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6 *Counsel for Shelley D. Krohn, Chapter 7 Trustee*

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:
11 AMERI-DREAM REALTY, LLC,
12 Debtor.

Case No. BK-S-15-10110-GS
Chapter 7

**TRUSTEE’S OBJECTION TO PROOF OF
CLAIM NUMBER 780-1 FILED BY MEI-
PENH KHUU PURSUANT TO 11 U.S.C. §
502(b)(1) AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 3007**

Date of Hearing: August 30, 2018
Time of Hearing: 9:30 a.m.
Place: Courtroom No. To Be Determined
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Gary Spraker ¹

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20 Shelley D. Krohn, the duly appointed Chapter 7 Trustee in the above-captioned
21 bankruptcy case (the “Trustee”), by and through her counsel of record, Jacob L. Houmand, Esq.
22 and Kyle J. Ortiz, Esq. of the Houmand Law Firm, Ltd., hereby submits the *Trustee’s Objection*
23 *to Proof of Claim Number 780-1 Filed by Mei-Penh Khuu Pursuant to 11 U.S.C. § 502(b)(1) and*
24 *Federal Rule of Bankruptcy Procedure 3007* (the “Objection”).The Objection is based on the

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26 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of
Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United
States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

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1 following Memorandum of Points and Authorities and the *Declaration of Shelley D. Krohn In*
2 *Support of Trustee’s Objection to Proof of Claim Number 780-1 Filed by Mei-Penh Khuu*
3 *Pursuant to 11 U.S.C. § 502(b)(1) and Federal Rule of Bankruptcy Procedure 3007* (the “Trustee
4 Declaration”), which is filed separately and concurrently with this Court pursuant to Local Rule
5 9014(c)(2). The Objection is also based on the pleadings and papers on file herein, and any
6 argument that may be entertained at the hearing on the Objection.²

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 This Objection relates to Proof of Claim Number 780-1 filed by Mei-Penh Khuu (the
10 “Landlord”) on May 13, 2015 (“Claim 780”). Claim 780 asserts priority under Section 507(a)(7)
11 in the amount of \$1,900.00. The basis of Claim 780 is the security deposit (the “Security
12 Deposit”) relating to the real property located at 2000 Hollywell Street, Las Vegas, NV 89135
13 (the “Hollywell Property”). Claim 780 improperly seeks priority under Section 507(a)(7), which
14 provides priority up to the maximum amount “for each such individual, arising from the deposit,
15 before the commencement of the case, of money in connection the purchase, lease, or rental of
16 property” It cannot be said that prior to the Debtor’s bankruptcy filing the Landlord
17 deposited money in connection with the lease of the Hollywell Property as these funds were paid
18 by Matthew Kuykendall and Dana Kuykendall (the “Tenants”) in connection with the leasing of
19 the Hollywell Property.³ For this reason, the Trustee seeks an order finding that Claim 780 is not
20 entitled to priority under Section 507(a)(7).

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23 _____
24 ² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
25 referenced bankruptcy case, including adversary proceedings, pursuant to Federal Rule of
Evidence 201, incorporated by reference by FRBP 9017.

26 ³ The Tenants have filed Proof of Claim Number 31 (“Claim 31”) also relating to the Security
27 Deposit. The Trustee has also filed an objection to Claim 31 (the “Tenant Objection”) that seeks
28 an order disallowing Claim 31 as a duplicate of Claim 780. The Tenant Objection was filed
separately due to the limitations imposed under FRBP 3007(c), which does not permit objections
to more than one claim in a single objection, unless provided for under FRBP 3007(d).

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1 **II. JURISDICTION AND VENUE**

2 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This
3 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate
4 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §
5 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
6 parties the Court cannot enter final orders or judgment regarding the Objection consistent with
7 Article III of the United States Constitution, the Firm consents to entry of final orders and
8 judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and
9 FRBP 3007.

10 **III. STATEMENT OF FACTS**

11 1. On January 9, 2015 (the "Petition Date"), the Debtor filed a voluntary bankruptcy
12 pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1]⁴. See Trustee
13 Declaration.

14 2. On January 9, 2015, Victoria L. Nelson ("Trustee Nelson") was appointed as the
15 Chapter 7 Trustee in the Debtor's bankruptcy case [ECF No. 4]. See Trustee Declaration.

16 3. On January 28, 2015, the Court entered an *Amended Notice of Chapter 7*
17 *Bankruptcy Case* [ECF No. 12] that established May 14, 2015, as the deadline for creditors to file
18 proofs of claim. See Trustee Declaration.

19 4. On February 9, 2015, Trustee Nelson filed an *Application for Order Authorizing*
20 *Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No. 88]. See
21 Trustee Declaration.

22 5. On February 27, 2015, the Court entered an *Order Granting Application for Order*
23 *Authorizing Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No.
24 128]. See Trustee Declaration.

25 6. Since its employment, GCG has been maintaining the Proofs of Claim that have
26 been submitted by creditors. See Trustee Declaration.

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28 ⁴ All references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

1 7. On January 13, 2018, Trustee Nelson died. *See* Trustee Declaration.

2 8. On January 19, 2018, the Trustee was appointed as the successor Chapter 7 Trustee
3 in the Debtor's bankruptcy case. *See* Trustee Declaration.

4 9. On May 13, 2015, the Landlord timely filed Claim 780 claiming priority under
5 Section 507(a)(7) in the amount of \$1,900.00. A true and correct copy of Claim 780 is attached to
6 the Trustee Declaration as **Exhibit "1"**.

7 10. The Trustee now seeks an order finding that Claim 780 is not entitled to priority
8 under Section 507(a)(7).

9 **IV. LEGAL ARGUMENT**

10 **A. The Standard For Disallowance of Proofs of Claim**

11 Pursuant to section 502, a filed proof of claim is deemed allowed, unless a party in interest
12 objects thereto. *See* 11 U.S.C. § 502(a). The United States Court of Appeals for the Ninth Circuit
13 has described the obligations of a creditor in establishing their claim and the burdens relating to
14 proofs of claim objections:

15 Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or
16 interest as to which proof is filed is "deemed allowed," the burden
17 of initially going forward with the evidence as to the validity and
18 the amount of the claim is that of the objector to that claim. In short,
19 the allegations of the proof of claim are taken as true. **If those**
20 **allegations set forth all the necessary facts to establish a claim**
21 **and are not self-contradictory, they prima facie establish the**
22 **claim.** Should objection be taken, the objector is then called upon to
produce evidence and show facts tending to defeat the claim by
probative force equal to that of the allegations of the proofs of claim
themselves. But **the ultimate burden of persuasion is always on**
the claimant. Thus, it may be said that the proof of claim is some
evidence as to its validity and amount.

23 *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, COLLIER ON
24 BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)) (emphasis removed) (emphasis added); *see*
25 *also Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1040 (9th Cir. 2000) (holding that
26 the bankruptcy court correctly understood that the ultimate burden of persuasion was on the
27 creditor); *Spencer v. Pugh (In re Pugh)*, 157 B.R. 898, 901 (B.A.P. 9th Cir. 1993) (holding
28 claimant bears ultimate burden of persuasion as to validity and amount of the claim by a

1 preponderance of the evidence). Accordingly, to be entitled to prima facie validity of a claim, a
 2 proof of claim must set forth all necessary facts to establish the claim. *Wright*, 931 F.2d at 623.
 3 Furthermore, the ultimate burden is always on the claimant, and a claim must be denied if the
 4 claimant cannot carry this burden after an objection showing facts tending to defeat the claim. *Id.*
 5 If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof
 6 of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance
 7 of the evidence. *See Lundell*, 223 F.3d at 1039 (citations omitted).

8 In accordance with Section 502(b), the validity and amount of the claim shall be
 9 determined as of the date of the filing of the bankruptcy petition. Section 502(b)(1) requires
 10 disallowance of a claim if “such claim is unenforceable against the debtor and property of the
 11 debtor, under any agreement or applicable law for a reason other than because such claim is
 12 contingent or unmatured . . .” 11 U.S.C. § 502(b)(1). The “applicable law” referenced in Section
 13 502(b)(1) includes bankruptcy law as well as other federal and state laws. A trustee is therefore
 14 allowed to raise any federal or state law defenses to a claim. *See In re G.I. Indus., Inc.*, 204 F.3d
 15 1276, 1281 (9th Cir. 2000) (stating that a claim cannot be allowed under Section 502(b)(1) if it is
 16 unenforceable under nonbankruptcy law); *Johnson v. Righetti*, 756 F.2d 738, 741 (9th Cir. 1985)
 17 (finding that the validity of the claim may be determined under state law); *In re Eastview Estates*
 18 *II*, 713 F.2d 443, 447 (9th Cir. 1983) (applying California law).

19 **B. Claim 780 Is Not Entitled to Priority Under Section 507(a)(7)**

20 Section 507(a)(7) provides for seventh level priority for the “allowed unsecured claims of
 21 individuals, to the extent of \$2,775⁵ for each such individual, arising from the deposit, before the
 22 commencement of the case, of money in connection with the purchase, lease, or rental of
 23 property, or the purchase of services, for the personal, family, or household use of such
 24 individuals, that were not delivered or provided.” 11 U.S.C § 507(a)(7).

25 Case law has established that a residential tenant who pays a security deposit is entitled to
 26 a priority claim under Section 507(a)(7) in a landlord’s bankruptcy case. *See Guarracino v.*

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 28 ⁵ On the Debtor’s Petition Date the maximum amount allowed under Section 507(a)(7) was \$2,775.

1 *Hoffman*, 246 B.R. 130, 134 (D. Mass. 2000) (“Given that non-commercial tenant security
 2 deposits are within the scope of the statute and legislative history evidences Congress’ intent to
 3 protect a consumer’s money held in trust, it follows that the \$1300 security deposit should be
 4 given administrative priority.”); *In re River Vill. Assocs.*, 161 B.R. 127, 133-34 (Bankr. E.D. Pa.
 5 1993) aff’d, 181 B.R. 795 (E.D. Pa. 1995) (holding that each tenant’s claim for security deposits is
 6 entitled to priority in landlord’s Chapter 11 case); *In re Wise*, 120 B.R. 537, 545-47 (Bankr. D.
 7 Alaska 1990) (contractual assignee of tenant security deposits was entitled to assert consumer
 8 deposit priority).

9 In *Guarracino* the court reviewed the legislative history of the statute and determined that
 10 the purpose of Section 507(a)(7) was to protect the power imbalance between the consumer and
 11 the retailer. *Guarracino*, 246 B.R. at 133-34. The court found that this concern for protecting
 12 those in an inferior bargaining position is amplified in the non-commercial tenant – landlord
 13 context. *Id.* The court ultimately held that the security deposit at issue was afforded to then sixth-
 14 level priority given that non-commercial tenant security deposits are within the scope of the
 15 statute and that Congress’ intent was to protect a consumer’s money held in trust. *Id.* at 134.

16 Here, the Landlord filed Claim 780 claiming priority under Section 507(a)(7) in the
 17 amount of \$1,900.00 relating the security deposit for the Hollywell Property. The plain language
 18 of Section 507(a)(7) provides priority up to the maximum amount “for each such individual,
 19 arising from the deposit, before the commencement of the case, of money in connection the
 20 purchase, lease, or rental of property” It cannot be said that prior to the Debtor’s bankruptcy
 21 filing the Landlord deposited money in connection with the lease of the Hollywell Property.
 22 Further, as the *Guarracino* court found, **non-commercial tenant** security deposits are within the
 23 scope of the statute and that the purpose of the statute was to protect a consumer’s money held in
 24 trust. The Landlord is not a non-commercial tenant. For these reasons, the Trustee seeks an order
 25 finding that Claim 780 is not entitled to priority under Section 507(a)(7).⁶

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 28 ⁶ The Trustee anticipates the filing of omnibus objections to proofs of claim based upon the
 Court’s ruling on the Objection.

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V. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enter an order (i) sustaining the Objection and (ii) for such other and further relief as is just and proper.

Dated this 31st day of July, 2018.

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