

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

4324 S. Vermont LLC

Debtor(s).

Case No.: 2:25-bk-11371-BB

CHAPTER 11

**ORDER DENYING EMERGENCY MOTION
FOR A STAY PENDING APPEAL OF
ORDER DISMISSING BANKRUPTCY CASE**

(No hearing required)

The Court having reviewed the Debtor and Debtor-in-Possession's March 14, 2025 Emergency Motion for Stay Pending Appeal of the Court's March 10, 2025 Order Granting Emergency Motion to Dismiss Case (the "Emergency Motion") and the opposition to the Emergency Motion filed by Creditor, Wilmington Savings Fund Society, FSB, not in its Individual Capacity, but Solely as the Trustee for Residential Mortgage Aggregation Trust, hereby makes the following findings of fact and conclusions of law:

1. In evaluating a motion for a stay pending appeal, a court should evaluate the following factors:

- 1 a. Whether the movant has made a strong showing that it will succeed
- 2 on the merits of its appeal;
- 3 b. Whether the moving party will be irreparably injured absent a stay;
- 4 c. Whether issuance of the requested stay will substantially injure the
- 5 other parties interested in the outcome of the appellate
- 6 proceedings; and
- 7 d. How the public interest is implicated.
- 8 2. Under the “sliding scale” approach used by Courts in the Ninth Circuit, a
- 9 weak showing on one factor may be offset by a strong showing on other
- 10 factors; however, the movant must nevertheless satisfy all four factors.
- 11 3. The debtor has not carried its burden of proof with regard to the
- 12 Emergency Motion as the debtor has no prospect whatsoever of prevailing
- 13 on the merits of its appeal.
- 14 4. Caselaw in the Ninth Circuit is clear and unambiguous, and debtor does
- 15 not dispute, that state law determines who has authority to file a
- 16 bankruptcy case on behalf of a given entity. And, although there is
- 17 caselaw to support the proposition that an injunction prohibiting a given
- 18 entity from filing bankruptcy may not be enforceable, there is no authority
- 19 for the proposition that a bankruptcy court may ignore unambiguous
- 20 provisions in a state court order vesting a receiver with the sole or
- 21 exclusive authority to commence a bankruptcy case on behalf of an entity.
- 22 5. Although the Supremacy Clause of the United States Constitution makes
- 23 federal law supreme in the event of a conflict between state and federal
- 24 law, there is no conflict or inconsistency here, as the Bankruptcy Code
- 25 relies upon state law to determine who has the authority to file a voluntary
- 26 bankruptcy case. See In re Sino Clean Energy, Inc., 901 F.3d 1139, 1142
- 27 (9th Cir. 2018), aff’g Sino Clean Energy, Inc., 565 B.R. 677 (D. Nev. 2017)
- 28 (rejecting preemption argument and finding that a state court receivership

1 order can prevent a corporation's directors from filing bankruptcy); see
2 also Chitex Comm. v. Kramer, 168 B.R. 587, 589-90 (S.D. Tex. 1994); In
3 re Statepark Bldg. Group, Ltd., 316 B.R. 466, 471-72 (Bankr. N.D. Tex.
4 2004); El Torero Licores v. Raile (In re El Torero Licores), 2013 U.S. Dist.
5 LEXIS 179953, 2013 WL 6834609 at *5-6 (C.D. Cal. Dec. 20, 2013), all of
6 which stand for the proposition that a state court can dictate who has
7 authority to file a petition on behalf of an entity debtor because that
8 question is governed by state law.

- 9 6. Therefore, when a state court order grants a receiver the exclusive
10 authority to commence a bankruptcy case on behalf of a given entity, a
11 voluntary bankruptcy case filed by anyone else on behalf of that entity
12 must be dismissed as having been filed without appropriate corporate
13 authority (unless the receiver decides to ratify the filing, which has not
14 occurred here).
- 15 7. The debtor does not dispute that the Los Angeles Superior Court, case no.
16 24STCV13591, vested sole and exclusive authority in the appointed
17 receiver, Kevin Singer, to file a bankruptcy petition on behalf of 4324 S.
18 Vermont LLC in June and/or July of 2024. The debtor did not appeal that
19 order and did not obtain a stay pending appeal of that order. Therefore,
20 that order is binding on this Court and the debtor's prior management did
21 not have the authority to commence the above-entitled bankruptcy case.
- 22 8. The debtor contends that it will be irreparably harmed if a stay pending
23 appeal is not granted because the real property sale scheduled to occur
24 on March 18, 2025 will be for less than the property's market value, but
25 the debtor has not provided any evidence to support this contention or any
26 evidence to suggest that the receiver failed to market the property
27 adequately or has turned away any party interested in bidding on or
28 paying more for the property.


1 9. Moreover, imposing a stay pending appeal here would prejudice the
2 secured lender who has gone to great lengths to protect its interest in the
3 property and that of the prospective purchaser who would be precluded
4 from moving forward with its purchase of the property. And, if the public
5 interest is implicated at all in this case, it is hard to see how permitting a
6 party who is not authorized to commence a bankruptcy to nevertheless
7 remain in bankruptcy would serve the public interest.

8 10. As the order of which the debtor seeks a stay is an order dismissing this
9 chapter 11 bankruptcy case, the grant a stay pending appeal would mean
10 that, pending the outcome of the appeal, the case would remain in chapter
11 11. And it would be the receiver and not the debtor's former management
12 who would have the authority to operate as a debtor in possession in that
13 case. (On these facts, the Court is unlikely to order a receiver to return
14 possession of the property to the debtor former management.) This is not
15 what the debtor wants in any event. The debtor's former management
16 wants to be able to operate the debtor in bankruptcy. If that is what the
17 debtor wants, it should have appealed the order(s) giving the receiver the
18 sole and exclusive authority to file a bankruptcy petition on the debtor's
19 behalf, which it failed to do.

20 In light of the foregoing, **IT IS HEREBY ORDERED** that the Emergency Motion is
21 denied.

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25 Date: March 17, 2025

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Sheri Bluebond
United States Bankruptcy Judge