

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

Kevin B. Dean,

Debtor

Chapter 11
Case No. 20-20427

AMENDED ORDER REMOVING KEVIN B. DEAN AS DEBTOR IN POSSESSION

Section 1185 of the Bankruptcy Code provides that:

On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.

11 U.S.C. § 1185(a). Emile Clavet is a creditor in this subchapter V case. He is, without question, a party in interest in the case. Mr. Clavet has requested that the Court order that the Debtor be removed from his status as a debtor in possession. *See* [Dkt. No. 176]. Mr. Dean opposed that request, *see* [Dkt. No. 186], and the Court conducted a hearing on Mr. Clavet's request on October 28, 2021. During that hearing, the Debtor conceded that, under section 1185(a), if the Court determines that cause exists, the Court is required to remove the debtor as a debtor in possession.

The statute does not articulate the entire universe of facts and circumstances that might amount to cause for removal. To that extent, the Debtor correctly asserts that the Court has some discretion when evaluating whether cause exists. That said, the statute does identify some facts and circumstances that amount to cause, and fraud—whether before or after the filing of the petition—is one of them. Here, the Debtor committed prepetition fraud. The state court

determined as much, and this Court has also determined as much. The pending appeal from this Court's determination in a related adversary proceeding does not insulate the Debtor from the operation of section 1185(a). If the Debtor is successful on appeal, the Court may revisit the question of whether he should be removed as a debtor in possession. *See* 11 U.S.C. § 1185(b). But until then, there has been a determination of fraud by the Debtor. Under the plain language of the statute, the Court is required to order that Mr. Dean cease serving as a debtor in possession. Effective as of November 2, 2021, the Debtor is removed as a debtor in possession.¹

Date: November 1, 2021



Michael A. Fagone
United States Bankruptcy Judge
District of Maine

¹ This order has been amended to correct a typographical error in the last sentence of the original order at [Dkt. No. 203].