

No. A-__

IN THE
Supreme Court of the United States

CYRUS CAPITAL PARTNERS, L.P,

Petitioner,

v.

SEARS HOLDINGS CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI**

To: Justice Sonia Sotomayor, Circuit Justice for the Second Circuit:

Pursuant to this Court’s Rules 13.5 and 22, petitioner Cyrus Capital Partners, L.P. requests an extension of thirty (30) days to file a petition for a writ of certiorari in this case. The petition will seek review of the Second Circuit’s decision in *In re Sears Holdings Corporation*, 51 F.4th 53 (2d Cir. 2022), in which the court of appeals affirmed a bankruptcy court’s determination that the value of collateral retained by debtors in a Chapter 11 bankruptcy proceeding can be measured by its “net orderly liquidation value” (“NOLV”), notwithstanding this Court’s decision in *Associates Commercial Corp. v. Rash*, 520 U.S. 953 (1997), mandating the use of “replacement” value and rejecting other case-specific valuation methods. A copy of the Second Circuit’s decision is attached hereto as Appendix A. This application is supported by the following:

1. The Second Circuit issued its decision in this case on October 14, 2022. Without an extension, the petition for a writ of certiorari would be due on January 12, 2023. With the requested extension, the petition would be due on February 13, 2023. This Court’s jurisdiction will be invoked under 28 U.S.C. § 1254(1).

2. This case is a serious candidate for review. The Second Circuit’s decision directly conflicts with *Rash*, which holds that courts must apply a “replacement value” measure under 11 U.S.C. §506(a) to determine the value of a secured creditor’s collateral in a bankruptcy proceeding where the creditor is

prohibited from foreclosing on the collateral. *See Rash*, 520 U.S. at 962-65.¹ In so holding, this Court not only overruled the “foreclosure” valuation method applied by the lower courts in that case, but also “reject[ed] a ruleless approach allowing use of different valuation standards based on the facts and circumstances of individual cases.” *Id.* at 964 n.5. The Second Circuit’s adoption of an NOLV measure based on the facts and circumstances of this individual case cannot be reconciled with the categorical “replacement” value approach mandated by *Rash*.

It also cannot be reconciled with the Ninth Circuit’s decision in *In re Sunnyslope Housing Ltd. Partnership*, 859 F.3d 637 (9th Cir. 2017), which correctly reads *Rash* as requiring replacement value to measure collateral value, even if the bankruptcy court determines that case-specific facts and circumstances justify a different approach. *Id.* at 645. This conflict in circuit precedents reflects broader uncertainty about valuation standards among district courts and bankruptcy courts. Only this Court can resolve this split of authority and reaffirm the simpler, more categorical approach mandated by *Rash*.

3. The issue is exceedingly important for the sound administration of the bankruptcy laws. “[T]his Court has long recognized that a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period.” *Katchen v.*

¹ As *Rash* explains, “replacement” value in this context is substantively equivalent to “fair-market value,” i.e., “the price a willing buyer in the debtor’s trade, business, or situation would pay a willing seller to obtain property of like age and condition.” 520 U.S. at 959 n.2.

Landy, 382 U.S. 323, 328 (1966) (internal quotation marks and citation omitted). To achieve that end, “interests in efficiency, fairness, predictability, and uniformity” are paramount. *In re Cardelucci*, 285 F.3d 1231, 1236 (9th Cir. 2002). As the Court emphasized in *Rash* itself, “a simple rule of valuation is needed to serve the interests of predictability and uniformity.” 520 U.S. at 965 (internal quotation marks omitted). Absent this Court’s intervention, uncertainty and confusion in valuation determinations will undermine the efficient resolution of bankruptcy cases in the lower courts.

5. There is good cause for the requested 30-day extension. First, petitioner has only recently affiliated undersigned Counsel of Record, who will require additional time to fully familiarize himself with the record and legal issues. Second, the press of other business and the intervening holiday period will interfere with time needed to prepare the petition for certiorari. Counsel’s preexisting work commitments include oral arguments in the Ninth Circuit Court of Appeals on December 9, 2022 and January 9, 2023; and briefs due in the U.S. District Court for the District of Delaware on December 7, 2022; in the U.S. Court of Appeals for the Ninth Circuit on January 6, 2023; and in the U.S. Court of Appeals for the Eleventh Circuit on January 14, 2023.

6. For these reasons, petitioner requests that the due date for its petition for a writ of certiorari be extended to February 13, 2023.

Respectfully submitted,

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Attorneys for Petitioner Cyrus Capital Partners, L.P.

Dated: December 5, 2022

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CORPORATE DISCLOSURE STATEMENT

Petitioner is Cyrus Capital Partners, L.P. The following corporate disclosure statement is provided in accordance with S. Ct. R. 29.6. Petitioner is a non-governmental corporate party to this action. Petitioner has no parent corporation and no company owns 10% or more of its stock.

Respectfully submitted,

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Dated: December 5, 2022