

Adversary Proceeding against the following defendants: Corporation Services Co. (“CSC”), First Corporate Solutions (“FCS”), Global Merchant Cash, Inc. (“GMC”), United States Small Business Administration (“SBA”), Wellen Capital, LLC (“Wellen”), and Sonepar Distribution N.E., Inc. (“Sonepar”) (collectively the “Defendants”). The purpose of the action is to determine the value of the Defendants’ interests in certain property of the estate as well as to void those liens in connection with the confirmation of a Chapter 11 Plan.¹ ECF Nos. 1, 3. The Debtor filed the Motion contemporaneously with the Complaint in this action. No party responded to the Motion or advanced an objection either on the docket or at the hearing on this matter, which took place on March 28, 2022. In addition to the financing statements and financial statements attached to the Motion, the Debtor also sought to support its Motion with the affidavit of Paul Calafiore, the Debtor’s principal. ECF No. 4-1 (the “Calafiore Affidavit”). No party objected to the full admission of the Calafiore Affidavit for purposes of this Motion. The Court notes that CSC, FCS, and Sonepar have not appeared in this action. The Clerk filed an Entry of Default against these three Defendants on March 11, 2022. ECF Nos. 16, 17 18.

The Debtor’s senior lenders are People’s United Bank (“PUB”) in the senior position followed by Liberty Bank (“Liberty”). These two banks are fully secured and hold security interests in the Debtor’s personal property assets. PUB’s claim was scheduled at \$75,000 and its proof of claim asserts a prepetition claim of \$80,756.58. Liberty’s claim was scheduled at \$800,000 and its proof of claim asserts a prepetition claim of \$817,914.44. The two banks’ claims amount to \$898,671.02. Additional entities (the “Claimants”) are identified in the following chart, which lists each Claimant along with information about their financing statements and proofs of claim that are the subject of this Motion:

¹ The Debtor is the Debtor-in-Possession. No committee of unsecured creditors was appointed in the main bankruptcy case.

Entity	Date Financing Statement Recorded	Scheduled Amount	POC Amount
Corporation Services Co. (1st filing)	7/15/2019; filing no. 000 331 9482	\$0.00	\$0.00
First Corporate Solutions	12/31/2019; filing no. 000 334 7355	\$0.00	\$0.00
Global Merchant Cash, Inc.	1/17/2020; filing no. 000 334 8361	\$506,788.74	\$506,788.74
U.S. Small Business Administration	8/1/2020; filing no. 000 339 3464	\$500,000	None filed
Corporation Services Co. (2nd filing)	10/16/2020; filing no. 000 340 8197	\$0.00	\$0.00
Wellen Capital, LLC	12/18/2020; filing no. 000 341 9358	\$155,037.50	None filed
Sonepar Distribution N.E., Inc. (NorthEast Distributors)	1/4/2021; filing no. 000 341 9358	\$337,536.72	None filed

With respect to CSC’s two filings and FCS’s filing, the Debtor’s books and records do not reflect transactions by the Debtor with these entities or with any other entity to borrow money or any sales transactions in the period shortly before or about the times the first CSC and FSC liens were recorded. With respect to the second CSC lien, the Debtor’s records reflect that it did borrow monies in October 2020 from an entity known as Everyday Capital. The record reflects that the Debtor has served this Motion on Everyday Capital in the event that Everyday Capital would assert that the second CSC lien was recorded on its behalf. Everyday Capital has not appeared in this proceeding.

The Debtor has presented satisfactory and competent evidence reflecting the value of its assets (that are the subject of the Claimants’ financing statements) based on replacement value. The assets shall be referred to as the “Collateral.” The Court accepts the Debtor’s values and

finds that the value of the Debtor's Collateral, as of the date of the hearing on confirmation of the Debtor's plan of reorganization to be the following:

- a. Monies in the bank: \$37,225.32;
- b. Receivables: \$750,000;
- c. Inventory and supplies: \$50,000;
- d. Office equipment, computer equipment, communications equipment and furniture: \$8,900;
- e. Vehicles. \$0.00 as none of the Claimants' liens attach to vehicles;
- f. Machinery and equipment: \$68,000; and
- g. Four scissor lifts: \$23,000. Of this sum, there is an existing financing statement against which \$6,508.92 is owed. For purposes of simplicity, the Court will treat the difference in value (\$16,491.08) as the replacement value.

The total replacement value of the Collateral in the form of monies or receivables and of the other assets comes to \$930,616.40.

The Debtor (1) does not anticipate purchasing large quantities of inventory except those used and quickly consumed in jobs; (2) is not acquiring vehicles, machinery or equipment in the near term; and (3) expects that its receivables should remain relatively constant. As a result, the Debtor's conclusion that the replacement value of the Collateral will not markedly change through the first half of 2022 is a reasonable and supported conclusion.

B. Conclusions of Law

Valuation is determined in light of the purpose of the valuation and the proposed disposition or use of such property. 11 U.S.C. § 506(a). The values presented at the hearing must be compatible with the values that will prevail on the confirmation date to avoid an inequitable

result. *In re Stanley*, 185 B.R. 417, 423–24 (Bankr. D. Conn. 1995). As such, the values should be presented and determined at a time near the confirmation hearing. *Id.* The purpose of this valuation proceeding is to determine the secured status of the Claimants' liens on the Collateral as of the confirmation hearing, which is scheduled for March 30, 2022 (two days after the date of the hearing on the Section 506 Motion). The Debtor stated at the hearing that the values it presented were current as of one to two weeks prior to the confirmation hearing date. Thus, the hearing on the Motion was held in close proximity to the date of the hearing on confirmation of the Debtor's Plan and the values presented were current as of that date.

After careful review of the record, the statements made at the hearing, and the Calafiore Affidavit, the Court believes that there is good and sufficient evidence to support that which Debtor's counsel has advanced here. The Debtor has therefore met its burden of proof and its burden of persuasion.

The liens under the financing statements recorded by PUB and Liberty are fully secured. Both GMC and Wellen stipulated to the treatment of their claims under the Debtor's Fifth Amended Plan. The Court gives its accord to the content of those stipulations. Based on the foregoing, the following Claimants' liens do not attach to any property in which the estate has an interest:

- a. Corporate Services Co., as representative, filing no. 000 331 9482, filed July 15, 2019;
- b. First Corporate Solutions, as representative, filing no. 000 334 7355, filed December 31, 2019;
- c. Global Merchant Cash, Inc., filing number 000 334 8361, filed January 7, 2020;
- d. United States Small Business Administration, filing no. 000 3393464, filed August 1, 2020;
- e. Corporate Services Co., as representative, filing no 000 340 8197, filed October 16, 2020;
- f. Wellen Capital, LLC, filing no. 000 341 7482, filed December 18, 2020; and

- g. Sonepar Distribution New England, Inc., filing no. 000 341 9358, filed January 4, 2021.

In connection with the confirmation of the Debtor's Plan (as may be amended prior to confirmation), all of the Claimants' liens as identified above in sub-paragraphs (a) through (g) are hereby voided. The three liens filed by CSC and FCS are stricken as void on the basis that the three liens do not support obligations of the Debtor. The Court's disposition herein is expressly conditioned on the following caveat: in the event of the Debtor's inability to secure confirmation of its Plan or to go effective thereunder, an uncured default under the Plan, the dismissal of this bankruptcy case, or the conversion of this case to Chapter 7, this Section 506 Order will no longer have any force or effect and the liens will be reinstated.

After confirmation of the Plan, the Debtor is authorized to record this Order with the appropriate governmental entities to reflect the voiding of each of Claimants' liens and the clerk of each such governmental entity is directed to receive and to record this Order. Each and every Claimant is directed to cooperate with the Debtor and where necessary to assist the Debtor in recording this Order and any other filing necessary to reflect in the record that each Claimant's line has been avoided.

IT IS SO ORDERED at Hartford, Connecticut this 29th day of March 2022.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut