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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 857-1 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 857-1 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 857-1*
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 a proof of claim filed by Vincent Godino and Maria Godino (the
10 “Claimants”) based on a security deposit for rental of real property and an alleged personal injury
11 resulting out of toxic mold contamination. The Trustee objects to the claim as to the rental deposit
12 as it is a duplicate of claim 248-1. The Trustee also objects to the portion of the proof of claim
13 attributable to the personal injury. There is no evidence which establishes any liability by the
14 Debtor to the Claimants for the alleged personal injury. For this reason, the Trustee seeks an order
15 disallowing claim 857-1 in its entirety.

16 **II. JURISDICTION AND VENUE**

17 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This
18 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate
19 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §
20 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
21 parties the Court cannot enter final orders or judgment regarding the Objection consistent with
22 Article III of the United States Constitution, the Firm consents to entry of final orders and
23 judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and
24 FRBP 3007.

25 ...

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.

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III. STATEMENT OF FACTS

1
2 1. On January 9, 2015 (the “Petition Date”), the Debtor filed a voluntary bankruptcy
3 pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1]³.

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

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

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

11 5. On February 27, 2015, the Court entered an *Order Granting Application for Order*
12 *Authorizing Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No.
13 128].

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

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

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

19 9. May 14, 2015, Vincent Godino and Maria Godino filed a claim in the amount of
20 \$10,000.00 based on personal injury and a security deposit for rental of real property described as
21 9000 Moss Creek, Las Vegas, NV 89117. An attached lease agreement lists Karen Feng as
22 landlord and Vincent Godino and Maria Godino as tenants. On May 1, 2015, Karen Feng filed a
23 separate claim claiming priority under 11 U.S.C. § 507(a)(7) in the amount of \$3,000.00 based on
24 deposit toward purchase, lease or rental of real property described as 9000 Moss Creek, Las
25 Vegas, NV 89117. An attached lease agreement lists Karen Feng as landlord and Vincent Godino
26 and Maria Godino as tenants. A true and correct copy of Claims 857-1 and 248-1 are attached to
27

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.

1 the Trustee Declaration as **Exhibit “1”** and **Exhibit “2”**, respectively.

2 10. The Trustee now seeks an order disallowing claim 857-1 in its entirety.

3 **IV. LEGAL ARGUMENT**

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

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

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

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

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1 of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance
2 of the evidence. *See Lundell*, 223 F.3d at 1039 (citations omitted).

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

14 **B. Any Claim Based on a Security Deposit Should be Disallowed as it is Duplicative of**
15 **the Landlord’s Claim.**

16 Section 502(b) provides several grounds upon which a party can object to a proof of
17 claim, including if “such claim is unenforceable against the debtor and property of the debtor,
18 under any agreement or applicable law for a reason other than because such claim is contingent or
19 unmatured.” *See* 11 U.S.C. § 502(b)(1). Here, to the degree the claim arises out of a claim by a
20 tenant for a security deposit for the rent or lease of real property, that portion of the claim should
21 be disallowed because it is a duplicate of the landlord’s claim.

22 Nevada law defines “Security” as follows:

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

- 25 (a) Remediating any default of the tenant in the payments of
26 rent.
- 27 (b) Repairing damages to the premises other than normal wear
28 caused by the tenant.

(c) Cleaning the dwelling unit.

N.R.S. 118A.240

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

The Debtor filed for bankruptcy protection almost five years ago and presumably the lease in question has expired. Although the alleged embezzlement of approximately One Million One Hundred Thousand Dollars (\$1,100,000) of security deposits was not the fault of the landlord in this case, the landlord is still liable to the Claimants for the return of the security deposit in accordance with Nevada law. *See* N.R.S § 118A.242. For this reason, where a landlord and tenant have both filed a proof of claim relating to the same security deposit, the Trustee believes that it would be equitable to allow the claim of the landlord and disallow the claim of the tenant who has recourse against a landlord that fails to return a security deposit as required under Nevada law. Accordingly, the Trustee now seeks an order disallowing any portion of this claim arising out of a security deposit as such a claim is a duplicate of the landlord claims. The Trustee asks that this disallowance be without prejudice to the tenants’ right to seek recourse against landlord in accordance with the laws of the state of Nevada.

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1 **C. Any Claim Based on Personal Injury Arising Out of Mold Contamination Should be**
2 **Disallowed.**

3 Once again, section 502(b) provides that a party can object to a proof of claim if “such
4 claim is unenforceable against the debtor and property of the debtor, under any agreement or
5 applicable law for a reason other than because such claim is contingent or unmatured.” See 11
6 U.S.C. § 502(b)(1). Here, the Claimants have alleged a claim arising out of personal injury for
7 mold contamination of real property. The Debtor does not own the real property in question, as
8 evidenced by the lease agreement attached to the proof of claim, and there is no evidence that the
9 Debtor is in any way liable to the Claimants for any mold contamination in the subject property.
10 The Debtor was the property manager and, therefore, simply an agent for the landlord. The Court
11 may take notice that the Claimants sued the landlord of the subject property in state court, Case
12 No. A-15-714522-C, filed February 27, 2015. The Debtor was not named in the action, and no
13 effort has been made to lift the stay to proceed in state court against the Debtor. There is no
14 evidence in the record before the Court that the Debtor is liable to the Claimants for injuries
15 arising out of mold contamination of the subject property.

16 **V. CONCLUSION**

17 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:
18 (i) disallowing 857-1; and (ii) for such other and further relief as is just and proper.

19 Dated this 18th day of August, 2020.

20 **HOUAMAND LAW FIRM, LTD.**

21
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