

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ADVANTAGE HOLDCO, LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 20-11259 (CTG)
)

) Jointly Administered
)

) Related to Docket No. 895
)

Hearing Date: September 3, 2021 at 1:00 p.m. (ET)

Objection Deadline: August 25, 2021²

**OBJECTION AND RESERVATION OF RIGHTS OF ELEMENT FLEET
CORPORATION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER
CLARIFYING THE COURT'S VEHICLE SURRENDER ORDERS WITH
RESPECT TO CONTINUING LIABILITIES**

Element Fleet Corporation ("Element Fleet"), hereby objects and reserves its rights, as set forth below, with respect to the *Motion for Entry of an Order Clarifying the Court's Vehicle Surrender Orders With Respect to Continuing Liabilities* [Docket No. 895] (the "Motion"). In support, Element Fleet respectfully represents as follows:

BACKGROUND

1. On May 27, 2020 (the "Petition Date"), Debtors commenced the captioned bankruptcy cases (the "Chapter 11 Cases").

2. Prior to the Petition Date, Element Fleet provided revolving financing to the Debtors in connection their acquisition of vehicles comprising a portion of their rental fleet pursuant to (i) the *Loan and Security Agreement* dated as of March 11, 2013, executed by Element Fleet, as lender, and Debtor E-Z Rent A Car, LLC, by its predecessor E-Z Rent A Car, Inc., and

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Advantage Holdco, Inc. (4832); Advantage Opco, LLC (9101); Advantage Vehicles LLC (6217); AEZ, LLC (2538); Central Florida Paint & Body, LLC (1183); Advantage Vehicle Financing LLC (7263); and RAC Vehicle Financing, LLC (8375). The Debtors' address is 2003 McCoy Road, Orlando, Florida 32809.

² The noticed objection deadline was August 23, 2021, but pursuant to agreement with the Debtors, Element Fleet's deadline to respond was extended to August 25, 2021.

Debtor Advantage Opco, LLC (together with E-Z Rent A Car, LLC, collectively, “AEZ”), as borrowers (together with all amendments, the “Loan Agreement”); and (ii) the Promissory Note dated March 11, 2013, executed by AEZ in the original principal amount of \$40,000,000.00, which amount later was increased to \$50,000,000.00 (together with all amendments, the “Promissory Note”).³ Collectively, the Loan Agreement, Promissory Note and all amendments thereto are referred to hereafter as the “Loan Documents.”

3. With the loans and financial accommodation provided by Element Fleet, AEZ acquired vehicles for use in its vehicle rental business. Such vehicles (the “Element Fleet Vehicles”) and the proceeds of such vehicles (together with the Element Fleet Vehicles, collectively, the “Element Fleet Collateral”), served as collateral security for AEZ’s obligations to Element Fleet.

4. Pursuant to notation of Element Fleet as secured party on the certificates of title to the Element Fleet Vehicles, Element Fleet possessed valid, perfected, first priority liens and security interests in and to the Element Fleet Collateral.

5. As of the Petition Date, the Debtors were indebted to Element Fleet in the approximate amount of \$17,000,000, exclusive of accruing interest, fees and expenses and net of \$8,000,000 in letter of credit proceeds that had been received by Element Fleet, which funds were being held pending the results of disposition of all Element Fleet Vehicles.

6. On June 24, 2020, the Court entered an order [Docket No. 213] (the “Element Relief From Stay Order”) which, inter alia, authorized Element Fleet to repossess the Element Fleet Vehicles, a process which had started, but which had not been completed, prior to the Petition Date

³ Advantage Opco, LLC became a borrower under the Loan Agreement and the Promissory Note on July 11, 2017, pursuant to its execution of *Amendment #1 to Amended and Restated Promissory Note #1* dated July 11, 2017, and its execution of *Amendment Number 3 to Loan and Security Agreement* dated as of July 7, 2017.

pursuant to the Debtors' "de-fleeting" efforts as a result of its plans to liquidate exacerbated by the Covid-19 pandemic.

7. On August 9, 2021, the Debtors filed the Motion, purportedly seeking "clarification" of the Element Relief From Stay Order as well as other orders entered by the Court in late June 2020 concerning the repossession by vehicle lessors/lenders and/or surrender by the Debtors of the Debtors' rental fleet.

OBJECTIONS; RESERVATION OF RIGHTS

8. Element Fleet objects to the Motion on the grounds that the Element Relief From Stay Order, one of the orders from late June 2020 that Debtors seek by the Motion to "clarify" is not at all ambiguous but rather is clear with respect to its terms and is not in need of any clarification.

9. In addition, Element Fleet submits that the proposed June 30, 2020 "effective date" of "surrender" of the Element Fleet Vehicles is arbitrary, and may not be consistent with the dates on which Element Fleet actually repossessed the Element Fleet Vehicles pursuant to the Element Relief From Stay Order. Element Fleet further submits that the concept of "surrender" is not relevant to or otherwise useful in connection with the rights of a secured lender with respect to the repossession and sale of its collateral; and, as used in connection with the relief sought by the Motion, may arbitrarily and improperly impact claims held by Element Fleet in these cases and/or claims that third parties may then seek to assert against Element Fleet.⁴

10. Nevertheless, prior to the filing of this objection, Element Fleet contacted Debtors to discuss the relief Debtors were seeking by the Motion in an effort to see if an agreement could

⁴ Other vehicle lenders/lessors have objected to the Motion, including Bancorp Bank [*see* Docket No. 907] and HFC Acceptance, LLC and Westlake Flooring, LLC [*see* Docket No. 908], the arguments and objections in which Element Fleet hereby joins.

be reached on a form of order acceptable to all parties and have exchanged drafts of a revised proposed order to such effect. Element Fleet intends to continue that effort but files this objection and reservation of rights to protect its rights and claims in this matter.

11. Element Fleet is in the process of investigating certain factual issues that may bear on whether agreement can be reached on a form of order acceptable to Element Fleet and otherwise with respect to the Motion, including, without limitation, determining the timing of its actual repossession and sale of all the Element Fleet vehicles. Element Fleet accordingly reserves the right to supplement this objection prior to or at the hearing on the Motion with any such information.

WHEREFORE, Element Fleet respectfully objects to and reserves its rights in connection with the Motion as set forth herein, and requests such relief as the Court deems warranted under the circumstances.

Date: August 25, 2021

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