

Electronically Filed On: August 18, 2020

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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 THIRTEENTH OMNIBUS
OBJECTION TO PROOFS OF CLAIM
PURSUANT TO 11 U.S.C. § 502(b)(1) AND
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 3007—CLAIM NUMBERS
919-1, 920-1, 927-1, 928-1, and 931-1 –
LATE FILED CLAIMS**

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 Spraker¹

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 Thirteenth Omnibus Objection To Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of*

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 *Bankruptcy Procedure 3007—Claim Numbers 919-1, 920-1, 927-1, 928-1, and 931-1 – Late Filed*
2 *Proofs of Claim (the “Objection”).*

3 The Objection is based on the following Memorandum of Points and Authorities and the
4 *Declaration of Shelley D. Krohn In Support of Trustee’s Thirteenth Omnibus Objection To Proofs*
5 *Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007—*
6 *Claim Numbers 919-1, 920-1, 927-1, 928-1, and 931-1 – Late Filed Proofs of Claim ((the*
7 *“Trustee Declaration”), which is filed separately and concurrently with this Court pursuant to*
8 *Local Rule 9014(c)(2). The Objection is also based on the pleadings and papers on file herein,*
9 *and any argument that may be entertained at the hearing on the Objection.²*

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

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 This Omnibus Objection relates to a series of claims that were filed after the established
15 deadline to timely file a proof of claim. Consequently, the Trustee requests that the Court deem
16 these claims to be late filed and that the claimants be deemed entitled only to receive a
17 distribution pursuant to 11 U.S.C. § 726(a)(3).

18 **II. JURISDICTION AND VENUE**

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

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FRBP 3007.

III. 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
Chiu, Lirong	920-1	Claim was filed after the deadline. <i>See</i> p. 5-6
Fleming III, Ernest	927-1	Claim was filed after the deadline. <i>See</i> p. 5-6
Guan, Zhuo Yun	928-1	Claim was filed after the deadline. <i>See</i> p. 5-6
Pensado, Frank and Joy	931-1	Claim was filed after the deadline. <i>See</i> p. 5-6
Qi, Bao Wen	919-1	Claim was filed after the deadline. <i>See</i> p. 5-6

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].

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

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 6. Since its employment, GCG has been maintaining the Proofs of Claim that have
2 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 18, 2015, Bao Wen Qi filed a claim claiming priority under 11 U.S.C. §
7 507(a)(7) in the amount of \$1,150.00 based on a rental security deposit. A true and correct copy
8 of Claim 919-1 is attached to the Trustee Declaration as **Exhibit “1”**.

9 10. On May 18, 2015, Lirong Chiu filed a claim claiming priority under 11 U.S.C. §
10 507(a)(7) in the amount of \$1,975.00 based on a rental security deposit. A true and correct copy
11 of Claim 920-1 is attached to the Trustee Declaration as **Exhibit “2”**.

12 11. On June 2, 2015, Ernest Fleming III filed a claim claiming priority under 11
13 U.S.C. § 507(a)(7) in the amount of \$1,880.00 based on a rental security deposit. A true and
14 correct copy of Claim 927-1 is attached to the Trustee Declaration as **Exhibit “3”**.

15 12. On June 11, 2015, Zhuo Yun Guan filed a claim claiming priority under 11 U.S.C.
16 § 507(a)(7) in the amount of \$2,150.00 based on a rental security deposit. A true and correct copy
17 of Claim 928-1 is attached to the Trustee Declaration as **Exhibit “4”**.

18 13. On February 12, 2016, Frank and Joy Pensado filed a claim claiming priority under
19 11 U.S.C. § 507(a)(7) in the amount of \$2,500.00 based on a rental security deposit. A true and
20 correct copy of Claim 931-1 is attached to the Trustee Declaration as **Exhibit “5”**.

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

24 The Trustee now seeks an order finding that Claims 919-1, 920-1, 926-1, 927-1, 928-1,
25 and 931-1 were late-filed and entitled only to receive a distribution pursuant to 11 U.S.C. §
26 726(a)(3).

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1 **IV. LEGAL ARGUMENT**

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

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

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

20 *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, COLLIER ON
21 BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)) (emphasis removed) (emphasis added); *see*
22 *also Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1040 (9th Cir. 2000) (holding that
23 the bankruptcy court correctly understood that the ultimate burden of persuasion was on the
24 creditor); *Spencer v. Pugh (In re Pugh)*, 157 B.R. 898, 901 (B.A.P. 9th Cir. 1993) (holding
25 claimant bears ultimate burden of persuasion as to validity and amount of the claim by a
26 preponderance of the evidence). Accordingly, to be entitled to prima facie validity of a claim, a
27 proof of claim must set forth all necessary facts to establish the claim. *Wright*, 931 F.2d at 623.
28 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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B. The Proofs of Claim Should Be Deemed As Untimely Filed Thereby Entitling the Claimants to Only Receive A Distribution Pursuant to Section 726(a)(3)

Section 502(b) provides several grounds upon which a party can object to a proof of claim, including if a proof of claim is not filed prior to a claims bar date:

- (9) Proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

See 11 U.S.C. § 502(b)(9).

Section 726 sets forth the priority scheme for distributions of property in a Chapter 7 bankruptcy and provides that untimely proofs of claim are entitled to receive a distribution after timely filed unsecured claims are paid in full. *See* 11 U.S.C. § 726(a)(3).

Here, all the claims in question were filed after the Claims Bar Date. Accordingly, the Proofs of Claim should be deemed as untimely filed, thereby entitling the claimants to only receive a distribution pursuant to Section 726(a)(3).

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V. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enter an Order: (i) sustaining the Objection in its entirety; (ii) deeming the Proofs of Claim as tardily filed claims entitling the Claimants to receive a distribution in accordance with the priority scheme set forth under Section 726(a)(3); and (iii) for such other and further relief as is just and proper.

Dated this 18th day of August, 2020.

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