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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 OBJECTION TO PROOF OF
CLAIM 16-1 PURSUANT TO 11 U.S.C. §
502(b)(1) AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 3007**

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 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 Objection To Proof Of Claim 16-1 Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007* (the “Objection”).

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 The Objection is based on the following Memorandum of Points and Authorities and the
2 *Declaration of Shelley D. Krohn In Support of Trustee’s Objection To Proof Of Claim 16-1*
3 *Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007* (the
4 “Trustee Declaration”), which is filed separately and concurrently with this Court pursuant to
5 Local Rule 9014(c)(2). The Objection is also based on the pleadings and papers on file herein,
6 and any 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 a claim that asserts a duplicative claim. The Trustee seeks an
10 order disallowing this claim.

11 **II. JURISDICTION AND VENUE**

12 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This
13 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate
14 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §
15 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
16 parties the Court cannot enter final orders or judgment regarding the Objection consistent with
17 Article III of the United States Constitution, the Firm consents to entry of final orders and
18 judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and
19 FRBP 3007.

20 **III. STATEMENT OF FACTS**

21 1. On January 9, 2015 (the “Petition Date”), Ameri-Dream Realty, LLC (the
22 “Debtor”) filed a voluntary bankruptcy pursuant to Chapter 7 of Title 11 of the United States
23 Code [ECF No. 1]³.

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

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

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

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

8 5. On February 27, 2015, the Court entered an *Order Granting Application for Order*
9 *Authorizing Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No.
10 128].

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

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

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

16 9. On February 6, 2015, Joe H. Milton, Jr. filed a proof of claim asserting a secured
17 claim of \$3,975.00. Attached to the proof of claim is a residential lease agreement for real
18 property described as 10629 Tamaruga Ct. Las Vegas, NV 89179, and which lists Asrock Pro,
19 LLC as landlord and Joe H. Milton, Jr. and Melanie Gineen Thomas as tenants. On May 8, 2015,
20 Asrock Pro, LLC filed a separate claim in the amount of \$36,735.00 based on several security
21 deposits toward lease or rental of real property. Included in the attached lease agreements was an
22 agreement for real property described as 10629 Tamaruga Ct. Las Vegas, NV 89179 and lists
23 Asrock Pro, LLC as landlord and Joe H. Milton, Jr. and Melanie Gineen Thomas as tenants. True
24 and correct copies of Claims 16-1 and 349-1 are attached to the Trustee Declaration as **Exhibit**
25 **“1”** and **Exhibit “2”**, respectively.

26 10. The Trustee now seeks an order disallowing claim 16-1.

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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).

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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 Claim Should be Disallowed as it is Duplicative.**

13 Section 502(b) provides several grounds upon which a party can object to a proof of
14 claim, including if “such claim is unenforceable against the debtor and property of the debtor,
15 under any agreement or applicable law for a reason other than because such claim is contingent or
16 unmatured.” *See* 11 U.S.C. § 502(b)(1). Here, the claim should be disallowed in its entirety
17 because it is duplicated of another claim filed by a landlord.

18 Nevada law defines “Security” as follows:

19 Any payment, deposit, fee or charge that is to be used for any of
20 the following purposes is “security” and is governed by the
provisions of this section and NRS 118A.242 and 118A.244:

- 21 (a) Remediating any default of the tenant in the payments of
22 rent.
- 23 (b) Repairing damages to the premises other than normal wear
24 caused by the tenant.
- 25 (c) Cleaning the dwelling unit.

26 N.R.S. 118A.240

27 N.R.S. § 118A.242(4) provides in pertinent part, “Upon termination of the tenancy by
28 either party for any reason, the landlord may claim of the security . . . only such amounts as are

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1 reasonably necessary to remedy any default of the tenant in the payment of rent, to repair
2 damages to the premises caused by the tenant other than normal wear and to pay the reasonable
3 costs of cleaning the premises. The landlord shall provide the tenant with an itemized written
4 accounting of the disposition of the security . . . and return any remaining portion of the security
5 to the tenant no later than 30 days after the termination of the tenancy by handing it to the tenant
6 personally at the place where the rent is paid, or by mailing it to the tenant at the tenant’s present
7 address or, if that address is unknown, at the tenant’s last known address.” In the event a landlord
8 fails to return any remainder of a security deposit within 30 days after the tenancy has ended the
9 landlord is liable for damages. *See* N.R.S § 118A.242(6). These damages include an amount equal
10 to the entire deposit and a sum that is to be fixed by the court of not more than the amount of the
11 entire deposit. *Id.*

12 The Debtor filed for bankruptcy protection over three years ago and presumably the lease
13 in question has expired. Although the alleged embezzlement of approximately One Million One
14 Hundred Thousand Dollars (\$1,100,000) of the Security Deposits was not the fault of the various
15 homeowners and landlords, they are still liable to their tenants for the return of the security
16 deposits in accordance with Nevada law. *See* N.R.S § 118A.242. For this reason, where a landlord
17 and tenant have both filed a proof of claim relating to the same security deposit, the Trustee
18 believes that it would be equitable to allow the claim of the landlord and disallow the claim of the
19 tenant who has recourse against a landlord that fails to return a security deposit as required under
20 Nevada law. Accordingly, the Trustee now seeks an order disallowing claim 16-1 as it is a
21 duplicate of claim 349-1. The Trustee asks that this disallowance be without prejudice to the
22 tenants’ right to seek recourse against their landlord in accordance with the laws of the state of
23 Nevada.

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V. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enter an order (i) sustaining the Objections to claim number 16-1 and disallow this claim; (ii) for such other and further relief as is just and proper.

Dated this 18th day of August, 2020.

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