

SIGNED.



Dated: November 17, 2009

James M. Marlara
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 DEBTORS:</p> <p>16 BEAUDRY CHEVROLET, CHRYSLER,</p> <p>17 JEEP & DODGE, LLC 4:08-bk-16504-JMM</p> <p>18 PALO VERDE VENTURES, LLC 4:08-bk-16526-JMM</p> <p>19 GILA RIVER VENTURES, LLC 4:08-bk-16527-JMM</p> <p>20 SMART VENTURES, LLC 4:08-bk-16529-JMM</p> <p>21 WITT VENTURES, LLC 4:08-bk-16531-JMM</p> <p>22 BEAUDRY RV COMPANY 4:08-bk-16533-JMM</p> <p>23 BEAUDRY RV RESORT, INC. 4:08-bk-16536-JMM</p> <p>24 BEAUDRY RV MESA, INC. No. 4-08-bk-17015-JMM</p> <p>25 _____</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 403)</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>
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Creditor Steven Roddy has filed a "motion to reconsider" this court's order disallowing a claim. That order was entered on October 8, 2009 (DN 397). The present motion was filed on October 19, 2009 (DN 403). Because the motion before the court was not timely filed within ten days after the order complained of, it cannot be treated as a FED. R. CIV. P. 59 motion (FED. R. BANKR. P. 9023). Instead, it must be treated as a FED. R. CIV. P. 60 motion (FED. R. BANKR. P. 9024).

1 For the instant motion, Mr. Roddy has presented the court with a new case, that was
2 not part of the original motion (DN 384). *In re Maya Construction Co.*, 78 F.3d 1395 (9th Cir.
3 1996). In that case, the circuit placed the burden of notification of known creditors upon the debtor.

4 In the instant case, the affidavit of Mr. Roddy's state court attorney, Ezra Clark, is
5 un rebutted. It states that the Debtors, although listing Mr. Clark, set forth the wrong address and
6 zip code. The affidavit further states, that even after diligent search, counsel nor staff could locate
7 receipt of the court's notices. In view of the errors made in the attempted notice, the court must find
8 that the notice sought to be given was not reasonable, and therefore, Mr. Roddy's late-filed claim
9 must be accepted. *See, also, In re Reilly*, 2009 WL 507063 (Bankr. D. Idaho 2009).

10 For these reasons, then, the court will grant the motion to set aside the order of
11 October 8, 2009, and will enter a new order GRANTING Steven Roddy's request to file a late claim.
12 If that claim is contested, however, then further proceedings must be held on its liquidation and
13 settlement.

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15 DATED AND SIGNED ABOVE.

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17 COPIES to be sent by the Bankruptcy Notification
18 Center ("BNC") to the following:

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