

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV027214-590

ALLIANZ PCREL US DEBT S.A.,

Plaintiff,

v.

BLV ASCEND LLC; BLV ASCEND II
LLC; ELLIE PERLMAN; and
BENJAMIN PERLMAN,

Defendants.

**ORDER ON MOTION FOR ENTRY OF
AN ORDER (I) DISMISSING COUNT
TWO OF THE COMPLAINT WITHOUT
PREJUDICE AND (II) CONTINUING
RECEIVERSHIP**

1. **THIS MATTER** is before the Court following the 26 March 2026 filing of the *Motion for Entry of an Order (I) Dismissing Count Two of the Complaint Without Prejudice and (II) Continuing Receivership* (the Motion). (ECF No. 97 [Mot.])

2. Plaintiff Allianz PCREL US Debt S.A. (Plaintiff), through the Motion, seeks a Court order (i) dismissing its second claim for relief (Count Two) against Defendants Ellie Perlman and Benjamin Perlman (together, Guarantor Defendants) without prejudice¹ and (ii) continuing the receivership over Defendants BLV Ascend LLC and BLV Ascend II LLC (together, Borrower Defendants; and with Guarantor Defendants, Defendants). (Mot. 1.)

3. On 30 May 2025, Plaintiff initiated this action against Defendants upon the filing of the *Complaint*. (ECF No. 16 [Compl.]) In the original *Complaint*, Plaintiff's

¹ The Motion seeks dismissal of Count Two pursuant to Rule 41(a)(1) of the North Carolina Rules of Civil Procedure (the Rule(s)), which contemplates voluntary dismissals by the plaintiff without court involvement. (Mot. 1, 5.) However, at the hearing on the Motion held on 8 April 2026, counsel for Plaintiff orally amended the Motion to seek dismissal of Count Two by an order of the Court pursuant to Rule 41(a)(2). The Court, therefore, considers the Motion as if brought pursuant to Rule 41(a)(2).

only request for relief was a motion for appointment of a general receiver over Borrower Defendants. Of significance, while the motion for appointment of a receiver was premised on the fact that Plaintiff had loaned millions of dollars to Borrower Defendants, which loans were in default, Plaintiff asserted no claim against Borrower Defendants for breach of the loan agreements.²

4. On 11 June 2025, Plaintiff filed its *Amended Complaint* as a matter of right which, in relevant part, added Count Two against Guarantor Defendants for breach of their guaranty agreement. (ECF No. 5.)

5. On 1 July 2025, the Court entered its *Order on Plaintiff's Motion for Appointment of Receiver* (Order Appointing Receiver), appointing a general receiver over Borrower Defendants. (ECF No. 23.) The Court's Order Appointing Receiver stayed the litigation between Plaintiff and Guarantor Defendants for a period of sixty days. Following the end of the temporary stay, on 10 November 2025, the Court entered a *Case Management Order* setting deadlines for discovery to be conducted between Plaintiff and Guarantor Defendants.³ (ECF No. 58.)

6. The Motion represents that "Plaintiff now seeks to narrow the active issues in this case by dismissing its breach of guaranty claim *without prejudice* while

² Paragraph 1 of the initial *Complaint* provides: "This is a receivership action stemming from Defendants' mismanagement of real property secured by, among other things, real property known as 'The Ariel,' a 408-unit, multifamily apartment complex located at 1801 Willow Haven Lane in Charlotte, North Carolina (the 'Property'); and all leases and rents associated with the Property; and all buildings, structures, and improvements on the Property, and default under the terms of commercial loan documents under which approximately \$70,806,061.12 is currently outstanding." (Compl. ¶ 1.)

³ Notwithstanding the Court's setting, and extension of, discovery deadlines, it appears that Plaintiff and Guarantor Defendants have conducted no discovery to date.

allowing the receivership claim to proceed independently under N.C.[G.S.] § 1-507.24.” (Mot. 2.)

7. Rule 41(a)(2) provides that

[e]xcept as provided in subsection (1) of this section, an action or any claim therein shall not be dismissed at the plaintiff’s instance save upon order of the judge and upon such terms and conditions as justice requires. Unless otherwise specified in the order, a dismissal under this subsection is without prejudice.

N.C.G.S. § 1A-1, Rule 41(a)(2). “Whether an order granting voluntary dismissal under Rule 41(a)(2) should be entered is a matter of trial court discretion.” *In re Se. Eye Ctr.-Pending Matters*, 2020 NCBC LEXIS 133, at *3 (N.C. Super. Ct. Nov. 12, 2020) (quoting *West v. G.D. Reddick, Inc.*, 38 N.C. App. 370, 372 (1978)). “Rule 41(a)(2) is designed to take care of the hardship case where, for quite legitimate reasons, the plaintiff is unable to press his claim.” *Id.* (quoting *Thompson v. Town & Country Constr. Co.*, 39 N.C. App. 240, 242 (1978)).

8. While courts may play a productive part in the resolution of legal disputes, it is clearly unnecessary for a court to intervene to do something that a party may accomplish for itself. It is clear from the record before the Court that there are no circumstances present necessitating dismissal of Count Two pursuant to Rule 41(a)(2) and counsel for Plaintiff essentially acknowledged the same at the hearing on the Motion. This is not, for example, a class action lawsuit requiring court approval for dismissal pursuant to Rule 23(c) or an action involving a statute requiring court approval to dismiss, such as a derivative proceeding. Further, because Plaintiff has not rested its case, Plaintiff may, without involvement of any

kind by the Court, voluntarily dismiss Count Two without prejudice pursuant to the provisions of Rule 41(a)(1).

9. Pursuant to N.C.G.S. § 1-507.24(a)

A receiver may be appointed under this Article by the filing of a civil action by a creditor or other party in interest *in which the sole relief requested is the appointment of a receiver* or is combined with, or is ancillary to, a civil action that seeks a money judgment or other relief[.]

N.C.G.S. § 1-507.24(a) (emphasis added).

10. Plaintiff points out that “there are no reported decisions concerning the viability of a previously appointed receivership when a claim for money judgment alleged in the same action is voluntarily dismissed without prejudice.” (Mot. 5.) Thus, Plaintiff has filed the Motion “out of an abundance of caution” to ensure that the receivership continues upon dismissal of Count Two. (Mot. 5.) At the hearing on the Motion, counsel for Plaintiff voiced the concern that if Plaintiff voluntarily dismisses Count Two under Rule 41(a)(1), Plaintiff would be at risk of Defendants, or the Court, seeking termination of the receivership in the absence of the claim for monetary relief. The Court finds no basis for such concern.

11. By the express terms of the statute, a receiver may be appointed in an action in which the sole request for relief is the appointment of a receiver. N.C.G.S. § 1-507.24(a). While the statute is silent on the issue of whether a receivership may properly continue when an action includes claims for monetary relief that are subsequently dismissed, the Court concludes it logically follows that if N.C.G.S. § 1-507.24(a) permits the *creation* of a receivership and the *appointment* of a receiver in cases where the sole claim for relief is appointment of a receiver, the

statute also permits the *maintenance* of a receivership in cases where the complaint includes claims for monetary judgment that are ultimately dismissed, leaving a motion for appointment of a receiver as the only request for relief.

12. Accordingly, the Court concludes that the maintenance of a receivership over Borrower Defendants is proper regardless of whether Plaintiff dismisses Count Two and leaves the appointment of a receiver as the sole request for relief.

13. Moreover, pursuant to N.C.G.S. § 1-507.37(a), a receivership does not terminate until the court enters an order discharging the receiver and terminating the receivership upon a finding that “the appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership[.]” Assuming Plaintiff dismisses Count Two, there are no other changes in circumstances apparent here that would justify a finding by the Court that the receivership is no longer warranted and serving the purpose for which it was created, particularly in light of the fact that Plaintiff is owed tens of millions of dollars under its loan agreement with Borrower Defendants which has not been satisfied and the receiver has identified a number of other creditors with claims against Borrower Defendants. Thus, the Court sees no need to enter an order directing that the receivership continue upon dismissal of Count Two, as such dismissal would not automatically terminate or invalidate the ongoing receivership.

14. **THEREFORE**, with respect to Plaintiff’s request for an order dismissing Count Two pursuant to Rule 41(a)(2), the Court, in its discretion, hereby **DENIES** the Motion without prejudice to Plaintiff dismissing Count Two of its own volition

under the provisions of Rule 41(a)(1). Further, with respect to Plaintiff's request for an order continuing the receivership, the Court hereby **DENIES** the Motion as moot. The Order Appointing Receiver, and all other orders entered pertaining to the receivership over Borrower Defendants, remain in full force and effect.

SO ORDERED, this the 9th day of April, 2026.

/s/ Michael L. Robinson

Michael L. Robinson
Chief Business Court Judge