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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
AMERI-DREAM REALTY, LLC,

Debtor.

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

**TRUSTEE’S TENTH OMNIBUS
OBJECTION TO PROOFS OF CLAIM
PURSUANT TO 11 U.S.C. § 502(b)(1) AND
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 3007—CLAIM NUMBERS
60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1,
681-1, 683-1, AND 735-1, BASED ON
IMPROPER ASSERTION OF A
SECURED CLAIM**

Date of Hearing: September 15, 2020
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

Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case, by and through her counsel of record, Jacob L. Houmand, Esq. and Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits the *Trustee’s Tenth*

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The 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 *Omnibus Objection To Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of*
2 *Bankruptcy Procedure 3007—Claim Numbers 60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1,*
3 *681-1, 683-1, and 735-1, Based on Improper Assertion of a Secured Claim (the “Objection”).*

4 The Objection is based on the following Memorandum of Points and Authorities and the
5 *Declaration of Shelley D. Krohn In Support of Trustee’s Tenth Omnibus Objection To Proofs Of*
6 *Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007—*
7 *Claim Numbers 60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1, 681-1, 683-1, and 735-1, Based on*
8 *Improper Assertion of a Secured Claim (the “Trustee Declaration”),* which is filed separately and
9 concurrently with this Court pursuant to Local Rule 9014(c)(2). The Objection is also based on
10 the pleadings and papers on file herein, and any argument that may be entertained at the hearing
11 on the Objection.²

12 **In accordance with FRBP 3007(e)(1), the Trustee directs all claimants receiving this**
13 **objection to locate their names and claims in this objection.**

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 This Omnibus Objection relates to a series of claims that improperly assert a security
17 interest where no documented security interest exists. For this reason, the Trustee seeks an order
18 reclassifying these claims as general unsecured claims.

19 **II. JURISDICTION AND VENUE**

20 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This
21 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate
22 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §
23 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
24 parties the Court cannot enter final orders or judgment regarding the Objection consistent with
25 Article III of the United States Constitution, the Firm consents to entry of final orders and
26

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

1 judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and
 2 FRBP 3007.

3 **II. CLAIMS OBJECTED TO IN THIS OMNIBUS OBJECTION**

4 In accordance with FRBP 3007(e)(2) and (3) the following proofs of claim are objected to
 5 herein:

6	Claimant	Proof of Claim No.	Grounds for objection ³
7	Bell, April and Kenneth	60-1	Claim improperly asserts a secured claim with
8			no evidence of security agreement. <i>See</i> p. 8.
9	Chang, Wei Chen	137-1	Claim improperly asserts a secured claim with
10			no evidence of security agreement. <i>See</i> p. 8.
11	Chen, Jeffrey and	501-1	Claim improperly asserts a secured claim with
12	Shirley Zheng		no evidence of security agreement. <i>See</i> p. 8.
13	Huang, Yichao	290-1	Claim improperly asserts a secured claim with
14			no evidence of security agreement. <i>See</i> p. 8.
15	Johnson, Karen	231-1	Claim improperly asserts a secured claim with
16	Elizabeth		no evidence of security agreement. <i>See</i> p. 8.
17	Lawrence, Janet	87-1	Claim improperly asserts a secured claim with
18			no evidence of security agreement. <i>See</i> p. 8.
19	Qin, Wei	230-1	Claim improperly asserts a secured claim with
20			no evidence of security agreement. <i>See</i> p. 8.
21	Wong, Yuk S. and Xiao	681-1	Claim improperly asserts a secured claim with
22	Y Zhu		no evidence of security agreement. <i>See</i> p. 8.
23	Wong, Yuk S. and Xiao	683-1	Claim improperly asserts a secured claim with
24	Y Zhu		no evidence of security agreement. <i>See</i> p. 8.
25	Zhang, Ya Qing	735-1	Claim improperly asserts a secured claim with
26			

27 _____
 28 ³ Unless otherwise stated, page references are to the page within this Objection stating the legal argument for the objection.

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no evidence of security agreement. See p. 8.

III. STATEMENT OF FACTS

1. On January 9, 2015 (the "Petition Date"), Ameri-Dream Realty, LLC (the "Debtor") filed a voluntary bankruptcy pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1]⁴.

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

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

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

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

6. Since its employment, GCG has been maintaining the Proofs of Claim that have been submitted by creditors.

7. On January 13, 2018, Trustee Nelson died.

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

9. On May 11, 2015, April and Kenneth Bell filed a proof of claim asserting a secured claim of \$1,925.00. The basis for the asserted proof of claim was a residential lease agreement. A true and correct copy of Claim 60-1 is attached to the Trustee Declaration as Exhibit "1".

...

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.

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1 10. On March 13, 2015, Janet Lawrence filed a secured claim in the amount of
2 \$1475.00. The basis for the asserted proof of claim was a security deposit based on a rental
3 agreement. A true and correct copy of Claim 87-1 is attached to the Trustee Declaration as
4 **Exhibit “2”**.

5 11. On April 7, 2015, Wei Chen Chang filed a secured claim for \$1,470.00. The basis
6 for the asserted proof of claim was a security deposit based on a rental agreement. A true and
7 correct copy of Claim 137-1 is attached to the Trustee Declaration as **Exhibit “3”**.

8 12. On April 27, 2015, Wei Qin filed a secured claim for \$1,400.00. The basis for the
9 asserted proof of claim was a security deposit based on a rental agreement. A true and correct
10 copy of Claim 230-1 is attached to the Trustee Declaration as **Exhibit “4”**.

11 13. On April 28, 2015, Karen Elizabeth Johnson filed a secured claim for \$1,825.00.
12 The basis for the asserted proof of claim was a security deposit based on a rental agreement. A
13 true and correct copy of Claim 231-1 is attached to the Trustee Declaration as **Exhibit “5”**.

14 14. On May 4, 2015, Yichao Huang filed a secured claim for \$6,854.00. The basis for
15 the asserted proof of claim was a security deposit based on a rental agreement. No documentation
16 was attached to the proof of claim. A true and correct copy of Claim 290-1 is attached to the
17 Trustee Declaration as **Exhibit “6”**.

18 15. On May 8, 2015, Jeffrey Chen and Shirley Zheng filed a secured claim for
19 \$1,395.00. The basis for the asserted proof of claim was a security deposit based on a rental
20 agreement. A true and correct copy of Claim 501-1 is attached to the Trustee Declaration as
21 **Exhibit “7”**.

22 16. On May 12, 2015, Ya Qing Zhang filed a secured claim for \$4,571.00. The basis
23 for the asserted proof of claim was past rent payments held in trust. A true and correct copy of
24 Claim 735-1 is attached to the Trustee Declaration as **Exhibit “8”**.

25 17. On May 12, 2015, Yuk S. Wong and Xiao Y Zhu filed a claim proof of claim,
26 asserting a secured claim of \$2038.75. The stated basis of the claim was for rent not received
27 from the Debtor with respect to real property described as 7620 Lillywood Ave. No evidence of a
28 perfected security interest is attached. A true and correct copy of Claim 681-1 is attached hereto

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1 as **Exhibit “9”**.

2 18. On May 12, 2015, Yuk S. Wong and Xiao Y Zhu filed a claim proof of claim,
3 asserting a secured claim of \$3,847.00. The stated basis of the claim was for rent not received
4 from the Debtor with respect to real property described as 2285 Chestnut Ranch Ave., Henderson,
5 NV 89052. No evidence of a perfected security interest is attached. A true and correct copy of
6 Claim 683-1 is attached hereto as **Exhibit “10”**.

7 19. On February 10, 2020, the Court entered an *Order Granting Ex Parte Motion to*
8 *Permit the Joinder of Objections to Proofs of Claim Pursuant to Federal Rule of Bankruptcy*
9 *Procedure 3007(c)* [ECF No. 306].

10 20. The Trustee now seeks an order finding that Claims 60-1, 87-1, 137-1, 230-1, 231-
11 1, 290-1, 501-1, 681-1, 683-1, and 735-1 are not secured claims and reclassifying these claims as
12 general unsecured claims.

13 **IV. LEGAL ARGUMENT**

14 **A. The Standard for Disallowance of Proofs of Claim**

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

19 Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or
20 interest as to which proof is filed is "deemed allowed," the burden
21 of initially going forward with the evidence as to the validity and
22 the amount of the claim is that of the objector to that claim. In short,
23 the allegations of the proof of claim are taken as true. **If those**
24 **allegations set forth all the necessary facts to establish a claim**
25 **and are not self-contradictory, they prima facie establish the**
26 **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.

27 *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, COLLIER ON
28 BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)) (emphasis removed) (emphasis added); *see*

1 also *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1040 (9th Cir. 2000) (holding that
 2 the bankruptcy court correctly understood that the ultimate burden of persuasion was on the
 3 creditor); *Spencer v. Pugh (In re Pugh)*, 157 B.R. 898, 901 (B.A.P. 9th Cir. 1993) (holding
 4 claimant bears ultimate burden of persuasion as to validity and amount of the claim by a
 5 preponderance of the evidence). Accordingly, to be entitled to prima facie validity of a claim, a
 6 proof of claim must set forth all necessary facts to establish the claim. *Wright*, 931 F.2d at 623.
 7 Furthermore, the ultimate burden is always on the claimant, and a claim must be denied if the
 8 claimant cannot carry this burden after an objection showing facts tending to defeat the claim. *Id.*
 9 If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof
 10 of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance
 11 of the evidence. *See Lundell*, 223 F.3d at 1039 (citations omitted).

12 In accordance with Section 502(b), the validity and amount of the claim shall be
 13 determined as of the date of the filing of the bankruptcy petition. Section 502(b)(1) requires
 14 disallowance of a claim if “such claim is unenforceable against the debtor and property of the
 15 debtor, under any agreement or applicable law for a reason other than because such claim is
 16 contingent or unmatured . . .” 11 U.S.C. § 502(b)(1). The “applicable law” referenced in Section
 17 502(b)(1) includes bankruptcy law as well as other federal and state laws. A trustee is therefore
 18 allowed to raise any federal or state law defenses to a claim. *See In re G.I. Indus., Inc.*, 204 F.3d
 19 1276, 1281 (9th Cir. 2000) (stating that a claim cannot be allowed under Section 502(b)(1) if it is
 20 unenforceable under nonbankruptcy law); *Johnson v. Righetti*, 756 F.2d 738, 741 (9th Cir. 1985)
 21 (finding that the validity of the claim may be determined under state law); *In re Eastview Estates*
 22 *II*, 713 F.2d 443, 447 (9th Cir. 1983) (applying California law).

23 **B. The Claims in Question are Not Properly Secured.**

24 FRBP 3001(c)(1) requires that a claim based on a writing must attach a copy of that
 25 writing to the claim. Failure to provide appropriate documentation of a claim excludes the claim
 26 from prima facie validity under FRBP 3001(f). Moreover, any party asserting a secured proof of
 27 claim must provide documentation of that security interest and perfection thereof. In this case, the
 28 proofs of claim in question assert a secured claim in security deposits with no evidence of a

1 secured interest therein. Accordingly, these claims should be reclassified as general unsecured
2 claims.

3 **V. CONCLUSION**

4 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order
5 (i) sustaining the Objections to claim numbers 60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1,
6 681-1, 683-1, and 735-1 and disallowing these claims; (ii) for such other and further relief as is
7 just and proper.

8 Dated this 14th day of August, 2020.

9 **HOUMAND LAW FIRM, LTD.**

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