

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

In re:)	Chapter 11
)	
AFH AIR PROS, LLC, <i>et al.</i> , ¹)	Case No. 25-10356- PMB
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. 34

**LIMITED OBJECTION OF THE COMMITTEE OF CREDITORS HOLDING
UNSECURED CLAIMS TO SALE OF DEBTORS' ASSETS**

The Committee of Creditors Holding Unsecured Claims (the “Committee”) of the above-captioned debtors and debtors in possession (the “Debtors”), by and through its undersigned counsel, hereby files this limited objection (this “Objection”) to the *Motion of the Debtors for Entry of Orders (I)(A) Establishing Bidding Procedures Relating to the Sale of the Debtors’ Assets, (B) Approving the Debtors’ Entry into the Stalking Horse Purchase Agreements and Related Bid Protections, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving Form and Manner of Notices Relating Thereto, (E) Scheduling a Hearing to Consider the Proposed Sale, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related*

¹ The last four digits of AFH Air Pros, LLC’s tax identification number are 1228. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent at <https://www.veritaglobal.net/AirPros>. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 150 S. Pine Island Road, Suite 200, Plantation, Florida 33324.



Relief [Docket No. 34] (the “Sale Motion”). In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee supports the prompt sale of the Debtors’ businesses in exchange for the highest and best bids. Here, however, the Stalking Horse Purchase Agreements do not allocate the purchase prices among the purchased assets for each individual Business Unit, a substantial portion of which may be unencumbered. Accordingly, the proceeds of such sales should be reserved rather than distributed to the Debtors’ Prepetition Secured Parties² pending the resolution of the Committee’s lien investigation and an acceptable allocation of the sale proceeds among encumbered and unencumbered assets.

2. In particular, the Committee submits that sale proceeds allocable to the Debtors’ labor are unsecured by virtue of section 552(a) of the Bankruptcy Code, which does not permit liens on *postpetition revenues or receivables* generated by the Debtors’ valuable HVAC (heating, ventilation, and air conditioning) installation, repair, and maintenance services. These services are based on the ongoing and future *postpetition labor* of the Debtors’ employees rendered for the benefit of the Debtors’ customers. Section 552(a) of the Bankruptcy Code provides that, except as to proceeds of existing collateral covered under a prepetition security agreement, “property acquired by the estate or by the debtor after commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before commencement of the case.” Under section 552(a) of the Bankruptcy Code, the Prepetition Secured Parties do not have a lien on the postpetition receivables generated, or that will be

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Emergency Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing and to Use Cash Collateral, (B) Granting Liens and Superpriority Claims, (C) Granting Adequate Protection, (D) Modifying the Automatic Stay, (E) Scheduling Final Hearing, and (F) Granting Related Relief* [Docket No. 17] (the “DIP Motion”).

generated, by the postpetition services of the Debtors' employees. Hence, the sale proceeds of the Debtors' service business must be allocated between the value of the prepetition assets that may be validly encumbered by the Prepetition Obligations³ and the value of the postpetition assets that are unencumbered by virtue of section 552(a). These assets include the future revenues created by, *and that are nonexistent without*, the postpetition efforts of the Debtors' workforce.

3. Moreover, the Prepetition Lender has agreed to marshal away from any previously unencumbered assets and turn to such assets only after all commercially reasonable efforts to recover from the Prepetition Collateral have been exhausted. Accordingly, proceeds related to the Debtors' postpetition labor services as well as those related to approximately \$800,000 in a PNC depository account and proceeds related to owned vehicles for which there is no perfected security interest must be held pending determination of the Prepetition Secured Parties' rights to proceeds of these assets.

4. Until the Committee's lien challenge investigation is completed, including potential claims against the Prepetition Secured Parties themselves, there is no basis for distributing sale proceeds to the Prepetition Secured Parties.

BACKGROUND

I. General Background

5. On March 16, 2025 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia (the "Court"), commencing the above-captioned cases (the "Chapter 11 Cases"). The Debtors are authorized to

³ The Committee Challenge Period expires on June 16, 2025.

continue operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

6. On March 31, 2025, the Office of the United States Trustee for Region 21 appointed the Committee, consisting of: (i) Chadwich Jay Setchell; (ii) Despedida Holdings, Inc.; (iii) HVAC Success, Inc.; (iv) Jack Denton; (v) Jeffrey D. Tauzin; (vi) LaGrange Air Force Heating & Air, LLC; and (vii) West Georgia Indoor Comfort, LLC [Docket No. 111].

7. On April 2, 2025, the Committee selected Pachulski Stang Ziehl & Jones LLP as counsel and Province, LLC as financial advisor.

II. Prepetition Funded Debt

8. The Debtors indicate that they have approximately \$250.4 million of funded indebtedness as of the Petition Date, consisting of the Prepetition Term Loan Facility and the Prepetition Revolving Facility (together, the “Prepetition Credit Facility”).⁴ A description of the Debtors’ prepetition capital structure is set forth in the DIP Motion.

III. The Proposed Stalking Horse Purchase Agreements

9. Pursuant to the Sale Motion, the Debtors seek authority to consummate six (6) stalking horse agreements for their various business units for a combined cash purchase price of \$155,900,000⁵.

10. Notably, however, none provide for an allocation of the purchase price other than post-closing, for tax purposes.

⁴ DIP Motion ¶ 8.

⁵ As of May 12, 2025, the Committee is aware that the Stalking Horse Agreement by and among the Debtors and One Source is in question and that as of the filing of the Objection, there is no indication one way or the other whether the sale to One Source will close as provided for in the Sale Motion and the One Source Asset Purchase Agreement.

ARGUMENT

A. The Sale Includes Unencumbered Assets

11. The Debtors propose to sell their various business lines, which are composed of hard assets on which the Prepetition Secured Parties may hold valid liens, as well as new *postpetition assets* generated through the Debtors' *ongoing and future services*, as well as pre-existing leaseholds and fixtures, commercial tort claims, avoidance actions (including potential claims against the Prepetition Secured Parties themselves), and the proceeds thereof.

12. Postpetition revenues and receivables are not subject to floating security interests except insofar as such amounts are "proceeds" of prepetition collateral. "Under § 552 of the Bankruptcy Code, post-petition property acquired by the debtor's estate, such as revenues generated from operations, is not subject to any liens resulting from pre-petition security agreements unless the pre-petition security agreements create a security interest in pre-petition property and its proceeds, product, offspring, rents or profits and the post-petition property constitutes such proceeds, product, offspring, rents or profits."⁶ "From a plain reading of § 552, revenues generated post-petition solely as a result of the debtor's labor are not subject to a pre-petition lender's security interest."⁷ "As a general rule, postpetition revenue is not cash collateral. Under § 552(a), a creditor's prepetition security interest does not extend to property acquired by the debtor postpetition even if there is an 'after acquired' clause in the security agreement."⁸

⁶ *In re Cafeteria Operators, L.P.*, 299 B.R. 400, 405 (Bankr. N.D. Tex. 2003) (citing 11 U.S.C. § 552).

⁷ *Id.*

⁸ *Far E. Nat'l Bank v. United States Tr. (In re Premier Golf Props., LP)*, 477 B.R. 767, 771 (B.A.P. 9th Cir. 2012); *see also In re Blackjewel L.L.C.*, No. 3:19-bk-30289, 2020 Bankr. LEXIS 3413, at *47 (Bankr. S.D. W. Va. Dec. 7, 2020) ("[I]t is well settled that § 552(b) cuts off any security interest in accounts receivable arising post-petition.").

13. “[W]here it is only post-petition acts which generate an account receivable, those post-petition receivables will not be considered proceeds because there is no interest in, or connection to, the right in the account receivable created pre-petition.”⁹ “Furthermore, revenue generated by the operation of a debtor’s business, post-petition, is not considered proceeds if such revenue represents compensation for goods and services rendered by the debtor in its everyday business performance. Revenue generated post-petition solely as a result of a debtor’s labor is not subject to a creditor’s pre-petition interest.”¹⁰

14. Courts, including those in this District, have consistently held that postpetition revenues and receivables from a debtor’s business operations or labor cannot be subject to liens in connection with prepetition security agreements.¹¹ *See Bank of N. Ga. v.*

⁹ *Arkison v. Frontier Asset Mgmt., LLC (In re Skagit Pac. Corp.)*, 316 B.R. 330, 336 (B.A.P. 9th Cir. 2004).

¹⁰ *Id.* (citing *Cafeteria Operators*, 299 B.R. at 405); *see also In re Texas Tri-Collar, Inc.*, 29 B.R. 724, 726–27 (Bankr. W.D. La. 1983) (“[A]ccounts receivable generated after commencement of the case are in no way proceeds, product, offspring, rents or profits of prepetition accounts receivable . . .”); *In re Cross Baking Co.*, 818 F.2d 1027, 1032 (1st Cir. 1987) (noting that postpetition receivables generally do not constitute proceeds of prepetition receivables).

¹¹ *See, e.g., Premier Golf Props.*, 477 B.R. at 777 (finding that a golf club’s revenue from green fees and driving range fees were “not proceeds of the Bank’s security interest and [did] not constitute the Bank’s cash collateral”); *Johnson v. RFF Family P’ship, LP (In re Johnson)*, 554 B.R. 448, 466–67 (Bankr. S.D. Ohio 2016) (finding that section 552(a) terminated any interest of a secured creditor in an NHL player’s postpetition contract earnings and that such earnings did not constitute proceeds of prepetition collateral for purposes of section 552(b)); *In re Ne. Chick Servs., Inc.*, 43 B.R. 326, 329, 331 (Bankr. D. Mass. 1984) (finding that no security interest attached to the debtor’s postpetition receivables from the sale of chickens and eggs, because the secured creditor did “not have a right to proceeds arising from the sale of what is not [its] (pre-petition) collateral”); *Shearer v. Tepsic (In re Emergency Monitoring Techs., Inc.)*, 366 B.R. 476, 500 (Bankr. W.D. Pa. 2007) (finding that section 552(a) operated to terminate a “security interest as of, and with respect to—in particular—receivables generated after, the date of the Debtor’s bankruptcy petition filing” and that section 552(b) did not change the result because “accounts receivable that are generated post-bankruptcy, in any event, cannot constitute ‘proceeds, products, offspring, or profits’ of accounts receivable that are generated pre-bankruptcy”); *Ne. Copy Servs. v. Bridgeport Park Assocs. (In re Ne. Copy Servs.)*, 175 B.R. 580, 583 (Bankr. E.D. Pa. 1994) (“Although the proceeds of NE’s sale of its property are Concord’s cash collateral, . . . Mammoth’s revenues are not Concord’s cash collateral. Thus, Mammoth may proceed to utilize its revenues free from any alleged lien thereon of Concord.”); *In re S-Tek I, Ltd. Liab. Co.*, No. 20-12241-j11, 2023 Bankr. LEXIS 673, at *25–26 (Bankr. D.N.M. Mar. 15, 2023) (“Section 552 cuts off the attachment of Surv-Tek’s security interest in after-acquired accounts receivable because S-Tek’s post-petition accounts receivable are not proceeds, products, offspring, or profits of its pre-petition accounts receivable.”); *U.S. Trust Nat’l Assoc. v. Venice MP LLC*, 92 F. App’x. 948, 953 (4th Cir. 2004) (finding that revenues generated by the sale of food at the debtor’s restaurant were not “proceeds” of prepetition inventory where such revenues derived from operation of the debtor’s service-oriented

Strick Chex Columbus Two, LLC (In re Strick Chex Columbus Two, LLC), 542 B.R. 914 (Bankr. N.D. Ga. 2015).

15. The secured creditor bears the burden of proving that it has a lien on proceeds under section 552 of the Bankruptcy Code.¹² “Caselaw interpreting 11 U.S.C. § 552 has established that § 552(b) is to be read narrowly in determining whether a certain security interest falls outside the general rule of § 552(a) that pre-petition security interests do not survive post-petition. Furthermore, ‘the secured party bears the burden of proving that its pre-petition lien retained its vitality as a postpetition lien on property acquired by a debtor after the filing of bankruptcy.’”¹³

16. Here, the Prepetition Secured Parties cannot carry their burden of establishing that they have a lien on the Debtors’ postpetition revenue tied to labor or the sale proceeds related thereto, yet a significant portion of the value of the Debtors’ estates consists of the products of *postpetition labor* of the Debtors’ employees. Specifically, the Debtors’ employees provide HVAC (heating, ventilation, and air conditioning) installation, repair, and maintenance services to their customers. The Prepetition Secured Parties’ asserted lien on this property is cut off by virtue of section 552(a) of the Bankruptcy Code. The value of the Debtors’

business); *Timothy Dean’s, Inc. v. White (In re Timothy Dean Rest. & Bar)*, 342 B.R. 1, 23–24 (Bankr. D.D.C. 2006) (finding that a hotel’s postpetition receivables from room service and other guest charges were not subject to security interests and were not proceeds of the sale of inventory); *In re Inman*, 95 B.R. 479, 480–81 (Bankr. W.D. Ky. 1988) (finding that revenues generated from the operation of a debtor’s fast-food restaurants were not proceeds from the sale of inventory subject to a creditor’s security interest).

¹² See *Bank of N. Ga. v. Strick Chex Columbus Two, LLC (In re Strick Chex Columbus Two, LLC)*, 542 B.R. 914, 918 (Bankr. N.D. Ga. 2015) (citations omitted) (quoting 11 U.S.C. § 363(p)(2)) (“[I]n order for a pre-petition security interest to attach to a debtor’s after-acquired cash, making it ‘cash collateral,’ the secured creditor must show that the security agreement attaches to the proceeds of the collateral covered by the agreement and that the proceeds claimed as cash collateral are in fact proceeds . . . of pre-petition property subject to the lien. ‘[T]he entity asserting an interest in property has the burden of proof on the issue of validity, priority, or extent of such interest.’”).

¹³ *Ne. Copy Servs. v. Bridgeport Park Assocs. (In re Ne. Copy Servs.)*, 175 B.R. 580, 583 (Bankr. E.D. Pa. 1994) (citations omitted) (quoting *In re Sherwood Ford, Inc.*, 125 Bankr. 957, 962 (Bankr. D. Md. 1991)); see also *Cafeteria Operators*, 299 B.R. at 405 (“Under the Bankruptcy Code, the secured lender has the burden of proof on the issue of validity, priority and/or extent of its lien on the property.”).

business tied to future work and the capacity to generate future revenue is unencumbered as of the Petition Date and should remain unencumbered by the Prepetition Obligations. The rights of unsecured creditors to recover from the *newly-created and postpetition assets* of the Debtors' estates, including accounts receivable generated postpetition and the discounted cash flow value of the future revenue stream associated with the Debtors' business, must be fully preserved. At a minimum, all sale proceeds must be reserved pending determination as to the allocation of proceeds of each sale among encumbered and unencumbered assets.

17. Further, until the Committee's lien challenge investigation is completed, including potential claims against the Prepetition Secured Parties themselves, there is no basis for distributing sale proceeds to the Prepetition Secured Parties. The Prepetition Lender has agreed to marshal away from any previously unencumbered assets and turn to such assets only after all commercially reasonable efforts to recover from the Prepetition Collateral have been exhausted. Accordingly, proceeds related to approximately \$800,000 in a PNC account should and proceeds related to owned vehicles for which there is no perfected security interest must also be held pending determination of the Prepetition Secured Parties' rights to proceeds of these assets.

RESERVATION OF RIGHTS

18. The Committee will continue to discuss these issues with the Debtors and their advisors and hope to achieve a consensual resolution before the hearing. However, if the Committee and the Debtors are not able to consensually resolve these issues, the Committee reserves all rights to amend this Objection through the time the Court determines whether to approve the Stalking Horse Purchase Agreements.

Dated: May 12, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Bradford J. Sandler

Signed w/express permission by Anna M. Humnicky

Bradford J. Sandler, Esq. (NY Bar No. 4499877)*

Paul J. Labov, Esq. (NY Bar No. 4136941)*

Maxim B. Litvak, Esq. (CA Bar No. 215852)*

Cia H. Mackle, Esq. (FL Bar No. 0026471)*

**Admitted pro hac vice*

780 Third Avenue, 34th Floor

New York, NY 10017

Telephone: (212) 561-7700

Email: bsandler@pszjlaw.com;

plabov@pszjlaw.com; mlitvak@pszjlaw.com;

cmackle@pszjlaw.com

***Counsel to the Committee of Creditors Holding
Unsecured Claims***

and

Small | Herrin, A Limited Liability Partnership

/s/ Anna M. Humnicky

Gus H. Small, Esq. (GA Bar No. 653200)

Anna M. Humnicky, Esq. (GA Bar No. 377850)

100 Galleria Parkway, Suite 350

Atlanta, GA 30339

Telephone: 770.783.1800

Email: gsmall@smallherrin.com;

ahumnicky@smallherrin.com

***Local Counsel to the Committee of Creditors
Holding Unsecured Claims***