrative and priority claims having been paid and distribution to the unsecured creditors having begun. The Court is also persuaded that granting Mr. Morgan the relief he seeks would impair the success of the Debtor's reorganization by essentially unraveling the Plan. This consequence would, in turn, harm the public interest by undermining a successful reorganization. American Film Technologies, Inc. v. Taritero, 175 B.R. 847, 849 (Bankr. D. Del. 1994) (recognizing that public interest in a bankruptcy case is promoting and assisting debtor in successful reorganization).

In sum, the Court concludes that the 2003 Appeal is statutorily and equitably moot, such that Mr. Morgan is not entitled to the relief he requested. Because this appeal will be dismissed, the Court finds its consolidation with Civil Action Number 02-1353-JJF unnecessary. To the extent that Mr. Morgan requests reconsideration of the Court's ruling in the 2002 Appeal, the Court will take up that request by separate Order in that case.

### **III. CONCLUSION**

For the reasons discussed, the Court will grant Wind Down's Motion To Dismiss Appeal and deny the Request For Consolidation

Under 02-1353 filed by Mr. Morgan.

An appropriate Order will be entered.



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**FINAL ORDER**

At Wilmington, this 30th day of September 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. The Motion To Dismiss Appeal (D.I. 12) filed by Wind Down Associates, LLC as Plan Administrator of the Reorganized Debtor, Polaroid Corporation is **GRANTED**.

2. The Request For Consolidation Under Case 02-1353 (D.I. 37) filed by Stephen J. Morgan is **DENIED**.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

