

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



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**In re:**

**Corporation of Southern  
Vermont College, Inc.,  
Debtor.**

**Chapter 7  
Case # 20-10268**

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**ORDER**  
**DENYING ALL REQUESTS IN EMERGENCY MOTION**

On the afternoon of December 4, 2020, Moshe Perlstein (the “Movant”) filed a document captioned as an “objection to proposed sale and emergency motion to allow use of deposit and postpone the proposed bidding” (doc. # 71, the “Emergency Motion”). The Court reads the Emergency Motion to seek an Order granting three forms of relief:

- (i) permitting the Movant to apply his \$300,000 deposit (made when he executed a pre-petition purchase and sale agreement and occupancy agreement for the Campus Property) as part of his deposit and purchase price if he is the successful bidder at the Trustee’s sale of the Campus Property;
- (ii) deferring the sale until after the Court rules on the Emergency Motion; and
- (iii) extending the deadline for the Movant to submit a higher and better bid.

Later that day, the Court entered an Order (doc. # 75), which set a December 8, 2020 hearing on the Emergency Motion and set December 7 deadlines for parties to file responses and replies to the Emergency Motion. After considering the objections Southwestern Health Care the Trustee filed (doc. ## 82 and 83, respectively), the Community Bank joinder in the Trustee’s objection, and the arguments the Movant presented at the December 8, 2020 hearing, the Court entered a bench ruling denying the Emergency Motion in its entirety. The Court enters this Order to memorialize its bench ruling.

First, THE COURT FINDS the Trustee has demonstrated that time is of the essence with respect to the pending sale of the Debtor’s estate’s property (see doc. # 41), and Mr. Perlstein has failed to

- (i) explain his delay in making a request for release and use of the \$300,000 deposit,
- (ii) identify any factors that justify delaying the sale, or
- (iii) show that a delay is in the best interest of the estate or would not harm the estate.

Accordingly, IT IS ORDERED that Mr. Perlstein's request to delay the sales scheduled for December 11, 2020 is DENIED.

With respect to Mr. Perlstein's request to use the \$300,000 security deposit the Trustee is holding as part of Mr. Perlstein's bid deposit, THE COURT FINDS Mr. Perlstein has failed to carry his burden to warrant this extraordinary relief because

- (i) there are questions of fact to be determined in connection with the pending adversary proceeding (A.P. # 20-01010) and to release the deposit prior to adjudication of those questions would prejudice the Plaintiffs, as it appears the deposit may be the only source to fund a remedy for the Plaintiffs' if they prevail in that litigation;
- (ii) Mr. Perlstein entered a stipulation on November 5, 2020, which explicitly states "the Trustee shall hold the Deposit funds until further Order of the Court in this Adversary Proceeding," that stipulation was converted to an order when the Court entered it later that same day (doc. # 39), and that stipulation is binding on Perlstein;
- (iii) Mr. Perlstein's arguments to the contrary at the December 8, 2020 hearing were wholly unpersuasive;
- (iv) Mr. Perlstein has failed to present any facts or law that warrant the Court releasing him from that stipulation or reconsidering or vacating that order – especially since Mr. Perlstein knew on the date he executed the stipulation that the Trustee would be selling the subject real property – so his request for such a release or vacatur of the Order is too late; and
- (v) Mr. Perlstein's argument that the Trustee's receipt of higher bids for the property Mr. Perlstein occupied defeat the Trustee's arguments in the adversary proceeding, and establish the estate suffered no loss from the damages caused during his occupancy, is without merit, as the Trustee's sale motion points out that the Trustee is including either a repair of those damages or an assignment of the insurance proceeds related to those damages, in the sale.<sup>1</sup>

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<sup>1</sup> The Purchase and Sale Contract the Trustee has filed, and will use for the subject sale of the subject property includes the following provision:

As to the damage caused this past summer while the Tenant was in possession of the Property pursuant to an Occupancy Agreement (the "Occupancy Agreement") between the College and the tenant (the "Tenant"), which includes in part, insured damage and uninsured damage, at Closing, Seller shall pay over to Purchaser any insurance proceeds received on claims made for such insured damage, or assign such rights to payment for the insured damage to Purchaser, if such payment has not been made to Seller prior to the Closing. As to the uninsured damage at Closing, Seller shall pay over to Purchaser proceeds received on the claim for such uninsured damages, or, at the option of Purchaser to be exercised at Closing or waived, assign the right to payment for the uninsured damage to Purchaser, if such payment has not been made to Seller prior to the Closing. If assignment of the claim is made by Seller at the option of Purchaser, Purchaser agrees that from any recovery, the first proceeds will go to the Seller to pay for the administrative expenses and attorney's fees incurred by Seller in pursuing the claim and all costs of litigation, then to Seller for the amount due for the occupancy expenses that the Tenant was supposed to pay Seller pursuant to the Occupancy Agreement, then to


Based on these findings, IT IS ORDERED that Mr. Perlstein's request to use the \$300,000 deposit the Trustee is holding as a deposit for a purchase offer Mr. Perlstein would like to present is DENIED.

Finally, with regard to Mr. Perlstein's request to extend the deadline by which he must submit a qualified bid, deliver a deposit and demonstrate financial capacity to fulfill the purchase offer, THE COURT FINDS cause to extend it to **4:00 PM today** – but no later. Hence, the limited extension this Court previously granted in its December 4, 2020 Order (doc. # 75) stands and any further extension of Mr. Perlstein's deadline for submitting a qualified bid is DENIED.

At the hearing on the Emergency Motion the Trustee reported that Mr. Perlstein has already submitted to the Trustee both a higher offer and the documents intended to demonstrate he has the financial capacity to pay the full purchase price he has offered. The Trustee also stated he would immediately transit to Mr. Perlstein's attorney the information necessary so Mr. Perlstein may timely wire the required deposit funds to the Trustee by the end of the business day today. The Court directs that the Trustee make every effort to ensure that technical issues are not a cause for Mr. Perlstein's offer failing to meet the criteria of a qualified bid.

SO ORDERED.

December 8, 2020 1:30 P.M.  
Burlington, Vermont

  
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Colleen A. Brown  
United States Bankruptcy Judge

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Purchaser for the cost for the damages not yet recovered for, then to costs of Purchaser in litigating the claim, including reasonable attorney's fees, and if any remainder, then to the Seller.  
Doc. #41, Ex. 1 at § 12(a).