

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: AUGUST 30, 2021
CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-22404](#)-A-11 **IN RE: PAR 5 PROPERTY INVESTMENTS, LLC**
[DL-2](#)

CONTINUED MOTION TO AUTHORIZE POST-PETITION SECURED
FINANCING AND/OR MOTION TO ENTER INTO POST-PETITION
EMPLOYMENT SERVICES AGREEMENT
7-27-2021 [[37](#)]

IAIN MACDONALD/ATTY. FOR DBT.
WALTER DAHL/ATTY. FOR MV.

No Ruling

2. [20-25294](#)-A-11 **IN RE: HILLIARD CHAPEL AME ZION CHURCH**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-23-2020 [[1](#)]

DAVID JOHNSTON/ATTY. FOR DBT.

No Ruling

3. [20-25294](#)-A-11 **IN RE: HILLIARD CHAPEL AME ZION CHURCH**
[CCR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-2-2021 [[54](#)]

DAVID JOHNSTON/ATTY. FOR DBT.
CHERYL ROUSE/ATTY. FOR MV.
BERNARD BRONSON VS.

No Ruling

4. [20-25396](#)-A-11 **IN RE: RACEDAY CYCLE, INC.**
[RLC-4](#)

MOTION TO VALUE COLLATERAL OF RICHARD BURNS
7-29-2021 [\[100\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Continued to September 20, 2021, at 1:30 p.m. to allow the debtor to augment the record; debtor in possession to give notice of the continued hearing

Order: Civil minute order

The debtor in possession seeks to value unspecified property that serves as collateral for the secured claim of Richard Burns.

VALUATION OF COLLATERAL

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); accord *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The debtor has not made a prima facie case for relief. First, the motion does not specify the collateral. Rule 9013 requires "A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and

shall set forth the relief or order sought..." The motion describes it only as "collateral." Mot. 2:1, July 29, 2021, ECF No. 100. The Proof of Claim describes the collateral as "All Lienable Property of the Debtor. Proof of Claim 4-1, Part 9, February 2, 2021. Because the motion does not specify the collateral, either by individual asset or by category of items, i.e., account receivable, equipment, it does not meet the minimum standards under Rule 9013.

Second, it is also deficient in that it does not provide any independent basis by which the court may independently conclude that the debtor has accurately calculated value. The motion does not (1) identify the senior lien holder; (2) the items that are encumbered by the senior lien holders claim for which valuation is sought by this motion; or (3) the amount owed the senior lienholder.

Third, there is insufficient evidence of value of these assets. The only evidence offered is the declaration of Marc Sanders. Sanders decl., July 29, 2021, ECF No. 102. But it never opinions as to the value of the collateral, encumbered both by the senior lien and by the Richard Burns lien. Assuming (without deciding) that Marc Sanders, the Chief Executive Officer of the debtor may offer a non-expert opinion of value, *Enewally*, 368 F.3d at 1173, his declaration does not do so.

For these reasons the motion does not state a prima facie case for relief. Mindful that the debtor in possessions' plan is set for confirmation on September 20, 2021, and that the plan is posited on this valuation, the court will continue the hearing on this matter to allow the debtor to augment the record.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value personal property collateral has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that this matter is continued September 20, 2021, at 1:30 p.m.;

IT IS FURTHER ORDERED that not later than September 6, 2021, the debtor in possession shall serve of the notice of continuance on Richard Burns and his attorney, the Subchapter V trustee, and on all parties requesting notice; that notice shall specifically provide that no written opposition is due and may be made orally at the hearing;

IT IS FURTHER ORDERED that not later than September 6, 2021, the debtor in possession shall file a certificate of service indicating compliance with the previous paragraph of this order; and

IT IS FURTHER ORDERED that not later than September 6, 2021, the debtor in possession may augment the evidentiary record in support of the motion, shall all such documents on Richard Burns and his attorney, the Subchapter V trustee, and on all parties requesting notice, and shall file a certificate of service indicating compliance with this order.