

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:24-12028 **Madden Corporation**

Chapter 11

#1.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual
(cont'd from 9-11-24)

Docket 1

Tentative Ruling:

Tentative for November 13, 2024
Plan is now due. Status? *Appearance required.*

Tentative for September 11, 2024
Do we need a disclosure statement?
Set confirmation deadlines?
Plan to be filed by statutory deadline.
Has the Subchapter V trustee formulated any views?
Appearance required.

Party Information

Debtor(s):

Madden Corporation

Represented By
Robert S Marticello

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:24-12546 Motoo Noda

Chapter 11

#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.

Docket 1

Tentative Ruling:

Tentative for November 13, 2024

Deadline for filing plan and disclosure must be filed by February 15, 2025.

The court will hear argument as to whether a disclosure statement is needed.

Appearance required.

Party Information

Debtor(s):

Motoo Noda

Represented By
Andy C Warshaw

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8:23-11627 Vu Le

Chapter 11

**#3.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Plan
(set from s/c hrg held on 2-28-24)
(set from confirmation hrg held on 5-22-24)**

Docket 72

Tentative Ruling:

Tentative for November 13, 2024

Continue to coincide with hearing on debtor's motion to close on interim basis which was filed on October 25, 2024. *Appearance required.*

Tentative for May 22, 2024

Unless opposition is voiced, confirm. *Appearance required.*

Tentative for May 1, 2024

Are there continuing objections to confirmation? Were appraisals obtained? If not, how do we determine best interests of creditors? See §1129(a)(7). Since arguably only the UST has objected, what should the court do with the omissions? The fact that several classes cast no ballot and therefore § 1129(a)(8) is not satisfied seems not a problem in Subchapter V under 1191(b) but only so long as the court can otherwise find that one of the subparts of §1129(a)(7) applies. What does the Subchapter V trustee say? No tentative. *Appearance required.*

Tentative for February 28, 2024

Set confirmation and related deadlines for about 45 days hence. *Appearance required.*

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Chapter 11

Tentative for December 13, 2023
Set dates for confirmation?
Is a disclosure statement needed? The court would request a better explanation as to how this case works. See #7 at 10:00 a.m. regarding some other issues.
Appearance required.

Tentative for October 25, 2023
The status reports have been reviewed. Updates? Appearance required.

Tentative for September 13, 2023
The court would like to hear more, particularly from the appointed trustee, on how cash flow on V-Star Seafood looks, and whether there is a viable reorganization here. It would appear that a separate disclosure statement may not be needed and appointment of a committee may not be prudent. But it sounds like cash flow is very questionable.

Set dates for confirmation?
Is a disclosure statement needed?

Appearance required.

Party Information

Debtor(s):

Vu Le

Represented By
Andy C Warshaw

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:23-12551 Maria E Sanchez

Chapter 11

#4.00 POST-CONFIRMATION STATUS CONFERENCE RE: Confirmation Of Chapter 11 Plan
(set from s/c hrg held on 2-28-24)
(cont'd from 6-12-24 per court's own mtn)
(set from confirmation hrg held 6-26-24)
(cont'd from 10-09-24 per order cont. ch 11 post-confirmation s/c entered 9-19-24)

Docket 68

Tentative Ruling:

Tentative for November 13, 2024
Continued status conference February 5, 2025 with expectation that a final decree will be sought in meantime. *Appearance required.*

Tentative for June 26, 2024
See #5. Appearance is optional.

Tentative for February 28, 2024

Combined disclosure statement and plan to be filed not later than April 15, 2024. Continue status conference to evaluate that document and to schedule confirmation, claims bar and balloting etc. about thirty days later? Appearance required.

Tentative for January 10, 2024
This appears to be straightforward 100% case. Should a Disclosure Statement be required? In either event April 1, 2024 is a deadline for filing a

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CONT... **Maria E Sanchez** **Chapter 11**
plan of reorganization, and we should discuss whether a confirmation hearing
ought to be scheduled now. *Appearance required.*

Party Information

Debtor(s):

Maria E Sanchez

Represented By
John H Bauer

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8:23-12759 Knotty Nuff Wood, Inc.

Chapter 11

#5.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Small Business Plan 1
(set from s/c hrg held on 4-24-24)
(set from conf. hrg held on 7-03-24)
(cont'd from 10-09-24 per order continuing ch 11 post-confirmation s/c entered 9-19-24)

Docket 75

Tentative Ruling:

Tentative for November 13, 2024
Continue to January 29, 2025 at 10:00 a.m., with expectation that a motion to close on administrative basis will be filed in meantime to coincide.
Appearance required.

Tentative for July 3, 2024
The confirmation is unopposed and, per the brief, all elements are shown.
Confirm. Appearance required.

Party Information

Debtor(s):

Knotty Nuff Wood, Inc.

Represented By
Misty A Perry Isaacson

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:24-10111 Victory Professional Products, Inc.

Chapter 11

**#6.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Small Business Plan 1
(set from s/c hrg held on 4-24-24)
(set from conf. hrg held on 7-03-24)
(cont'd from 10-09-24 per order cont. ch 11 post-confirmation s/c entered 9-19-24)**

Docket 79

Tentative Ruling:

Tentative for November 13, 2024
Continue status conference to January 23, 2025 at 10:00 a.m. with expectation that a motion to administratively close will coincide for hearing.
Appearance required.

Tentative for July 3, 2024
This appears to be a consensual plan and all of the elements necessary for confirmation shown. *Confirm. Appearance required.*

Party Information

Debtor(s):

Victory Professional Products, Inc.

Represented By

Misty A Perry Isaacson

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:23-11167 Five Rivers Land Company LLC

Chapter 11

#6.10 Examiner Scott M. Sackett's Motion For Order Approving Settlement And Sale Of Property Pursuant To 11 U.S.C. 363(b)(f).

Docket 240

Tentative Ruling:

Tentative for November 13, 2024

This is Examiner Scott M. Sackett's ("Examiner") motion to approve a settlement under FRBP 9019 and sale of the property located at 17725 road 24, Madera, California 93638 ("Property" ; this is identified in the papers as the "Processor property") pursuant to §§ 363(b) and (f). The motion is opposed entirely by Shiu Ching Wu, Vijey K. Mehta and Sunita Mehta, Falcon Investments, LLC, Paramjit Rai and Shakuntala Rai, Yogesh Oka and Ripple Sharma, Yael Lir (collectively "the Falcon Group") and on a limited basis by Rabo Agri Finance, LLC ("Rabo"). The Examiner reports the Rabo objection is likely resolved by some modifications to language in the order.

A. Background

Debtor Five Rivers Land Company, LLC ("Debtor") filed a voluntary petition on June 6, 2023. Examiner was appointed on June 22, 2023 and granted authority to sell assets of the estate among other powers. In October 2023, Examiner convened certain stakeholders in this matters for a series of settlement meetings focused on finding a way to consensually reorganize Debtor. The settlement negotiations lasted three days and included more than three hours of negotiations on the first day, 17 hours on the second day, and 10 hours on the third day. As a result, an overall settlement agreement ("Settlement Agreement") was reached between Debtor, Five Rivers Farming Co. LLC ("Five Rivers Farming"), Coast to Coast Packing Group LLC ("Coast"), David Nino, Victoria Nino (collectively with David Nino, the "Ninos"), California Nut Growers LLC ("CNG"), Golden Valley Ag LLC ("GVA"), Harjinder "Jay" Brar, Ramandip "Ray" Brar, Pinder Brar, Nirbhey Brar, and

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The Brar Family Trust dated April 20, 2014 (the "Brar Trust," and collectively with Jay Brar, Ray Brar, Pinder Brar, and Nirbhey Brar, the "Brars"). The Settlement Agreement was memorialized in a Settlement Term Sheet in October 2023 ("Term Sheet"). Through this motion, Examiner now seeks approval of the Settlement Agreement, and authority to consummate a material term in the Settlement Agreement – the sale and transfer of the Property to the Brars for \$800,000.

The Settlement Agreement includes, among other things, the following terms:

- (a) Reinstatement of Debtor with California Secretary of State
- (b) Consolidation of approximately 550 acres of real property (including orchards, commercial property, and residences) into the bankruptcy estate;
- (c) Cessation of litigation involving claims by, against, and between Debtor, Brars, CNG, GVA, Fiver Rivers Farming, and Coast;
- (d) Sale of Debtor's real property; and
- (e) Structure for a consensual liquidation of Debtor's assets.

Debtor is now reportedly in good standing with the California Secretary of State. The Brars executed deeds allowing the Real Property to be transferred to Debtor without necessity of further litigation, allowing the estate to avoid substantial administrative costs. Litigation between Brars, Ninos, and Debtor has been stayed, also resulting in cost-savings for the estate. And the Debtor's remaining real estate is currently being marketed for sale by Examiner's brokers- consistent with the parties' agreement that those properties "can and should be sold for highest possible price"

Debtor holds title to the Property, and there is currently only one group of putative secured creditors who assert a lien against the Property who may be affected by this motion: The Falcon Group. The Falcon Group holds an alleged secured claim in the amount of \$2,971,253.91. Examiner acknowledges that there are outstanding property taxes and associated interest and penalties for prior years' unpaid property taxes, due and payable

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for the Property. The total amount of such taxes is \$11,793.08. Examiner proposes to pay all such outstanding amounts at the closing of the Sale. The Brars have agreed to pay for half of the outstanding balance.

Examiner proposes the sell the Property on the following terms:

- (a) Free and clear of all liens, claims, interests, and encumbrances;
- (b) On an as-is, where-is basis, without any representations or warranties of any kind;
- (c) For a total price of \$800,000

Examiner also proposes to pay all outstanding property taxes at the close of the sale, with the Brars to pay half of the outstanding balance. Brars have agreed to pay the full cost of the title insurance policy to be acquired in connection with the proposed sale. An escrow has already been opened in connection with the proposed sale and the full \$800,000 purchase price has already been deposited into that escrow.

B. Legal Standard for Approving Compromise

Under FRBP 9019, "on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." "It is clear that there must be more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement. The court must also find that the compromise is fair and equitable." *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Id.* at 1381. "In addition, while creditors' objections to a compromise must be afforded due deference, such objections are not controlling...and while the court must preserve the rights of the creditors, it must also weigh certain factors to

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determine whether the compromise is in the best interest of the bankrupt estate." Id. at 1382. In short, "[t]he law favors compromise and not litigation for its own sake[.]" Id. at 1381. The court will below analyze applicability of the A&C Properties factors:

1. Probability of Success in Litigation

The first factor weighs in favor of the Settlement Agreement, as it eliminates all litigation between Debtor, the Brars, and Ninos which, based on the issues involved, was expected to be highly complex and contested. It is unclear who would prevail, which is why Examiner has made diligent efforts with the other parties over the last several months to reach settlement.

2. Difficulties In Collection

This factor is inapplicable to this matter.

3. Complexity of Litigation, Inconvenience, Delay

One of the main reasons Examiner requests approval of the Settlement Agreement is avoidance of the highly contested litigation that would have resulted without compromise. Through extensive negotiation, the parties have come to an agreement that saved the estate the uncertainty, expense, inconvenience, and delay that would have resulted. Further, the stay on the litigation for the last few months has avoided associated costs that estate would have incurred. This Settlement Agreement provides substantial benefit to the estate and allows for a possible reorganization for Debtors. Accordingly, the third factor weighs in favor of the Settlement Agreement.

4. Paramount Interest of Creditors

Falcon Group, the main opponent here, argues that the Settlement Agreement and accompanying sale are not in its best interests as alleged first priority lienholder of the Property, and that the Settlement Agreement allows

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for the Brars to somehow "correct" its transfer of the Debtor's real estate to family members. As observed correctly by the Examiner, this premise is incorrect because many of the properties involved, including the subject Property, were not originally owed by Debtor but by the Brars. Further, the Settlement Agreement does not automatically provide for the full releases as contemplated by Falcon Group, but only an exchange of releases if the properties *are sold or refinanced for \$20 million or more*. If this becomes the case, there will be enough for the Debtor to pay all creditors of the estate in full, which is obviously in the best interest of creditors. If that amount is not realized, then the Brars will not receive the release under the Settlement Agreement. Falcon Group does not seem to appreciate the great benefit this Settlement Agreement will bring to the estate, as it avoids the extreme costs and delay that most certainly would have occurred with the pending litigation. This would further present an obstacle for the Falcon Group to be paid on their disputed lien.

It is also noted that this Settlement Agreement and the Term Sheet were executed in October 2023, and parties in interest were notified of the Term Sheet in December 2023. Since that time, multiple requests were also field seeking authority to implement certain portions of the Settlement Agreement. No objections from the Falcon Group or any other creditor were brought during this time until now. Significant steps have been made in compliance with the Settlement Agreement, including reinstating Debtor with the California Secretary of State, transfer of the real property to Debtor without further litigation, and cessation of all litigation involved. There also apparently been efforts to market the remaining real estate for sale by Examiner's brokers to sell for the highest possible price.

Based on the above arguments, the court finds that three out of the four A&C Properties factors weigh in favor of approving the Settlement Agreement, and allowing for the sale of the Property, which is explained further below.

C. Legal Standard for Approving Sale Under Section 363

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Section 363(b) provides that after notice and a hearing, a trustee may sell property of the estate out of the ordinary course of business. Courts have held that in order to approve a sale, a court must find that the trustee demonstrates a valid business justification, and that the sale is in the best interest of the estate. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653 (9th Cir. BAP 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841-42 (Bankr. C.D. Cal. 1991). A sale is in the best interest of the estate when it is fair and reasonable, it has been given adequate marketing, it has been advertised and negotiated in good faith, the purchaser is proceeding in good faith, and it is an arm's length transaction. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 841. The *Wilde Horse* court goes on to explain that good faith encompasses fair value and further speaks to the integrity of the transaction. Bad faith would include collusion between the seller and buyer or any attempt to take unfair advantage of any potential purchasers. *Id.* at 842.

1. Sound Business Purpose/Valid Business Justification

The first consideration is whether there is a sound business purpose for the sale of the Property. Falcon Group argues that there is not because simply bringing funds into the estate at the expense of a secured creditor is not adequate. Further, Falcon Group contends that instead of having its lien attach to the sale proceeds, it should be paid immediately and not held hostage by the Examiner pending further proceedings. Examiner strongly disputes these arguments, arguing that there is a sound business purpose for the sale. Specifically, Examiner asserts that it has been continuing to farm the portions of Debtor's real estate on which almond orchards are present and is marketing those properties for sale. The subject Property does not have orchards or farming operations, and the Debtor does not own the equipment to utilize the Property as a nut processing facility. Thus, the only practical step forward is to sell the Property and gain value for the estate to pay off creditors. Examiner is currently challenging Falcon Group's lien, so it is unclear whether there will be a security interest in the proceeds of the sale. Examiner and Debtor have filed an objection to Falcon Group's claim and an adversary proceeding, raising numerous challenges to the validity and extend. Until these claims are adjudicated, Falcon Group does not hold an allowed

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secured claim against the estate.

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The court is persuaded by Examiner's argument. After several months of negotiations, the parties have come to a Settlement Agreement that will generate potentially millions of dollars for the estate to satisfy claims of creditors (apparently in full). This is exactly the goal in a bankruptcy, to satisfy the claims of creditors and provide a debtor with a path forward. The court finds a valid business justification/purpose for this sale transaction.

2. Fair and Reasonable

Falcon Group also contends that the sale is not fair and reasonable, particularly that the Property was not marketed for the best and highest price, not subject to overbids, and the appraisal is from April 2024 for the purpose of refinancing the Property for the Brars. Falcon Group argues that the actual value of the Property is unknown (although does not provide any counter appraisal) and that the whole point of the sale was to correct the mistakes of the Brars so they can purchase the Property they want. However, as stated above, this is not the correct narrative as the Brars were the original owners of the Property. As to the purchase price of \$800,000, Examiner asserts that this price is higher than the appraised value and the appraisal from April 2024 was conducted by an independent third-party and based on substantial market data. Additionally, Examiner states that the lack of commission will actually provide more value to the estate by paying the Brars instead of marketing the property and paying brokers.

Although further marketing the Property to other buyers and including overbids usually adds an element of fairness in most cases, this is a unique situation. The Brars originally owned the Property and to avoid litigation and allow for the estate to be able to generate enough money to pay off creditors, the Brars transferred the Property and other real estate. This sale provides proceeds for the estate, and in turn creditors, but also gives the Brars the opportunity to buy back the Property they originally owned. As mentioned, a recent appraisal would have been preferred, but Falcon Group does not provide the court with any counter appraisal or further evidence to support

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that the value is incorrect. Thus, the court is left to determine the value as stated by Examiner. Based on the significantly higher purchase price, the court finds that the sale is fair and reasonable.

3. Free and Clear of Liens under Section 363(f)(5)

Although not disputed by the parties, discussion is warranted to determine whether the sale can be made free and clear of liens under Section 363(f)(5). Section 363(f) allows a trustee to sell property of the bankruptcy estate "free and clear of any interest in such property of an entity," if any one of the following five conditions is met: (1) Applicable non-bankruptcy law permits a sale of such property free and clear of such interest; (2) Such entity consents; (3) Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) Such interest is in bona fide dispute; or (5) Such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest. 11 U.S.C. § 363(f); see e.g., *Pinnacle Restaurant at Big Sky, LLC v. CH SP Acquisitions, LLC (In re of Spanish Peaks Holdings II, LLC)*, 862 F.3d 892,900 (9th Cir. 2017); see also *In re Jolan*, 403 B.R. 866, 868 (Bankr. W.D. Wash. 2009); *Southland Royalty co. v. Wamsutter LLC (In re Southland Realty Co.)* 623 B.R. 64, 98 (Bankr. Del. 2020), While there is arguably contrary BAP authority in the Ninth Circuit (see *Channel Outdoor, Inc. v Knpfer (In re PW,LLC.)*, 391 B.R. 25 ,41 (9th Cir. 2008) the court regards the *Pinnacle/Jolan* approach as more sound and controlling in this Circuit. Further, as explained below, it is not necessary on this record to resolve this conflict.

Here, the Examiner argues that Section 363(f)(5) is applicable because Falcon Group would be compelled in a legal or equitable proceeding to accept money satisfaction for their lien on the Property. This may or may not be true, *but the court finds that Section 363(f)(4) also applies* as Falcon Group's lien on the Property is currently in dispute, as demonstrated by the Examiner and Debtor's claim objection and adversary proceeding challenging the validity of the claim. Until this is determined, Examiner provides Falcon Group with a replacement lien by attaching the lien to the sale proceeds,

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which is discussed further below.

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4. Good Faith Sale/Good Faith Purchaser under Section 363(m)

Examiner asserts that the Brars should be afforded determination and protection as good faith purchasers because the terms of the sale are dictated by the Settlement Agreement which was the result of extensive negotiations with multiple stakeholders over the course of three days. Further, Examiner has already received the substantial consideration from the Brars and the purchase price is above the appraised value - a good indication of good faith transaction. This is disputed by Falcon Group, who contends that the Property was not marketed to other potential buyers so it is unclear if a sale to a third party would have generated more money to the estate. Further, Falcon Group argues that the identity of the "designee" of the Brars has not been disclosed. Examiner provides clarification on these points that the court agrees with. As to marketing to other potential buyers, Examiner has explained that this transaction Debtor did not own the Property prior to the petition date, and the Brars transferred the title to allow for maximization of the funds for the estate and is now offering to pay in excess of \$800,000 (higher than the appraised value) to repurchase the Property. Additionally, Falcon Group was apparently provided with details regarding the name of the Brars' then-intended designee on September 27, 2024 at the same time it was advised that escrow had been opened with the \$800,000 purchase price deposited. This was three weeks before the motion was filed. Finally, the sale price was arrived at through extensive and painstaking negotiation that lasted for several hours over the court of three days between Debtor, the Brars, and Ninos. The parties could not come to an agreement and the purchase price was set by the Examiner. Based on these arguments, the court finds that this sale was conducted in good faith and the Brars are good faith purchasers under Section 363(m).

5. Waiver of 14-day Stay

Rule 6004(h) provides that "An order authorizing the use, sale, or lease

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of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." FRBP 6004(h). The court agrees with Examiner that for the sake of timely and speedy close of escrow, the 14-day stay of effectiveness of sale order is waived to prevent further delay. There are unpaid prior years' property taxes that are continuing to accrue interest and penalties. Consequently, the estate has a business need to close the sale as soon as possible, so that the property taxes are paid and the accrual of such additional amounts is stopped. This does not appear to be disputed by Falcon Group or Rabo, so the court will also not create further obstacles here. The 14-day stay is waived.

D. Adequate Protection for Falcon Group

Falcon Group argues that the motion fails to provide the Falcon Group with adequate protection for its claimed lien. The Examiner proposes a replacement lien on the sale proceeds, which the Falcon Group allegedly already has a lien on but is reserving the right to use sale proceeds for other purposes, thus diluting the value of the replacement lien. Examiner responds in the reply that it has provided Falcon Group with the "indubitable equivalent" by attaching the lien to the sale proceeds of the Property. Indeed, "[m]ost often, adequate protection in connection with a sale free and clear of other interests will be to have those interests attach to the proceeds of the sale." *Wilmington Trust v. BOH Park Highlands NV, L.P. (In re November 2005 Land Investors, LLC)*, 636 Fed. Appx. 723, 726 (9th Cir. 2016). Further, the use of the proceeds from the sale will be to pay half of the real estate taxes and associated interest and penalties; in every likelihood these come ahead of any lien The Falcon Group could assert in any event.. Payment of any other amounts from the sale proceeds will not occur according to Examiner. So long as Falcon Group's claim and liens are disputed, it cannot be paid anything and it cites to no authority requiring payment in full immediately upon close of sale. Adequate protection has been provided appropriately here.

Grant. Appearance required.

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

CONT... Five Rivers Land Company LLC

Chapter 11

Party Information

Debtor(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Matthew J Stockl
Richard H Golubow

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

8:24-11723 Cristelle Steenson Arenal

Chapter 11

#7.00 Motion In Individual Ch 11 Case For Order Approving A Budget For The Use Of
The Debtor's Cash And PostPetition Income

Docket 73

Tentative Ruling:

Tentative for November 13, 2024
Approve as unopposed. *Appearance suggested.*

Party Information

Debtor(s):

Cristelle Steenson Arenal

Represented By
Michael G Spector
Vicki L Schennum

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room

5B

10:00 AM

8:24-11723 Cristelle Steenson Arenal

Chapter 11

#8.00 Application For Compensation For Period: 7/11/2024 to 10/21/2024:

MICHAEL G SPECTOR, DEBTOR'S ATTORNEY:

FEE: \$43,038.00

EXPENSES: \$545.65

Docket 86

Tentative Ruling:

Tentative for November 13, 2024
Allow as prayed. *Appearance is optional.*

Party Information

Debtor(s):

Cristelle Steenson Arenal

Represented By
Michael G Spector
Vicki L Schennum

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

8:24-11866 TOURA #5, LP

Chapter 11

#9.00 Motion To Approve Financing Pursuant To 11 U.S.C. §364(c)(2)

Docket 47

***** VACATED *** REASON: OFF CALENDAR - ORDER ON MOTION
FOR PROTECTIVE ORDER ENTERED 10-29-24 - SEE DOC #53**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

TOURA #5, LP

Represented By
Nancy Korompis

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

8:24-11866 TOURA #5, LP

Chapter 11

#10.00 Debtor And Debtor In Possession, Tour #5, LP's Motion To Approve Financing Pursuant To 11 U.S.C. §364(c)(2)

Docket 54

Tentative Ruling:

Tentative for November 13, 2024

This is Chapter 11 Debtor's ("Debtor") Motion to Approve Financing under 11 U.S.C. § 364(c)(2) to approve a loan to be taken by Debtor. It is only opposed by Creditor RJS Financial.

A. Background

Debtor took out a mortgage loan in the amount of \$1,250,000 from Pacific Loan Works ("Creditor" or "PLW") in March 2023, the loan servicer of RJS Financial. The loan was secured by Debtor's two real properties located at (i) 1203 Circle City Drive, Corona, CA and (ii) 1154 East 6th Street, Corona, CA (the "Properties").

Debtor became delinquent on the loan in 2024, and when attempts to negotiate a restructuring of the loan failed, Creditor scheduled the Properties for auction in July 2024. Debtor filed its Chapter 11 on July 23, 2024 to reorganize. Debtor intends to refinance the loan from Creditor and develop the Properties to prepare it for sale to a developer. The current amount due to Creditor is \$1,426,272.66, although the source of this amount is disputed by RJS, which contends that the source, or the Payoff Statement, was obtained through unauthorized communication in violation of a California Rule of Professional Conduct. Specifically, RJS argues that Debtor's counsel Nancy Korompis emailed Isamar Mondragon in the Loan Servicing Department of PLW and requested the Payoff Statement without the consent or permission from PLW's counsel of record before communicating directly with PLW. This was done despite Debtor's counsel being aware that PLW and RJS were represented by counsel. Debtor, through Ms. Korompis, filed this DIP Motion with the Payoff Statement attached. Debtor's reply resolves this issue by

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

CONT... TOURA #5, LP

Chapter 11

admitting to the oversight in the prohibited communication and agreeing to use the amount stated in Creditor's proof of claim #4, which is \$1,360,783.73. Thus, the Payoff Statement amount will be disregarded.

Debtor would like to incur debt in the amount of \$2,000,000. Debtor is working with loan broker Chameleon Enterprises, Inc. ("Chameleon" or "Broker") to obtain the new loan that will be secured by the Properties. Debtor will be filing a motion to employ Broker and the terms of the new loan will be as follows:

- (a) Loan Amount: \$2,000,000
- (b) Duration: 12 to 18 months
- (c) Interest Rate: 11-12%
- (d) Monthly payment: \$18,000-\$20,000
- (e) Reserve prepaid 12-month interest of \$220,000 - \$240,000

Debtor intends to use the new loan to pay estimated charges of \$1,939,346 as well as hold the estimated remainder of \$60,000 to pay for all business expenses including any future loan interest payments, legal fees and for upkeep on the Properties. The Charges are summarized as follows:

- (a) \$1,426,272.6 per Creditor's Payoff Statement
- (b) Additional interest due on Creditor's loan of \$26,794.80
- (c) Debtor's tax debts totaling \$21,973.07
- (d) Lender's reserved 12-month prepaid interest of \$240,000
- (e) Broker's fees at 3% of loan amount
- (f) UST quarterly fees of \$16,000
- (g) Entitlement costs between \$150,000 and \$170,000
- (h) Estimated remainder of \$60,000 used to pay Debtor's business expenses including loan interest payments, legal fees, and upkeep of

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

CONT... TOURA #5, LP
Properties.

Chapter 11

B. Legal Standard

Under 11 U.S. Code § 364 (c)(2), "If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt— secured by a lien on property of the estate that is not otherwise subject to a lien." ". . . Chapter 11 debtors in possession are required to obtain the approval of the bankruptcy court when they wish to incur secured debt. . . . This obligation stems from section 362 of the Bankruptcy Code, which prohibits post-petition encumbrances on the bankruptcy estate." *In re Harbin*, 486 F. 3d 510, 521 (9th Cir. 2007) (internal citations omitted).

C. Analysis

As a procedural matter, Creditor's opposition contends that Debtor failed to provide a F 4001-2.STMT.FINANCE. form as required under Local Bankruptcy Rule 4001-2(a) with the motion. Debtor has since provided the completed form in the reply. Although the court would have preferred this filing with the motion, Debtor seems to have resolved this procedural issue.

Regarding whether Debtor's motion should be approved, Debtor seeks to obtain a loan for \$2 million from Chameleon (or as brokered by Chameleon) that will be secured by the Properties. Debtor provides the terms of the loan in the motion as well as the signed Letter of Intent filed as a supplemental document [DN 60]. Creditor disputes the Letter of Intent, arguing that it is not from a lender, but a loan broker, and that it reflects various contingencies that are not addressed in the motion. The LOI also states that it is "NOT a loan approval or commitment to fund". Finally, Creditor argues that Debtor has made no effort to obtain a loan on unsecured basis. Debtor responds in the reply that Section 364(c)(2) does not require Debtor to

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

CONT... TOURA #5, LP

Chapter 11

first try to obtain unsecured financing before requesting for court approval to incur debt. It is common to use a loan broker when seeking this type of commercial mortgage loan. Reportedly, the loan broker will issue a Commitment Letter to fund the loan once the court's approval to incur the debt is obtained. Further, Debtor does not know of any lender that would provide \$2 million on an unsecured basis but is open to the possibility if Creditor can find one. The terms of the signed LOI appear reasonable, with an interest rate of 11-12% and a loan-to-value ratio of 23%. There is significant cushion in the Properties which are appraised at \$9 million. Chameleon has also indicated that a Commitment Letter will be forthcoming once court approval is given.

Should the \$2 million be enough to pay off the Creditor's proof of claim amount #4 and all interest, fees, costs, and other charges justly accrued, the court grants the motion now that all procedural issues have been resolved, and in anticipation that Creditor will not refuse payment in full from escrow. But should the loan amount be inadequate to take care of Creditor and any other liens on the Properties, a further hearing will be required as the requirements of Section 364(c)(2) will no longer be met for the court to approve the loan.

Appearance required.

Party Information

Debtor(s):

TOURA #5, LP

Represented By
Nancy Korompis

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, November 13, 2024

Hearing Room 5B

10:00 AM

8:24-12497 Afrin Transport, Inc.

Chapter 11

#11.00 Motion For Authority To Use Cash Collateral On An Interim Basis - **Final Hearing**
(OST Signed 10-09-24)
(Cont'd from 10-15-24 - ES Calendar)

Docket 13

Tentative Ruling:

Tentative for November 13, 2024
Grant on a final basis as unopposed. *Appearance suggested.*

October 15, 2024

Absent opposition presented at the hearing, the Court is inclined to grant the motion for interim use of cash collateral as requested in the Motion and to set a final hearing for November 13, 2024 at 10:00 a.m. As to any supplemental pleadings in support/opposition regarding the final hearing, the briefing schedule set forth in LBR 9013-1(d)(1) applies.

The Court does, however, have one concern. According the evidence submitted in support of the Motion, as of October 1, 2024 (petition date), Debtor only had available cash of \$4400. Does Debtor currently have cash sufficient to make the payments referenced in the Motion, i.e., \$65,121?

Party Information

Debtor(s):

Afrin Transport, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se