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SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:  
RENO CITY CENTER OWNER LLC,  
Debtor.

CHRISTOPHER BEAVOR; CAI RENO  
HOTEL PARTNERS, LLC; CAI RENO  
HOTEL OZ FUND, LLC; BRISTLECONE  
MANAGEMENT, LLC; PFM  
HARVARD, LLC; CAI TEMPE HOTEL  
PARTNERS, LLC; CAI INVESTMENTS,  
LLC; CAI INVESTMENTS SUB SERIES  
300, LLC; SILVER STATE REALTY &  
INVESTMENTS; CAI DEVELOPMENT,  
LLC; CAI INVESTMENTS  
HEALTHCARE PRODUCTS II, DST,  
Appellants,

v.  
RENO CITY CENTER OWNER LLC;  
UNITED STATES TRUSTEE, RENO;  
DELPHI CRE FUNDING, LLC; THE  
OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS,  
Appellees.

BAP No. NV-25-1050-CNB

Bk. No. 24-50152-hlb

MEMORANDUM\*

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\* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

Appeal from the United States Bankruptcy Court  
for the District of Nevada  
Hilary L. Barnes, Bankruptcy Judge, Presiding

Before: CORBIT, NIEMANN, and BRAND, Bankruptcy Judges.

## INTRODUCTION

Appellants, chapter 11<sup>1</sup> creditors, appeal the bankruptcy court's order dismissing the debtor's chapter 11 case (the "Dismissal Order"). On appeal, Appellants do not contest the court's finding of "cause" under § 1112(b) nor do they challenge the court's determination that dismissal, rather than conversion, was in the best interests of creditors and the estate. Instead, Appellants argue that the bankruptcy court abused its discretion because the dismissal order violated the Supreme Court's holding in *Czyzewski v. Jevic Holdings Corp.*, 580 U.S. 451 (2017) ("*Jevic*"). Specifically, Appellants contend the Dismissal Order expressly or implicitly provided for a structured dismissal which deviated from the Bankruptcy Code's ordinary priority scheme for distributions to creditors.

Because the Dismissal Order clearly states that dismissal was not conditioned on specific payments to creditors, it did not violate *Jevic* and was not an abuse of the bankruptcy court's discretion. We AFFIRM.

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<sup>1</sup> Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure.

## FACTS<sup>2</sup>

### A. The project.

On September 30, 2020, Reno City Center, LLC (“RCC”) acquired certain real property located in downtown Reno, Nevada (the “Property”). RCC planned to turn the Property into a multi-use complex with apartments, office and retail space, restaurants, and climate-controlled storage (the “Project”).

RCC was managed by Bristlecone Management, LLC (“Bristlecone”), an entity owned and managed by Christopher Beavor (“Beavor”). Beavor controlled the Project through Bristlecone and other related entities from September 2020 to approximately May 2023.<sup>3</sup>

#### 1. Refinancing the Project.

In June 2022, Beavor refinanced the Project with Delphi CRE Funding, LLC (“Delphi”) (the “Delphi Loan”). As part of the refinancing, Delphi required RCC to create two new entities: Reno City Center Owner, LLC (“RCCO” or the “Debtor”), and Reno City Mezzanine Borrower, LLC (“Mezzanine”). The Debtor was the named borrower under the Delphi

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<sup>2</sup> We exercise our discretion to take judicial notice of documents electronically filed in the adversary proceeding, main bankruptcy case, and related proceedings. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (Courts “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.”) (citation modified).

<sup>3</sup> Many of the other related entities are named appellants in this appeal.

Loan<sup>4</sup> and Delphi required Beavor to personally guarantee the Delphi Loan. As part of the refinancing, title to the Property was transferred from RCC to Mezzanine and then to the Debtor.

## **2. The Debtor's Default.**

In April 2023, Delphi declared a default under the Delphi Loan, asserting the Debtor had a "funding shortfall of \$59,474,502."

Soon after Delphi declared the Debtor's default, RCC removed Bristlecone as manager of RCC, Mezzanine, and the Debtor.<sup>5</sup> The removal was based on RCC's assertion that Bristlecone, under Beavor's mismanagement, failed to properly insure and pay the Project's property taxes and utility bills. RCC also asserted that Beavor and Bristlecone had misappropriated millions of Delphi Loan funds through transfers to Beavor's other entities and projects, as well as for Beavor's personal use.

After being removed, Bristlecone filed a state-court lawsuit against the majority members of RCC, alleging that it was wrongfully removed as manager of RCC. The state court denied Bristlecone's request for a temporary protective order and preliminary injunction. The case was subsequently referred to arbitration where it remains pending.

In January 2024, Delphi commenced foreclosure proceedings against the Property. On February 5, 2024, Delphi sought appointment of a

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<sup>4</sup> The Debtor was the obligor on two promissory notes executed in favor of Delphi, one for \$92,247,458 plus interest and another for \$46,123,729 plus interest. Mezzanine was the obligor on a separate loan with Delphi in the amount of \$3,547,979.

<sup>5</sup> RCC Manager, LLC was appointed manager of the Project.

receiver.

**B. The Debtor's chapter 11 bankruptcy.**

On February 16, 2024, the Debtor filed a voluntary chapter 11 bankruptcy petition as a single asset real estate case. On March 7, 2024, the court appointed an official committee of unsecured creditors (the "Committee").

On April 4, 2024, Delphi filed proof of claim no. 15 in the amount of \$106,404,600.05 secured by the Property (the "Delphi Claim"). Delphi also filed a motion for relief from the automatic stay (the "Motion for Relief"). Delphi's Motion for Relief asked the bankruptcy court to terminate the automatic stay allowing Delphi to pursue its state law remedies and rights in connection with the Property, including continuing the prepetition receivership action and foreclosure.

**1. The 9019 settlement with Delphi.**

Before the court ruled on the Motion for Relief, the Debtor filed a motion to approve a Rule 9019 compromise with Delphi ("9019 Motion"). The 9019 Motion detailed the history of the parties' relationship and described the Property, the Project, the Delphi Loan, and the Debtor's default under the terms of the Delphi Loan. The 9019 Motion also included details about Delphi's state court receivership action, the Debtor's chapter 11 bankruptcy, and ten proofs of claim (claim nos. 38-48) totaling approximately \$141 million that were filed by Beavor and his related

entities (“Appellants’ Claims”).<sup>6</sup>

In the 9019 Motion, the Debtor disputed both Appellants’ Claims and

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<sup>6</sup> The following is a summary of Appellants’ Claims. Claim No. 38 filed by CAI Reno Hotel OZ Fund, LLC in the amount of \$101,975.53 for alleged advancements made on behalf of the Debtor in 2022. Claim No. 39 filed by Bristlecone in the amount of \$199,018.34 “stemming from amounts owed related to the Company Management Agreement between Bristlecone and Debtor.” Claim No. 40 filed by CAI Development, LLC in the amount of \$33,820.12 for “advancements made – by routing funds through Silver State Realty & Investments, the Debtor’s former property manager – on behalf of the Debtor in 2022.” Claim No. 41 filed by CAI Investments, LLC in the amount of \$855,234.71 “stemming from fees related to the Development Agreement between CAI and the Debtor.” Claim No. 42 filed by CAI Investments Healthcare Products II, DST alleging a claim in the amount of \$229,281.58 “for advancements made on behalf of the Debtor in 2022.” Claim No. 43 filed by CAI Investments Sub Series 300, LLC for an “unknown amount related to a lease agreement with the Debtor for the premises located in Suite W1-1, Reno City Center, Reno, NV 89501, where the Debtor was the landlord and CAI was the tenant for failing to furnish common area improvements.” Claim No. 44 filed by CAI Reno Hotel Partners, LLC in the amount of \$133,704.30 for “advancements made on behalf of the Debtor in 2022.” Claim No. 45 filed by CAI Tempe Hotel Partners, LLC in the amount of \$240,000.00 for “advancements made on behalf of the Debtor in 2022.” Claim No. 46 filed by Beavor alleging a claim for damages in an unknown amount based on legal theories of “breach of contract, breach of the covenant of good faith and fair dealing, fraud, negligent misrepresentation, tortious interference with contractual relations, and tortious interference with prospective economic advantage.” Beavor also alleged “a claim for indemnity against, and reimbursement by, the Debtor as a result of his obligations under” the Delphi Loan and a “claim against the Debtor for indemnification, in both his individual and representative capacity, to the extent that he or any of his entities are sued and/ or held liable in any capacity.” Claim No. 47 filed by PFM Harvard, LLC in the amount of \$77,500.00 for “advancements made on behalf of the Debtor in 2022.” Claim No. 48 filed by Silver State Realty & Investments in the amount of \$723,098.80 “stemming from amounts owed related to the [Project].” Claim Nos. 39-41, 44, and 48 asserted additional claims in unknown amounts under a variety of legal theories including alleged “breach of contract, breach of the covenant of good faith and fair dealing, fraud, negligent misrepresentation, tortious interference with contractual relations, and tortious interference with prospective economic advantage.”

Beavor's alleged indemnification claims. Additionally, the Debtor asserted that rather than being liable to Appellants, the Debtor had viable and valuable potential causes of action against Beavor, Bristlecone, and the affiliate entities ("Appellant Litigation").

Under the proposed settlement, Delphi agreed to reduce its secured claim to \$47,500,000 and retain an unsecured claim of \$58,904,600. In exchange, the Debtor would assign the Appellant Litigation to Delphi and would make two payments to satisfy Delphi's reduced secured claim. Specifically, the Debtor agreed to pay Delphi \$10,000,000 before October 16, 2024 ("Initial Payment") and to make a second and final payment of \$37,500,000 before January 1, 2025 ("Final Payment").

The settlement further provided that Delphi would release the deed of trust against the Property after the Debtor made the payments. In the event the Debtor defaulted, the parties agreed that the entire debt would be reinstated, the § 362(d)(1) automatic stay would immediately be terminated for cause, and Delphi could pursue foreclosure.

Finally, the proposed settlement provided that if the Debtor sought dismissal of its bankruptcy case for any reason, such dismissal would be "conditioned upon Debtor's satisfaction of its payment obligations and the assignment of the Appellant Litigation to Delphi . . . ." The proposed settlement agreement also explicitly stated that its terms would "be adopted and incorporated into any" dismissal order and the terms of the settlement agreement would be "enforceable after such dismissal."

In support of the 9019 Motion the Debtor explained how the proposed settlement satisfied each of the *A & C Properties* factors.<sup>7</sup> The Debtor argued that the settlement was in the best interest of the estate because no reasonable basis existed to dispute the full Delphi Claim amount but, under the settlement, Delphi was willing to discount its secured claim by more than 55%. The Debtor asserted that this compromise would allow the Debtor to “move forward with the Project and the proposed plan confirmation without Delphi’s objection, which, in turn, allows the Debtor to pay all creditors.”

Concurrently, the Debtor filed an amended plan and disclosure statement. Class 6 included only the “disputed insider” Appellants’ Claims. Pursuant to the terms of the proposed plan, Class 6 claims would not receive any payment “unless those claims are allowed by the Court or by agreement with the Debtor.”

The bankruptcy court conditionally approved the amended disclosure statement but remained concerned about the viability of the proposed plan. Specifically, the bankruptcy court was concerned because the Debtor failed to provide a construction timeline, detailed budget, or a secured funding source. The bankruptcy court notified the Debtor that those major deficiencies had to be remedied. The bankruptcy court extended the exclusivity period to February 14, 2025.

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<sup>7</sup> *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

Beavor and Bristlecone opposed both the 9019 Motion and the amended disclosure statement and proposed plan.

On October 18, 2024, after reviewing all of the applicable *A & C Properties* factors, the bankruptcy court approved the Debtor's 9019 Motion with Delphi ("Delphi Settlement"). The Delphi Settlement was not appealed.

On November 2, 2024, the Debtor filed a second amended plan and disclosure statement. However, even with the amendments, the funding and feasibility of the proposed plan remained murky. On November 13, 2024, Beavor filed a motion pursuant to § 1121(d) to terminate the Debtor's exclusive period to propose a chapter 11 plan.

Although the Debtor timely made the \$10,000,000 Initial Payment required under the Delphi Settlement, the Debtor had trouble securing financing for the Final Payment. On December 18, 2024, the Debtor filed a motion to amend the Delphi Settlement. In the motion to amend, the Debtor reported that it was trying to obtain more cost-effective financing for the Final Payment. The Debtor anticipated it could close on new financing on or before February 28, 2025. Delphi agreed to extend the Final Payment due date to March 1, 2025, in exchange for an additional \$5 million ("Consideration Payment").

Beavor opposed the Debtor's attempts to amend the Delphi Settlement. On January 10, 2025, after briefing and a hearing, the bankruptcy court granted the motion after finding the amendment was

proposed in good faith, negotiated at arms' length, and complied with the *A & C Properties* factors (the "Amended Delphi Settlement"). Consequently, the Final Payment date was extended to March 1, 2025. No party appealed the Amended Delphi Settlement.

## **2. Beavor's competing plan.**

On January 24, 2025, after a hearing, the bankruptcy court granted Beavor's motion to terminate the Debtor's exclusivity period. The bankruptcy court was not convinced the Debtor could achieve a successful reorganization. The bankruptcy court noted that while the Debtor was acting in good faith, the Debtor's amended plan relied heavily on contingent financing, and lacked concrete financial commitments and detailed financial projections. Thus, the bankruptcy court determined that terminating the exclusivity period was in the best interest of creditors and would help move the case forward.

On February 7, 2025, Beavor and his affiliate CAI Development, LLC filed a competing disclosure statement and plan of reorganization (the "CAI Plan"). The CAI Plan proposed that CAI Reno Acquisition LLC, a Beavor controlled entity, would purchase substantially all of the Debtor's assets for \$75,000,000. However, Beavor had not secured financing for the \$75,000,000 purchase payment. Additionally, the CAI Plan did not provide for the Final Payment to Delphi or acknowledge that the full Delphi debt would be reinstated if the Final Payment was not made by March 1, 2025.

### **3. The Debtor's motion to dismiss the bankruptcy case.**

The Debtor faced a dilemma. It had less than three weeks to make the \$37,500,000 Final Payment to Delphi. However, the Final Payment funding it had secured was contingent on a confirmed plan. In light of Beavor's competing plan, the Debtor believed the confirmation hearing would be contested and could be delayed by discovery. Consequently, the Debtor was convinced a plan could not be confirmed before the Final Payment due date. Therefore, the Debtor concluded that the contingent financing for the Final Payment was no longer a viable option.

The Debtor asserted that the only viable lender remaining was Madison Capital Group LLC ("Madison"). Madison agreed to provide the financing for the Final Payment, but the financing was contingent on the dismissal of the bankruptcy case ("Refinance Transaction").<sup>8</sup>

Therefore, on February 11, 2025, the Debtor filed a motion to dismiss its chapter 11 bankruptcy case for cause pursuant to 1112(b). The Debtor's intent was to consummate the Refinancing Transaction and make the timely Final Payment to Delphi. The motion to dismiss explained that without the refinancing, the Debtor could not make the Final Payment and the entire Delphi debt would be reinstated (which the Debtor currently estimated at over \$110 million). This, according to the Debtor, would end

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<sup>8</sup> Madison was the source of \$4,000,000.00 of the \$10,000,000.00 Initial Payment and the \$5,000,000.00 Consideration Payment paid to Delphi. The payments were made in the form of equity contributions to the Debtor's indirect parent, RCC.

all hope of completing the Project. The Debtor argued that its significant unpaid taxes established it was already financially strained. The Debtor reasoned that “if the Bankruptcy Case [was] not dismissed, the Debtor will have no financial ability to maintain the Project, pay its administrative and operating expenses, or continue funding its chapter 11 reorganization process.”

The Debtor further argued that dismissal (rather than conversion to a chapter 7 or appointment of a chapter 11 trustee) was the only option to avoid dire results for all parties. The Debtor reasoned that dismissal was in the best interest of creditors because the Refinancing Transaction (which was contingent on dismissal), would allow the Debtor to “pay its chapter 11 administrative expenses and allowed general unsecured creditors, thus putting unsecured creditors in a far better position than if the case were converted to chapter 7 or a chapter 11 trustee was appointed.”

Finally, the Debtor argued that the CAI Plan was not a viable competing plan and did not provide a reason to continue the bankruptcy case. The Debtor asserted that the CAI Plan failed to provide evidence of a secured funding source or address how it would fund the Final Payment to Delphi. The Debtor also alleged the CAI Plan failed to comply with the Bankruptcy Code.

**a. The terms of the Refinancing Transaction.**

The terms and conditions of the Refinancing Transaction were specified in an Irrevocable Letter of Intent from Madison dated February 5,

2025 (the “LOI”). The LOI proposed a loan from Madison to the Debtor in the amount of \$42,000,000 on or about February 28, 2025. The LOI confirmed the disbursement of the funds was specifically “contingent upon the [Debtor] obtaining dismissal” of the case before February 28, 2025. Pursuant to the LOI, Madison was willing to subordinate its deed of trust securing the Refinancing Transaction to any existing senior liens on the Property, including all currently recorded mechanic’s liens. The LOI also described the intended use of the funds, stating that the Debtor “shall distribute” the funds to: (1) make the Final Payment to Delphi (causing Delphi to release its deed of trust); (2) pay administrative expenses from the bankruptcy case (estimated at \$835,000.00); and (3) pay the eighteen identified allowed unsecured creditors listed on the attached Exhibit B (the allowed unsecured claims totaled \$2,203,446.71). None of Appellants’ Claims were included in Exhibit B.<sup>9</sup>

**b. Opposition to the dismissal.**

Appellants opposed the dismissal. Appellants argued that their claims were outstanding and they were entitled to a ruling on their allowance. Appellants generally argued that the Debtor did not file the

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<sup>9</sup> The list of unsecured creditors to be paid did not include any of the Appellants’ Claims because the Debtor continued to dispute the validity of the claims. The Debtor filed its objection to Beavor’s Proof of Claim No. 46 on November 14, 2024. On February 6, 2025, the Debtor filed an omnibus objection to claim nos. 38, 40, 42, 43, 44, 45, and 47 and a separate objection to claim no. 39. The Debtor’s objections to the Appellants’ Claims remained pending at the time of the dismissal motion.

amended plan in good faith and had been less than candid with the court. Appellants further argued that the Debtor's proposed dismissal was in fact a structured dismissal that violated the holding in *Jevic*, because the dismissal contemplated paying lower priority unsecured creditors while not paying their higher priority claims.

In reply, the Debtor emphasized that most stakeholders, including the Committee, supported dismissal. The Debtor argued that the dismissal would not violate *Jevic* because the dismissal was not conditioned on payments to specific creditors. The Debtor again argued that dismissal was the only viable option for satisfying the Final Payment to Delphi by the deadline and that the two-party dispute between Appellants and the Debtor could proceed in another forum.

### **C. The dismissal.**

On February 19, 2025, the bankruptcy court held a hearing on the Debtor's motion to dismiss. At the hearing, the U.S. Trustee stated that it did not oppose dismissal and that it agreed with the Debtor, that the proposed dismissal did not violate *Jevic*.

The Debtor argued that although the dismissal request was not conditioned on payments to certain creditors, the dismissal order had to include "authorization" language solely "to satisfy title company concerns." The bankruptcy court questioned why the proposed dismissal order contemplated the dismissal at the same time as the closing of the Refinance Transaction. The court reasoned that this seemed to imply the

authorization language was equivalent to the court ordering the payments provided for in the Refinance Transaction. The Debtor replied that the timing was also at the request of the title company, but with the title company's approval, it would change the language to have the dismissal occur upon entry of the order and prior to the closing of the Refinance Transaction.

After hearing from the parties, the bankruptcy court stated it intended to dismiss the bankruptcy case and made factual findings on the record. First, the bankruptcy court found cause existed to dismiss, stating:

Here in the exercise of its discretion the Court concludes that cause exists to dismiss the Chapter 11 case under Code [§] 1112(b). The debtor cannot and will not move forward with its current plan, and the Beavor-related parties have filed a plan that the debtor would contest, and that would not be able to be confirmed within a reasonable time if at all and certainly not in time to pay Delphi the [§]37.5 million payment or in an amount sufficient to pay Delphi's full debt without the discount.

Continuing the Chapter 11 case would result in further delay in administrative expenses and a lesser recovery to creditors without a clear path to resolution. On this basis alone dismissal is warranted under [§] 1112(b)(4)(A) as the debtor is unable to effectuate a plan and has no reasonable likelihood of rehabilitation.

Delphi is the 800-pound gorilla in the room. The debtor can pursue its refinance with Madison to pay Delphi only if the bankruptcy case is dismissed. While success is not a foregone conclusion, after all the transaction still has to close, allowing the debtor to pursue the refinance to pay Delphi will provide

the debtor an opportunity to stave off foreclosure and benefit all creditors an opportunity that the debtor does not have within bankruptcy.

Dismissal Hr'g Tr. 57:25-58:22, Feb. 19, 2025.

The bankruptcy court considered whether it was better to dismiss, to convert to chapter 7, or appoint a chapter 11 trustee, and determined that dismissal was the only viable option stating:

As alternatives to dismissal, converting the case or appointing a Chapter 11 trustee will ensure that the debtor cannot make the Delphi payment, thus enabling the [automatic] stay to lift and enabling Delphi to foreclose.

*Id.* at 58:23-59:2.

Finally, the bankruptcy court addressed Appellants' argument that the dismissal would violate the holding in *Jevic*. The bankruptcy court disagreed, stating

While the Beavor-related parties raise a *Jevic* objection regarding the priority of payments out of the proceeds of the contemplated refinance, the Court finds that the dismissal does not deviate from the Bankruptcy Code's priority scheme in violation of *Jevic*. The debtor is not disposing of its assets as part of the dismissal, and the Court will not enter an order that requires payment of certain creditors over others as a condition to the dismissal, except as it relates to Delphi. The Court has already approved the settlement agreement which requires that any dismissal order will reference and incorporate the settlement agreement.

The dismissal will not alter the rights of lower priority creditors. And the Court notes that some of those creditors

joined in the motion. The Beavor related party's rights specifically will not be altered by the dismissal. They retain their rights and revenues [sic.] against the debtor. Based on the foregoing pursuant to Bankruptcy Code § 1112(b), the Court finds and concludes that dismissal of the Chapter 11 case is warranted and in the best interest of creditors and the estate. So the motion to dismiss will be granted.

*Id.* at 59:14-60:8.

On February 26, 2025, the bankruptcy court issued the Dismissal Order, which dismissed the Debtor's chapter 11 case and incorporated by reference the court's oral findings of facts and conclusions of law. Pursuant to the Dismissal Order, the case was dismissed "effective immediately upon entry of this Order on the Court's docket."

Relevant to this appeal, the Dismissal Order further provided:

2. The Debtor is authorized and empowered to do and perform all acts necessary to implement the Refinance Transaction with Madison Capital Group, LLC or its assignee as contemplated in the Motion; provided, however, that the Court is **not** hereby approving the terms of such Refinance Transaction as the Closing of the Refinance Transaction is intended to take place after dismissal of this Bankruptcy Case.
3. The Debtor is authorized, as set forth in the Refinance Transaction (**but not ordered**), to pay, from the proceeds of the Refinance Transaction, the Final Payment due to Delphi CRE Funding, LLC ("Delphi") under the terms of the parties' Settlement Agreement, and concurrently assign the Beavor Litigation to Delphi pursuant to the terms of the Settlement Agreement, all of which are adopted by and incorporated into this Order and the Settlement Agreement shall expressly

survive and be enforceable after dismissal of the Bankruptcy Case as set forth in the Settlement Agreement.

4. Upon Closing and receipt by Delphi of the Final Payment and assignment of the Beavor Litigation from Debtor to Delphi, and after filing of the Certification (as defined below), this chapter 11 Bankruptcy Case shall be administratively closed.

Dismissal Order, Feb. 26, 2025, pgs. 3-4 (emphasis added).

Appellants timely appealed the Dismissal Order.

### **JURISDICTION**

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

### **ISSUES**

Whether Appellants have standing to appeal the Dismissal Order.

Whether the bankruptcy court abused its discretion by dismissing the Debtor's case.

### **STANDARDS OF REVIEW**

We assess de novo our own jurisdiction, including questions of standing. *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 879 (9th Cir. 2012). "De novo review requires that we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

A bankruptcy court's decision to dismiss a case is reviewed under an abuse of discretion standard. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R.

604, 611 (9th Cir. BAP 2014). A bankruptcy court abuses its discretion if it applies the wrong legal standard, misapplies the correct legal standard, or if its factual findings are illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

## DISCUSSION

### A. Standing.

The Debtor argues that Appellants lack standing to appeal the Dismissal Order. Standing is a threshold jurisdictional requirement derived from the “case-or-controversy” requirement of Article III of the Constitution. *Clifton Cap. Grp., LLC v. Sharp (In re E. Coast Foods, Inc.)*, 80 F.4th 901, 905-06 (9th Cir. 2023). The Ninth Circuit recently clarified that Article III standing must be determined before analyzing the prudential “person aggrieved” requirement. *Id.* at 906. To demonstrate Article III standing, a plaintiff must have “(1) suffered an ‘injury in fact’ that is concrete, particularized, and actual or imminent, (2) the injury is ‘fairly traceable’ to the defendant’s conduct, and (3) the injury can be ‘redressed by a favorable decision.’” *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). “An order that diminishes one’s property, increases one’s burdens, or detrimentally affects one’s rights has a direct and adverse pecuniary effect for bankruptcy standing purposes.” *Harkey v. Grobstein (In re Point Ctr. Fin., Inc.)*, 890 F.3d 1188, 1191 (9th Cir. 2018) (citation omitted).

Here, Appellants suffered an injury in fact that is fairly traceable to the Debtor's conduct, and which could be redressed by a favorable decision. Appellants opposed the Motion to Dismiss. Entry of the Dismissal Order foreclosed Appellants from pursuing their own plan which may have provided a recovery for Appellants' and other creditors. While the court expressed concerns regarding the viability of Appellants' plan, that does not indicate that they did not suffer an injury in fact. Appellants have standing to appeal the Dismissal Order.

**B. Dismissal under § 1112(b).**

Section 1112(b) provides that on request of a party in interest "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 . . . ." Section 1112(b)(4) provides a non-exhaustive list that establishes cause to convert or dismiss, but bankruptcy courts can consider other factors. "The bankruptcy court has broad discretion in determining what constitutes 'cause' under section 1112(b)." *In re Sullivan*, 522 B.R. at 614.

Once cause is established, the bankruptcy court must convert or dismiss the case, whichever is in the best interest of creditors and the estate, unless the court "specifically identifies unusual circumstances" establishing that such relief is not in the best interest of creditors and the estate[.]" § 1112(b)(2).

Here, Appellants have not challenged the bankruptcy court's

determination of cause, that no special circumstances existed, or that dismissal rather than conversion was in the best interest of creditors. Rather, Appellants' sole argument on appeal is the bankruptcy court abused its discretion because the Dismissal Order violates the holding in *Jevic*.

**C. The Dismissal Order did not violate *Jevic*.**

Appellants assert that the Dismissal Order expressly or implicitly provides for a structured dismissal<sup>10</sup> because, without their consent, it permits the Debtor to allow equity to retain its interests and to selectively pay certain general unsecured creditors without paying their higher priority claims. Appellants argue that because the Dismissal Order's payments deviate from the Bankruptcy Code's priority scheme, the Dismissal Order violates the holding of *Jevic*. We disagree. The Dismissal Order provides for a straight dismissal. While the Dismissal Order contemplates the Debtor's payment of certain creditors post-dismissal, the dismissal is not conditioned on such payments, and the bankruptcy court did not order such payments.

*Jevic* does not apply here. Unlike this case, the *Jevic* dismissal was conditioned on fulfillment of payments provided for in the settlement

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<sup>10</sup> A structured dismissal is defined as a "hybrid dismissal and confirmation order that typically dismisses the case while, among other things, approving certain distributions to creditors, granting certain third-party releases, enjoining certain conduct by creditors, and not necessarily vacating orders or unwinding transactions undertaken during the case." *Jevic*, 580 U.S. at 456 (citation modified).

agreement, and the proscribed payments “gave money to high-priority secured creditors and to low-priority general unsecured creditors but which skipped certain dissenting mid-priority creditors.” *Jevic*, 580 U.S. at 454.

In *Jevic*, despite objections, and despite acknowledging that the dismissal was dependent on satisfaction of settlement payments which violated the priority rules, the bankruptcy court approved the settlement and dismissal. *Id.* at 461. The bankruptcy court justified the decision in light of the “dire circumstances facing the estate and its creditors. Specifically, . . . that without the settlement and dismissal, there was no realistic prospect of a meaningful distribution for anyone other than the secured creditors.” *Id.* (citation modified).

On appeal, the Third Circuit Court of Appeals affirmed holding that courts may, “in rare instances” like those presented in *Jevic*, “approve structured dismissals that do not strictly adhere to the Bankruptcy Code’s priority scheme.” *Id.* at 462.

The Supreme Court reversed the Third Circuit.<sup>11</sup> The Supreme Court explained that the Bankruptcy Code establishes a basic system of priority

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<sup>11</sup> The initial question presented (the question the Supreme Court agreed to hear) was whether a bankruptcy court “may authorize the distribution of settlement proceeds in a manner that violates the statutory priority scheme.” *Jevic*, 580 U.S. at 471 (Thomas, J., dissenting). “[H]owever, petitioners recast the question presented to ask whether a Chapter 11 case may be terminated by a structured dismissal that distributes estate property in violation of the Bankruptcy Code’s priority scheme.” *Id.* at 472 (citation modified).

distribution of estate assets. *Id.* at 464. The Court distinguished priority-violating structured dismissals from priority-violating interim distributions. The Court explained the latter was permissible because they furthered “Code-related objectives” such as “preserv[ing] the debtor as a going concern; . . . mak[ing] the disfavored creditors better off; . . . [or] promot[ing] the possibility of a confirmable plan.” *Id.* at 468.

The *Jevic* Court reversed the structured dismissal because it violated the priority system “long . . . considered fundamental to the Bankruptcy Code’s operation,” by conditioning the dismissal on settlement payments that violated the ordinary priority rules without the consent of the bypassed creditors. *Id.* at 466.

Here, unlike the dismissal order in *Jevic*, the dismissal was not conditioned on the Debtor making payments to certain creditors. Rather, the dismissal was effective immediately upon entry of the Dismissal Order. Accordingly, we decline to accept Appellants’ interpretation which adds conditions and payments that appear nowhere in the Dismissal Order. We also decline Appellants’ invitation to determine that the court “authorizing” is equivalent to the court “ordering.”

To accept Appellants’ argument, that the court’s authorization language was an implied condition of the Dismissal Order, “we would have to disregard the bankruptcy court’s written order, which expressly provides for a straight dismissal[.]” *First Found. Bank v. Pourteymour (In re Pourteymour)*, BAP Nos. SC-22-1008-GFB, SC-22-1009-GFB, & SC-22-1010-

GFB, 2023 WL 2929323, at \*6 (9th Cir. BAP Apr. 12, 2023). While the Dismissal Order contemplates certain payments by the Debtor post-petition and states that the Debtor “is authorized” to complete the Refinance Transaction, the Dismissal Order also expressly stated that the court was “**not . . . approving** the terms of such Refinance Transaction” and was “**not order[ing]**” the Debtor to make the payments contemplated by the Refinance Transaction.

Contrary to Appellants’ arguments and interpretations, the bankruptcy court did not order the Debtor to pay creditors as an express or implied condition of dismissal. Additionally, the Debtor’s intent post-dismissal does not change the effect of the Dismissal Order, which plainly provides for a straight dismissal. Simply put, under the Dismissal Order, the estate property is revested in the Debtor and Appellants retain their rights and remedies under state law.

Consequently, because the Dismissal Order was a straight dismissal in accordance with § 349, and it neither expressly nor impliedly conditioned the dismissal on payments to certain creditors, it did not violate the holding of *Jevic* and was not an abuse of the bankruptcy court’s discretion.

## CONCLUSION

Based on the foregoing, we AFFIRM.