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Electronically Filed On: August 18, 2020

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 ELEVENTH OMNIBUS
OBJECTION TO PROOFS OF CLAIM
PURSUANT TO 11 U.S.C. § 502(b)(1) AND
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 3007—CLAIM NUMBERS
50-3, 56-1, 58-3, 63-1, 93-1, 96-1, 172-1, 738-
1, 860-1, AND 874-1, BASED ON
IMPROPER SECURED CLAIM AND
IMPROPER ASSERTION OF A
PRIORITY CLAIM BY A LANDLORD
FOR A SECURITY DEPOSIT**

Date of Hearing: October 1, 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

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24 Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-
25 captioned bankruptcy case, by and through her counsel of record, Jacob L. Houmand, Esq. and
26 Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits the *Trustee’s Eleventh*
27 *Omnibus Objection To Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of*
28 *Bankruptcy Procedure 3007—Claim Numbers Claim Numbers 50-3, 56-1, 58-3, 63-1, 93-1, 96-1,*

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172-1, 738-1, 860-1, And 874-1, Based On Improper Secured Claim And Improper Assertion Of A Priority Claim By A Landlord For A Security Deposit (the “Objection”). The Objection is based on the following Memorandum of Points and Authorities and the *Declaration of Shelley D. Krohn In Support of Trustee’s Eleventh Omnibus Objection To Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007— Claim Numbers 50-3, 56-1, 58-3, 63-1, 93-1, 96-1, 172-1, 738-1, 860-1, And 874-1, Based On Improper Secured Claim And Improper Assertion Of A Priority Claim By A Landlord For A Security Deposit* (the “Trustee Declaration”), which is filed separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Objection is also based on the pleadings and papers on file herein, and any argument that may be entertained at the hearing on the Objection.¹

In accordance with FRBP 3007(e)(1), the Trustee directs all claimants receiving this objection to locate their names and claims in this objection.²

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Omnibus Objection relates to a series of claims that assert both a secured claim and priority claim arising out of a rental agreement. There is no valid agreement entitling a landlord to a secured claim in a rental deposit or in rental funds. Further these claims are not entitled to priority pursuant to 11 U.S.C. § 507(a)(7) as only tenants are allowed a priority claim for security deposits. For this reason, the Trustee seeks an order disallowing the secured portion of these claim, disallowing the priority claims, and reclassifying these claims as general unsecured claims.

...

...

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”.

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

II. JURISDICTION AND VENUE

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

II. CLAIMS OBJECTED TO IN THIS OMNIBUS OBJECTION

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

Claimant	Proof of Claim No.	Grounds for objection ³
Chang, Hweichen Lily and Yin Fang Wang	860-1	Claim improperly asserts a secured claim with no evidence of security agreement, Claim improperly asserts priority under 11 U.S.C. § 507(a)(7). This type of priority claim may not be asserted by a landlord. <i>See</i> p. 8-11.
Chun, Karen	58-3	Claim improperly asserts a secured claim with no evidence of security agreement, Claim improperly asserts priority under 11 U.S.C. § 507(a)(7). This type of priority claim may not be asserted by a landlord. <i>See</i> p. 8-11.
Chun, Richard F.	50-3	Claim improperly asserts a secured claim with no evidence of security agreement, Claim

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

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1			improperly asserts priority under 11 U.S.C. §
2			507(a)(7). This type of priority claim may not
3			be asserted by a landlord. <i>See</i> p. 8-11.
4	HLST GLOBAL, LLC	63-1	Claim improperly asserts a secured claim with
5			no evidence of security agreement, Claim
6			improperly asserts priority under 11 U.S.C. §
7			507(a)(7). This type of priority claim may not
8			be asserted by a landlord. <i>See</i> p. 8-11.
9	Li, Qian Yan	874-1	Claim improperly asserts a secured claim with
10			no evidence of security agreement, Claim
11			improperly asserts priority under 11 U.S.C. §
12			507(a)(7). This type of priority claim may not
13			be asserted by a landlord. <i>See</i> p. 8-11.
14	Lu, Xiang	738-1	Claim improperly asserts a secured claim with
15			no evidence of security agreement, Claim
16			improperly asserts priority under 11 U.S.C. §
17			507(a)(7). This type of priority claim may not
18			be asserted by a landlord. <i>See</i> p. 8-11.
19	Quan, Bei	172-1	Claim improperly asserts a secured claim with
20			no evidence of security agreement, Claim
21			improperly asserts priority under 11 U.S.C. §
22			507(a)(7). This type of priority claim may not
23			be asserted by a landlord. <i>See</i> p. 8-11.
24	Wang, Yiqun	56-1	Claim improperly asserts a secured claim with
25			no evidence of security agreement, Claim
26			improperly asserts priority under 11 U.S.C. §
27			507(a)(7). This type of priority claim may not
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		be asserted by a landlord. <i>See</i> p. 8-11.
Wong, Jaimy	93-1	Claim improperly asserts a secured claim with no evidence of security agreement, Claim improperly asserts priority under 11 U.S.C. § 507(a)(7). This type of priority claim may not be asserted by a landlord. <i>See</i> p. 8-11.
Xu, Michael and Leah	96-1	Claim improperly asserts a secured claim with no evidence of security agreement, Claim improperly asserts priority under 11 U.S.C. § 507(a)(7). This type of priority claim may not be asserted by a landlord. <i>See</i> p. 8-11.

III. STATEMENT OF FACTS

1. On January 9, 2015 (the “Petition Date”), 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].

...

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 6. Since its employment, Garden City Group, LLC (“GCG”) has been maintaining
2 the Proofs of Claim that have been submitted by creditors.

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

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

6 9. On May 14, 2015, Richard F. Chun filed an amended proof of claim asserting a
7 total claim of \$2,400.00, a secured claim in the amount of \$2,400.00, and asserting priority in the
8 amount of \$2,400.00. The basis for the asserted proof of claim was a security deposit based on a
9 rental agreement. A true and correct copy of Claim 50-3 is attached to the Trustee Declaration as
10 **Exhibit “1”**.

11 10. On April 27, 2015, Yiqun Wang filed a proof of claim asserting a split claim
12 listing a total claim of \$3,607.00, with a secured portion of \$2,775.00. The basis for the asserted
13 proof of claim was a residential lease agreement. A true and correct copy of Claim 56-1 is
14 attached to the Trustee Declaration as **Exhibit “2”**.

15 11. On May 14, 2015, Karen Chun filed an amended proof of claim asserting a split
16 claim, listing a total claim of \$2354.00, with a secured portion of \$2,534.00, and asserting a
17 priority claim in the amount of \$2,534.00. The basis for the asserted proof of claim was a
18 residential lease agreement. A true and correct copy of Claim 58-3 is attached to the Trustee
19 Declaration as **Exhibit “3”**.

20 12. On May 14, 2015, HLST GLOBAL, LLC filed a proof of claim asserting a split
21 claim listing a total claim of \$4,450.00, with a secured portion of \$1,950.00 and a priority amount
22 of \$2,500.00. The basis for the asserted proof of claim was a residential lease agreement. A true
23 and correct copy of Claim 63-1 is attached to the Trustee Declaration as **Exhibit “4”**.

24 13. On March 18, 2015, Jaimy Wong filed a split claim, with a total claim of
25 \$2,650.00, a secured claim in the amount of \$2,650.00, and asserting priority in the amount of
26 \$2,650.00. The basis for the asserted proof of claim was a security deposit based on a rental
27 agreement. A true and correct copy of Claim 93-1 is attached to the Trustee Declaration as
28 **Exhibit “5”**.

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1 14. On March 20, 2015, Michael and Leah Xu filed a split claim, with a total claim of
2 \$2,945.00, a secured claim in the amount of \$2,945.00, and asserting priority in the amount of
3 \$2,945.00. The basis for the asserted proof of claim was a security deposit based on a rental
4 agreement. A true and correct copy of Claim 96-1 is attached to the Trustee Declaration as
5 **Exhibit “6”**.

6 15. On April 17, 2015, Bei Quan filed a split claim, with a total claim of \$4,794.40, a
7 secured claim in the amount of \$4,794.40, and asserting priority in the amount of \$4,794.40. The
8 basis for the asserted proof of claim was a security deposit based on a rental agreement. A true
9 and correct copy of Claim 172-1 is attached to the Trustee Declaration as **Exhibit “7”**.

10 16. On May 13, 2015, Xiang Lu filed a split claim, with a total claim of \$1,200.00, a
11 secured claim in the amount of \$1,200.00, and asserting priority in the amount of \$1,200.00. The
12 basis for the asserted proof of claim was listed as unpaid real estate commissions. A true and
13 correct copy of Claim 738-1 is attached to the Trustee Declaration as **Exhibit “8”**.

14 17. On May 14, 2015, Hweichen Lily Chang and Yin Fang Wang filed a split claim,
15 with a total claim of \$5,241.00, a secured claim in the amount of \$3,266.00, and asserting priority
16 in the amount of \$1,975.00. The basis for the asserted proof of claim was a security deposit based
17 on a rental agreement. A true and correct copy of Claim 860-1 is attached to the Trustee
18 Declaration as **Exhibit “9”**.

19 18. On May 14, 2015, Qian Yan Li filed a split claim, with a total claim of \$3,156.00,
20 a secured claim in the amount of \$1,906.00, and asserting priority in the amount of \$1,250.00.
21 The basis for the asserted proof of claim was a security deposit based on a rental agreement. A
22 true and correct copy of Claim 874-1 is attached to the Trustee Declaration as **Exhibit “10”**.

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

26 20. The Trustee now seeks an order finding that Claims 50-3, 56-1, 58-3, 63-1, 93-1,
27 96-1, 172-1, 738-1, 860-1, and 874-1, are not properly secured claim, are not entitled to priority
28 under Section 507(a)(4), and reclassifying these claims as general unsecured claims.

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IV. LEGAL ARGUMENT

A. The Standard for Disallowance of Proofs of Claim

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

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

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, COLLIER ON BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)) (emphasis removed) (emphasis added); *see also Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1040 (9th Cir. 2000) (holding that the bankruptcy court correctly understood that the ultimate burden of persuasion was on the creditor); *Spencer v. Pugh (In re Pugh)*, 157 B.R. 898, 901 (B.A.P. 9th Cir. 1993) (holding claimant bears ultimate burden of persuasion as to validity and amount of the claim by a preponderance of the evidence). Accordingly, to be entitled to prima facie validity of a claim, a proof of claim must set forth all necessary facts to establish the claim. *Wright*, 931 F.2d at 623. Furthermore, the ultimate burden is always on the claimant, and a claim must be denied if the claimant cannot carry this burden after an objection showing facts tending to defeat the claim. *Id.* If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. *See Lundell*, 223 F.3d at 1039 (citations omitted).

...

1 In accordance with Section 502(b), the validity and amount of the claim shall be
 2 determined as of the date of the filing of the bankruptcy petition. Section 502(b)(1) requires
 3 disallowance of a claim if “such claim is unenforceable against the debtor and property of the
 4 debtor, under any agreement or applicable law for a reason other than because such claim is
 5 contingent or unmatured . . .” 11 U.S.C. § 502(b)(1). The “applicable law” referenced in Section
 6 502(b)(1) includes bankruptcy law as well as other federal and state laws. A trustee is therefore
 7 allowed to raise any federal or state law defenses to a claim. *See In re G.I. Indus., Inc.*, 204 F.3d
 8 1276, 1281 (9th Cir. 2000) (stating that a claim cannot be allowed under Section 502(b)(1) if it is
 9 unenforceable under nonbankruptcy law); *Johnson v. Righetti*, 756 F.2d 738, 741 (9th Cir. 1985)
 10 (finding that the validity of the claim may be determined under state law); *In re Eastview Estates*
 11 *II*, 713 F.2d 443, 447 (9th Cir. 1983) (applying California law).

12 **B. The Claims in Question are Not Secured Claims.**

13 FRBP 3001(c)(1) requires that a claim based on a writing must attach a copy of that
 14 writing to the claim. Failure to provide appropriate documentation of a claim excludes the claim
 15 from prima facie validity under FRBP 3001(f). Moreover, any party asserting a secured proof of
 16 claim must provide documentation of that security interest and perfection thereof. In this case, the
 17 proofs of claim in question assert a secured claim in security deposits with no evidence of a
 18 secured interest therein. Moreover, Section 507(a)(7) clearly establishes that such claims are, at
 19 best, priority unsecured claims. Accordingly, the secured portion of these claims must be
 20 disallowed.

21 **C. The Claims in Question Are Not Entitled to Priority Under Section 507(a)(7)**

22 Section 507(a)(7) states:

- 23 (a) The following expenses and claims have priority in the
 24 following order:

25 *****

- 26 (7) Seventh, allowed unsecured claims of individuals, to
 27 the extent of \$2,850 for each such individual, arising
 28 from the deposit, before the commencement of the
 case, of money in connection with the purchase, lease,
 or rental of property, or the purchase of services, for the

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personal, family, or household use of such individuals, that were not delivered or provided.

Case law establishes that tenants are entitled to seventh level priority. The Code provides a seventh priority for allowed, unsecured claims of individuals who deposited money with the debtor prepetition and in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such an individual where the debtor failed to deliver such property or services. This priority is limited to the extent of \$2,775 for each such individual and has been referred to as the “consumer priority.”

Courts have interpreted “individual” in its ordinary sense: An individual means “one natural person” and does not include business entities such as corporations or partnerships. *See In re James R. Corbitt Co.*, 48 B.R. 937, 939 (Bankr. E.D. Va. 1985); *In re Carolina Sales Corp.*, 43 B.R. 596, 597 (Bankr. E.D.N.C. 1984). A residential tenant who pays a security deposit is entitled to a §507(a)(7) priority claim in the landlord's bankruptcy case. *See Guarracino v. Hoffman*, 246 B.R. 130, 134 (D. Mass. 2000) (“Given that non-commercial tenant security deposits are within the scope of the statute and legislative history evidences Congress’ intent to protect a consumer's money held in trust, it follows that the \$1300 security deposit should be given administrative priority.”); *In re River Vill. Assocs.*, 161 B.R. 127, 133-34 (Bankr. E.D. Pa. 1993) *aff'd*, 181 B.R. 795 (E.D. Pa. 1995)(holding that each tenant’s claim for security deposits is entitled to priority in landlord’s Chapter 11 case); *In re Wise*, 120 B.R. 537, 545-47(Bankr. D. Alaska 1990) (contractual assignee of tenant security deposits was entitled to assert consumer deposit priority).

Guarracino found that §507(6)allowing sixth-level [now507(a)(7) allowing seventh-level] priority to unsecured claims for the recovery of sums deposited with debtor in connection with the purchase, lease or rental of property was enacted to protect unsuspecting individuals who deposit money into what is tantamount to a trust fund. In the instant case, it is the individual tenants who deposited the money, not the landlords. Therefore, the tenants, and only the tenants, are entitled to a priority claim.

...

1 Here, each of the claims objected to was filed by a landlord, asserting a priority claim
2 under 11 U.S.C. § 507(a)(7). The deposits in question were not for the purchase, lease, or rental of
3 property for the personal, family, or household of those asserting the claim. Accordingly, these
4 claims should be reclassified as general unsecured claims.

5 **V. CONCLUSION**

6 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:
7 (i) sustaining the Objections to claim numbers 50-3, 56-1, 58-3, 63-1, 93-1, 96-1, 172-1, 738-1,
8 860-1, and 874-1 and reclassify these claims as general unsecured claims; and (ii) for such other
9 and further relief as is just and proper.

10 Dated this 18th day of August, 2020.

11 **HOUAMAND LAW FIRM, LTD.**

12
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