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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 FOURTEENTH OMNIBUS
OBJECTION TO PROOFS OF CLAIM
PURSUANT TO 11 U.S.C. § 502(b)(1) AND
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 3007—CLAIM NUMBERS
82-2, 105-1, 108-1, 493-1, 677-1, 678-1, and
856-1 BASED ON IMPROPER
ASSERTION OF A PRIORITY CLAIM
BY AN INDEPENDENT CONTRACTOR**

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

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 Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits the *Trustee’s Fourteenth*
2 *Omnibus Objection To Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of*
3 *Bankruptcy Procedure 3007—Claim Numbers 82-2, 105-1, 108-1, 493-1, 677-1, 678-1, and 856-1*
4 *Based On Improper Assertion Of A Priority Claim by an Independent Contractor* (the
5 “Objection”). The Objection is based on the following Memorandum of Points and Authorities and
6 the *Declaration of Shelley D. Krohn In Support of Trustee’s Fourteenth Omnibus Objection To*
7 *Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure*
8 *3007—Claim Numbers 82-2, 105-1, 108-1, 493-1, 677-1, 678-1, and 856-1Based On Improper*
9 *Assertion Of A Priority Claim by an Independent Contractor* (the “Trustee Declaration”), which
10 is filed separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The
11 Objection is also based on the pleadings and papers on file herein, and any argument that may be
12 entertained at the hearing on the Objection.²

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

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 This Omnibus Objection relates to a series of claims that assert priority under Section
18 507(a)(4) for unpaid commissions for the sale of real estate. These claims are not entitled to
19 priority pursuant to 11 U.S.C. § 507(a)(4) as they do not relate to the “sale of goods or services”
20 as required by statute. For this reason, the Trustee seeks an order finding that these claims are not
21 entitled to priority under Section 507(a)(4).

22 **II. JURISDICTION AND VENUE**

23 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This
24 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate
25 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §
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.

1 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
 2 parties the Court cannot enter final orders or judgment regarding the Objection consistent with
 3 Article III of the United States Constitution, the Firm consents to entry of final orders and
 4 judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and
 5 FRBP 3007.

6 **III. CLAIMS OBJECTED TO IN THIS OMNIBUS OBJECTION**

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

Claimant	Proof of Claim No.	Grounds for objection ³
Aloma Handyman Services	105-1	Claim improperly asserts priority claim. <i>See p.</i>
AMA AIR CORP	82-2	Claim improperly asserts priority claim. <i>See p.</i>
Delman, Jennifer	856-1	Claim improperly asserts priority claim. <i>See p.</i>
Diaz, Diego	678-1	Claim improperly asserts priority claim. <i>See p.</i>
F & R Home Maintenance & Services, Inc	493-1	Claim improperly asserts priority claim. <i>See p.</i>
Joe He, Inc.	677-1	Claim improperly asserts priority claim. <i>See p.</i>
Montejano, Norma Yolanda Teran	108-1	Claim improperly asserts priority claim. <i>See p.</i>

21
 22 ...
 23 ...
 24 ...
 25 ...
 26 ...

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

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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]⁴.

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. On October 19, 2015, AMA AIR CORP filed an amended proof of claim claiming
20 priority claim under 11 U.S.C. § 507(a)(4) in the amount of \$3,352.71 based on “services
21 performed.” The amended proof of claim includes a number of invoices for various repair work
22 performed for the Debtor. A true and correct copy of Claim 82-2 is attached to the Trustee
23 Declaration as **Exhibit “1”**.

24 10. On March 21, 2015, Aloma Handyman Services filed a proof of claim claiming
25 priority claim under 11 U.S.C. § 507(a)(4) in the amount of \$1,915.00. The proof of claim
26 includes a number of invoices for various repair work performed for the Debtor. A true and
27

28 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 correct copy of Claim 105-1 is attached to the Trustee Declaration as **Exhibit “2”**.

2 11. On March 23, 2015, Norma Yolanda Teran Montejano filed a proof of claim
3 claiming priority claim under 11 U.S.C. § 507(a)(4) in the amount of \$312.50 for “office
4 cleaning.” The proof of claim includes an invoice for cleaning work performed for the Debtor. A
5 true and correct copy of Claim 108-1 is attached to the Trustee Declaration as **Exhibit “3”**.

6 12. On May 8, 2015, F & R Home Maintenance & Services, Inc. filed a proof of claim
7 claiming priority claim under an unspecified subsection of 11 U.S.C. § 507 in the amount of
8 \$4,925.00. The proof of claim includes a number of invoices for various repair work performed
9 for the Debtor. A true and correct copy of Claim 493-1 is attached to the Trustee Declaration as
10 **Exhibit “4”**.

11 13. On May 12, 2015, Joe He, Inc. filed a proof of claim claiming priority claim under
12 11 U.S.C. § 507(a)(7) in the amount of \$550.00 based on unpaid repair invoices. A true and
13 correct copy of Claim 677-1 is attached to the Trustee Declaration as **Exhibit “5”**.

14 14. On May 12, 2015, Diego Diaz filed a proof of claim claiming priority claim under
15 11 U.S.C. § 507(a)(7) in the amount of \$550.00 based on unpaid repair invoices. A true and
16 correct copy of Claim 678-1 is attached to the Trustee Declaration as **Exhibit “6”**.

17 15. On May 31, 2015, Jennifer Delman filed a proof of claim claiming priority claim
18 under 11 U.S.C. § 507(a)(7) in the amount of \$6,201.90 based on property management fees. A
19 true and correct copy of Claim 856-1 is attached to the Trustee Declaration as **Exhibit “7”**.

20 16. The Trustee now seeks an order finding that Claims 82-2, 105-1, 108-1, 493-1,
21 677-1, 678-1, and 856-1, are not entitled to priority under Section 507 *et seq.*, and reclassifying
22 these claims as general unsecured claims.

23 **IV. LEGAL ARGUMENT**

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

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

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

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

27 In accordance with Section 502(b), the validity and amount of the claim shall be
 28 determined as of the date of the filing of the bankruptcy petition. Section 502(b)(1) requires
 29 disallowance of a claim if “such claim is unenforceable against the debtor and property of the
 30 debtor, under any agreement or applicable law for a reason other than because such claim is
 31 contingent or unmaturing . . .” 11 U.S.C. § 502(b)(1). The “applicable law” referenced in Section
 32 502(b)(1) includes bankruptcy law as well as other federal and state laws. A trustee is therefore
 33 allowed to raise any federal or state law defenses to a claim. *See In re G.I. Indus., Inc.*, 204 F.3d

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1 1276, 1281 (9th Cir. 2000) (stating that a claim cannot be allowed under Section 502(b)(1) if it is
2 unenforceable under nonbankruptcy law); *Johnson v. Righetti*, 756 F.2d 738, 741 (9th Cir. 1985)
3 (finding that the validity of the claim may be determined under state law); *In re Eastview Estates*
4 *II*, 713 F.2d 443, 447 (9th Cir. 1983) (applying California law).

5 **B. The Claims in Question Are Not Entitled to Priority Under Section 507(a)(4)**

6 Section 507(a)(4) states:

7 (a) The following expenses and claims have priority in the
8 following order:

9 *****

10 (4) Fourth, allowed unsecured claims, but only to the extent
11 of \$10,000 for each individual or corporation, as the case
12 may be, earned within 180 days before the date of the filing
13 of the petition or the date of the cessation of the debtor’s
14 business, whichever occurs first, for—

15 (A) wages, salaries, or commissions, including
16 vacation, severance, and sick leave pay earned
17 by an individual; or

18 (B) sales commissions earned by an individual or by
19 a corporation with only 1 employee, acting as an
20 independent contractor in the sale of goods or
21 services for the debtor in the ordinary course of the
22 debtor’s business if, and only if, during the 12
23 months preceding that date, at least 75 percent of
24 the amount that the individual or corporation earned
25 by acting as an independent contractor in the sale of
26 goods or services was earned from the debtor.

27 Section 507(a)(4) gives priority in distribution to claims of employees of the debtor for
28 prepetition wages, salaries and commissions under subsection (a)(4)(A), and claims of certain
independent contractors for prepetition commissions earned from the debtor under subsection
(a)(4)(B). 11 U.S.C. § 507(a)(4). Courts have held that priority status under Section 507(a)(4)(A)
is accorded only to employees and that independent contractors must meet the requirements under
Section 507(a)(4)(B) to receive a priority claim.

For an independent contractor commissions to qualify for the priority, “the independent
contractor must have been acting as such for the debtor with regard to the sale of goods or

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1 services in the ordinary course of the debtor’s business. In addition, during the twelve months
2 preceding the earlier of the date of the filing of the petition or the cessation of the debtor’s
3 business, the independent contractor must have earned from the debtor at least 75 percent of the
4 total amount earned by such independent contractor from the sale of goods or services.” 4 Collier
5 On Bankruptcy ¶ 507.06[3][b] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed.).

6 Section 507(a)(4)(B)⁵ contemplates sales commissions earned by sales representatives of a
7 debtor. *See In re W. Wayne Transp., Inc.*, No. 00–10028C–7G, 2001 WL 1699665, *2 (Bankr.
8 M.D.N.C. Oct.5, 2001) (stating that the priority is for sales commissions earned from the sale of
9 good or services “on behalf of a debtor”); Bankruptcy Reform Act of 1994, Pub.L. No. 103–394,
10 sec. 207 (entitled “Priority for Independent Sales Representative”).

11 The term “goods” is not defined in the Bankruptcy Code. *See* 4 Collier On Bankruptcy, ¶
12 503.16[1] (Alan N. Resnick & Henry J. Sommer eds, 16th ed.). However, the definition of
13 “goods” used in the Uniform Commercial Code (“UCC”) has been adopted by most courts.
14 Under Nevada Law, “[g]oods” means all things (including specially manufactured goods) which
15 are movable at the time of identification to the contract for sale other than the money in which the
16 price is to be paid, investment securities (Article 8) and things in action. ‘Goods’ also includes the
17 unborn young of animals and growing crops and other identified things attached to realty as
18 described in the section on goods to be severed from realty. N.R.S. § 104.2107. Thus, it appears
19 that commission earned by the sale of real estate, not a good, would be excluded from
20 Section 507(a)(4)(B).

21 The claims in question all originate from independent contractors, but do not show
22 evidence that the claim arises from the sale of good or services, or that each respective
23 independent contractor earned from the Debtor at least 75 percent of the total amount earned by
24 such independent contractor from the sale of goods or services.

25 ...

26 _____
27 ⁵ The wage priority provision was previously found in § 507(a)(3). That subsection was
28 renumbered as § 507(a)(4) in 2005. *See* Bankruptcy Abuse Prevention and Consumer Protection
Act of 2005, Pub. L. No. 109–8, § 212.

1 To the degree that the above claimants seek priority under an unspecified subsection of
2 Section 507, or seek priority treatment under 507(a)(7), those claims likewise fail. There is no
3 indication that any of the above claims relate to a security deposit, or any that any of the other
4 claims fall under any category of priority specified in Section 507(a) *et seq.* Accordingly, these
5 claims have failed to establish entitlement to priority treatment and should therefore be
6 reclassified as general unsecured claims.

7 **V. CONCLUSION**

8 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:
9 (i) sustaining the Objections to claim numbers 82-2, 105-1, 108-1, 493-1, 677-1, 678-1, and 856-
10 1, and reclassify these claims as general unsecured claims; and (ii) for such other and further
11 relief as is just and proper.

12 Dated this 18th day of August, 2020.

13 **HOUMAND LAW FIRM, LTD.**

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