

SIGNED.



Dated: October 08, 2009

James M. Marlar
JAMES M. MARLAR
Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

<p>10 In re:</p> <p>11 BERRY GOOD, LLC,</p> <p>12 and related proceedings,</p> <p>13 _____</p> <p>14 OTHER JOINTLY ADMINISTERED</p> <p>15 BEAUDRY CHEVROLET, CHRYSLER,</p> <p>16 JEEP & DODGE, LLC 4:08-bk-16504-JMM</p> <p>17 PALO VERDE VENTURES, LLC 4:08-bk-16526-JMM</p> <p>18 GILA RIVER VENTURES, LLC 4:08-bk-16527-JMM</p> <p>19 SMART VENTURES, LLC 4:08-bk-16529-JMM</p> <p>20 WITT VENTURES, LLC 4:08-bk-16531-JMM</p> <p>21 BEAUDRY RV COMPANY 4:08-bk-16533-JMM</p> <p>22 BEAUDRY RV RESORT, INC. 4:08-bk-16536-JMM</p> <p>23 BEAUDRY RV MESA, INC. No. 4-08-bk-17015-JMM</p> <p>24 _____</p>	<p>) Chapter 11</p> <p>)</p> <p><input type="checkbox"/> No. 4:08-bk-16500-JMM</p> <p>) (Jointly Administered)</p> <p>)</p> <p>) MEMORANDUM DECISION (DN 384)</p> <p>)</p> <p>)</p> <p><input type="checkbox"/>)</p> <p><input type="checkbox"/>)</p> <p><input type="checkbox"/>)</p> <p><input type="checkbox"/>)</p> <p><input type="checkbox"/>)</p> <p><input checked="" type="checkbox"/>)</p> <p><input type="checkbox"/>)</p> <p><input checked="" type="checkbox"/>)</p>
<p>Debtors.</p>	

The issue before the court today is whether to approve an "informal claim" asserted by creditor Steven Roddy against the estates of Beaudry RV Company and Beaudry RV Mesa, Inc.

Mr. Roddy relies exclusively on one case from the Ninth Circuit, which he maintains supports his argument. *In re Pizza of Hawaii, Inc.*, 761 F.2d 1374 (9th Cir. 1985).

The difficulty with Mr. Roddy's argument, and the critical distinction is that Mr. Roddy never filed, prior to the instant motion, any document nor pointed to any pleading or other claim filed in the bankruptcy proceedings. Nor was there any civil action pending, even in the District Court. Mr. Roddy's only argument is that he had filed a state court civil action for damages prior to the bankruptcy case. Mr. Roddy never appeared in bankruptcy court, nor participated in any

1 manner. In the *Pizza* case, creditor Shakey's filed numerous documents with the bankruptcy court,
2 participated in several legal matters within that case, and made its claims generally known, through
3 such participation. And, Shakey's had previously filed an action in the federal U.S. District Court.

4 When the issues in the *Pizza* case reached the Ninth Circuit, the court held that it
5 applied a liberal standard to such "informal proofs of claim," and allowed it because of all the actual
6 notice given to the debtor of the existence of the claim--in the bankruptcy itself--by the creditor
7 Shakey's.

8 Mr. Roddy points to no fact which shows any appearance in the bankruptcy court
9 which would support such an argument.

10 This, then, raises a fact issue as to whether Mr. Roddy had actual notice of the
11 bankruptcy case in time to file a claim. If he had, he would have a duty to file a claim--formal or
12 informal--with the bankruptcy court. All that Mr. Roddy points to, to allege "no knowledge," is a
13 wrong address and the affidavit of his attorney that the attorney did not receive notice. No party,
14 Mr. Roddy nor his attorney, states under oath that they were unaware of the filing of the bankruptcy
15 case on November 17, 2008.

16 Nor does Mr. Roddy and his attorney argue or assert that they never had actual notice
17 of the case prior to the expiration of the claims deadline of March 4, 2009 (DN 181, entered
18 January 27, 2009). *See* FED. R. BANKR. P. 3003. The issue of actual knowledge is critical to the
19 legal consequence of whether the Roddy claim is dischargeable in the case. *See* 11 U.S.C.
20 § 523(a)(3).

21 For all of these reasons, then, Steven Roddy's "Motion to Recognize Proof of Claim
22 as Timely Filed" will be DENIED.

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24 DATED AND SIGNED ABOVE.

1 COPIES to be sent by the Bankruptcy Notification
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