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Electronically Filed On: October 1, 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

**MOTION TO SET ASIDE ORDER
SUSTAINING TRUSTEE’S TENTH
OMNIBUS OBJECTION TO PROOFS OF
CLAIM PURSUANT TO 11 U.S.C. §
502(b)(1) AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 3007—
CLAIM NUMBERS 60-1, 87-1, 137-1, 230-
1, 231-1, 290-1, 501-1, 681-1, 683-1, AND
735-1, BASED ON IMPROPER
ASSERTION OF A SECURED CLAIM,
AS TO CLAIMS, 60-1, 87-1, AND 231-1
ONLY**

Date of Hearing: October 29, 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

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26 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 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 Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-
2 captioned bankruptcy case, by and through her counsel of record, Jacob L. Houmand, Esq. and
3 Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Motion To Set Aside*
4 *Order Sustaining Trustee’s Tenth Omnibus Objection To Proofs Of Claim Pursuant To 11 U.S.C.*
5 *§ 502(b)(1) And Federal Rule Of Bankruptcy Procedure 3007—Claim Numbers 60-1, 87-1, 137-*
6 *1, 230-1, 231-1, 290-1, 501-1, 681-1, 683-1, And 735-1, Based On Improper Assertion Of A*
7 *Secured Claim, As To Claims, 60-1, 87-1, And 231-1 Only* (the “Motion”).

8 The Motion is based on the following Memorandum of Points and Authorities and the
9 *Declaration of Bradley G. Sims in Support of Motion to Set Aside Order Sustaining Trustee’s*
10 *Tenth Omnibus Objection to Proofs of Claim Pursuant to 11 U.S.C. § 502(b)(1) and Federal Rule*
11 *of Bankruptcy Procedure 3007—Claim Numbers 60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1,*
12 *681-1, 683-1, and 735-1, Based On Improper Assertion of a Secured Claim, as to Claims, 60-1,*
13 *87-1, and 231-1 Only* (the “Declaration”), which is filed separately and concurrently with this
14 Court pursuant to Local Rule 9014(c)(2). The Motion is also based on the pleadings and papers on
15 file herein, and any argument that may be entertained at the hearing on the Motion.²

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 This Motion relates to three claims which were disallowed by one order of the court, and
19 recharacterized as general unsecured claims by another. This conflict is the result of inadvertence
20 and creates a problem in the administration of the Debtor’s bankruptcy case. The Trustee
21 therefore seeks an order to set aside the inconsistent order as to these claims which will resolve
22 the conflict.

23 **II. JURISDICTION AND VENUE**

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

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 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §
2 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
3 parties the Court cannot enter final orders or judgment regarding the Objection consistent with
4 Article III of the United States Constitution, the Firm consents to entry of final orders and
5 judgment by this Court. The statutory basis for the relief sought herein are Section 105(a), FRBP
6 3007, and FRBP 9024.

7 **III. STATEMENT OF FACTS**

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

10 2. On January 9, 2015, Victoria L. Nelson ("Trustee Nelson") was appointed as the
11 Chapter 7 Trustee in the Debtor's bankruptcy case [ECF No. 4].

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

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

17 5. On February 27, 2015, the Court entered an *Order Granting Application for Order*
18 *Authorizing Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No.
19 128].

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

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

23 8. On January 19, 2018, the Trustee was appointed as the successor Chapter 7 Trustee
24 in the Debtor's bankruptcy case.

25 9. On May 11, 2015, April and Kenneth Bell filed a secured claim in the amount of
26 \$1,925.00 based on a security deposit for rental of real property described as 9539 Colorado Blue
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.

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1 St., Las Vegas, NV 89123. An attached lease agreement lists Yu Chan Bi and Jin Hui Xu as
2 landlord and Kenneth and April Bell as tenants. On May 8, 2015, Yu Chan Bi filed a separate
3 claim in the amount of \$1,925.00 based on a security deposit for rental of real property described
4 as 9539 Colorado Blue St., Las Vegas, NV 89123. An attached lease agreement lists Yu Chan Bi
5 and Jin Hui Xu as landlord and Kenneth and April Bell as tenants. A true and correct copy of
6 Claims 60-1 and 446-1 are attached to the Declaration as **Exhibit “1”** and **Exhibit “2”**,
7 respectively.

8 10. On March 13, 2015, Janet Lawrence filed a claim claiming priority under 11
9 U.S.C. § 507(a)(7) in the amount of \$1,475.00 based on deposit toward purchase, lease or rental
10 of real property described as 5914 Creekside Sands Lane, North Las Vegas, NV, 89011, as well
11 as a secured claim in the amount of \$1475.00. The attached lease agreement identified Janet
12 Lawrence as tenant, and Wu Wang as the landlord. On April 29, 2015, Wu Wang filed a separate
13 claim claiming priority under 11 U.S.C. § 507(a)(7) in the amount of \$16,989.50 based on deposit
14 toward purchase, lease or rental of various real properties, including real property described as
15 5914 Creekside Sands Lane, North Las Vegas, NV, 89011. True and correct copies of Claims 87-
16 1 and 233-1 are attached to the Declaration as **Exhibit “3”** and **Exhibit “4”**, respectively.

17 11. On April 28, 2015, Karen Elizabeth Johnson filed a claim claiming priority under
18 11 U.S.C. § 507(a)(7) in the amount of \$1,825.00 based on deposit toward purchase, lease or
19 rental of real property described as 7632 Hope Valley St., Las Vegas NV 89139, and a secured
20 claim in the amount of \$1,825.00. The attached lease agreement identifies Jeffrey Craig Johnson
21 and Karen Elizabeth Johnson as the tenants, and Lifang Tang as the landlord. On May 8, 2015,
22 Lifang Tang filed a separate claim, claiming an unsecured claim of \$1,825.00. The attached
23 documents indicate the basis of the claim is a security deposit based on a rental agreement for real
24 property described as 7632 Hope Valley St., Las Vegas NV 89139. True and correct copies of
25 Claims 231-1 and 376-1 are attached to the Declaration as **Exhibit “5”** and **Exhibit “6”**,
26 respectively.

27 12. On August 14, 2020, the Trustee filed the *Trustee’s Ninth Omnibus Objection To*
28 *Proofs Of Claim Pursuant To 11 U.S.C. § 502(b)(1) and Federal Rule of Bankruptcy Procedure*

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1 3007—*Claim 6-1, 7-1, 15-1, 18-1, 32-1, 34-1, 40-1, 41-1, 49-1, 59-1, 60-1, 72-1, 83-1, 86-1, 87-1,*
2 *97-1, 113-1, 115-1, 118-1, 119-1, 123-1, 128-1, 163-1, 231-1, 292-1, 293-1, 296-1, 338-1, 527-1,*
3 *612-1, 704-1, 813-1 , 815-1, 833-1, 834-1, 914-1, 921-1, 924-1, 929-1, and 930-1 Based on*
4 *Duplicate Claims Filed by Both a Landlord and a Tenant for A Security Deposit [ECF No. 374]*
5 (the “Ninth Omnibus Objection”).

6 13. The Ninth Objection seeks an order disallowing certain claims including claims
7 60-1, 87-1, and 231-1.

8 14. On August 14, 2020, the Trustee filed the *Trustee’s Tenth Omnibus Objection to*
9 *Proofs of Claim Pursuant to 11 U.S.C. § 502(b)(1) and Federal Rule of Bankruptcy Procedure*
10 *3007—Claim Numbers 60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1, 681-1, 683-1, and 735-1,*
11 *Based On Improper Assertion of a Secured Claim, as to Claims [ECF No. 377] (the “Tenth*
12 *Omnibus Objection*”).

13 15. The Tenth Objection seeks an order recharacterizing certain claims including
14 claims 60-1, 87-1, and 231-1, as general unsecured claims.

15 16. On September 17, 2020 the court entered an order sustaining the Ninth Omnibus
16 Objection [ECF No. 442], which ordered certain claims, including claims 60-1, 87-1, and 231-1,
17 disallowed.

18 17. On September 17, 2020 the court entered an order sustaining the Tenth Omnibus
19 Objection [ECF No. 443], which ordered certain claims, including claims 60-1, 87-1, and 231-1,
20 recharacterized as general unsecured claims.

21 18. The Trustee now seeks an order setting aside the order sustain the Tenth Omnibus
22 Objection as to claims 60-1, 87-1, and 231-1 to resolve the conflict between the order sustaining
23 the Ninth Omnibus Objection and the order sustaining the Tenth Omnibus Objection.

24 **IV. LEGAL ARGUMENT**

25 **A. The Court May Set Aside the Order**

26 A motion for relief from an order is governed by Fed.R.Civ.P. 60(b) (“Civil Rule 60(b)”)
27 made applicable in bankruptcy cases by Rule 9024. The party seeking relief under Civil Rule
28 60(b) bears the burden of proving justification for relief. *Cassidy v. Tenorio*, 856 F.2d 1412, 1415

1 (9th Cir.1988)). Whether relief should be granted under any of the provisions of Civil Rule 60(b)
 2 is addressed to the sound discretion of the Court. *Zimmerman v. First Fidelity Bank (In re Silva)*,
 3 97.4 I.B.C.R. 118, 119 (Bankr.D.Idaho 1997) aff'd, 85 F.3d 992 (9th Cir.1996)).

4 Civil Rule 60(b) provides that a party may seek relief from a final judgment or order for a
 5 variety of reasons. Here, the Trustee believes that relief under subsection (1) of that rule is
 6 Appropriate. That subsection provides that the Court may relieve a party from the effects of a
 7 final judgment or order for “mistake, inadvertence, surprise, or excusable neglect....” A court’s
 8 treatment of Civil Rule 60(b) is not intended to be rigid, but instead requires the court to equitably
 9 consider all relevant circumstances surrounding a party's (or its lawyer's), errors or omissions.
 10 *Pincay v. Andrews*, 389 F.3d 853, 856, 860 (9th Cir.2004) (en banc) (noting that the standard was
 11 an equitable one requiring a flexible approach, declining to adopt a strict per se rule) (citing
 12 *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123
 13 L.Ed.2d 74 (1993))

14 In this case, counsel for the Trustee reviewed and filed objections to hundreds of proofs of
 15 claims. Despite reviewing the claim objections for potential conflicts prior to filing, these three
 16 proofs of claim were inadvertently missed. The mistake was inadvertent. No party filed an
 17 objection to either the Ninth or Tenth Omnibus Objection. If the conflict between the orders is not
 18 resolved, then the Trustee will not have clear instruction on whether a distribution should be made
 19 on the claims. Accordingly, the order sustaining the Trustee’s *Tenth Omnibus Objection To*
 20 *Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure*
 21 *3007—Claim Numbers 60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1, 681-1, 683-1, and 735-1,*
 22 *Based on Improper Assertion of a Secured Claim* should be set aside as to claims 60-1, 87-1,
 23 and 231-1.

24 **V. CONCLUSION**

25 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:
 26 (i) setting aside the *Order Sustaining the Trustee’s Tenth Omnibus Objection To Proofs Of*
 27 *Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007—*
 28 *Claim Numbers 60-1, 87-1, 137-1, 230-1, 231-1, 290-1, 501-1, 681-1, 683-1, and 735-1, Based on*

1 *Improper Assertion of a Secured Claim* as to claims 60-1, 87-1, and 231-1 only; and (ii) for
2 such other and further relief as is just and proper.

3 Dated this 1st day of October, 2020.

4 **HOUMAND LAW FIRM, LTD.**

5
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