

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

In re:)	Chapter 11
ADVANTAGE HOLDCO, INC., <i>et al.</i> ,)	Case No. 20-11259 (JTD)
Debtors. ¹)	(Jointly Administered)
)	Re: Docket No. 895

**OBJECTION BY HFC ACCEPTANCE, LLC AND WESTLAKE
FLOORING COMPANY, LLC TO MOTION FOR ENTRY OF AN ORDER
CLARIFYING THE COURT’S VEHICLE SURRENDER ORDERS WITH
RESPECT TO CONTINUING LIABILITIES**

HFC Acceptance, LLC (“HFC”) and Westlake Flooring Company, LLC (“Westlake” and collectively with HFC, “Lessors”) submit this Objection (the “Objection”) to the Motion for Entry of an Order Clarifying the Court’s Vehicle Surrender Orders With Respect to Continuing Liabilities [Dkt. 895] (the “Motion”). In support of their Objection, Lessors respectfully represent as follows:

PRELIMINARY STATEMENT

1. As discussed below, the Motion should be denied for the following reasons:
 - The Court Cannot Grant the Relief Sought. Debtors seek to amend (or using the most benign terminology, clarify) the Order (as defined below). Yet, any such amendment or even clarification must comply with Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 9023. Among other things, Bankruptcy Rule 9023 requires that such a motion be brought no later than 14 days after entry of the Order. That deadline has long passed.

¹ 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); E-Z Rent A Car, LLC (2538); Central Florida Paint & Body, LLC (1183); Advantage Vehicle Financing LLC (7263); and RAC Vehicle Financing, LLC (8375). Debtors’ address is 2003 McCoy Road, Orlando, Florida 32809 (collectively, “Debtors”).

- The Order Is Unambiguous and Debtors Are Seeking New Relief. The Order, which essentially approves the Stipulation (defined below) between Debtors and Lessors regarding the recovery and disposition of the Leased Vehicles, is detailed and clear about the matters to which the Order and Stipulation relate. The Motion raises matters that are different and novel – who bears the cost of certain costs incurred by the estates. Accordingly, a motion to amend or clarify the Order (which is untimely) is inappropriate.
- Debtors Are Seeking Declaratory Relief and Employing the Wrong Procedures. Debtors are seeking a declaration that other parties are responsible for certain costs incurred by the estates. Such relief may only be sought through an adversary proceeding pursuant to Bankruptcy Rule 7001. Further, pursuant to the Order and Stipulation, Debtors waived the ability to seek any recovery from Lessors under section 506(c) of the Bankruptcy Code.
- Debtors Failed to Sufficiently State Their Claims or Present Sufficient Evidence. Even if all of the above deficiencies are ignored, Debtors failed to sufficiently set forth the precise claims of amounts and liabilities at issue and failed to provide evidence to support the Motion. Specifically, there is no detail or evidence regarding the specific amounts and charges at issue, the time and circumstances of each charge, and the vehicle or lessor or secured party to which the charge relates.

BACKGROUND

2. Lessors leased approximately 4,500 motor vehicles (the “Leased Vehicles”) to Advantage Rent a Car (“ARC”) and E-Z Rent a Car (“E-Z” and collectively with ARC, “Debtors”) pursuant to certain lease agreements with HFC (the “HFC Lease Agreements”) and Westlake (the

“Westlake Lease Agreements,” and collectively with the HFC Lease Agreements, the “Lease Agreements.”²

3. On June 30, 2020, Debtors and Lessors entered into a Stipulation and Agreement Authorizing the Rejection of Lease Agreements Between HFC Acceptance, LLC and Westlake Flooring Company, LLC and Advantage Rent A Car and E-Z Rent A Car, and Granting Relief From the Automatic Stay and Waiver of Rule 4001(a) [Dkt. 321-1] (the “Stipulation”), which was approved by an order of the Court entered on the same day [Dkt. 321] (the “Order”). Pursuant to the Stipulation, Debtors agreed to reject the Lease Agreements and the granting of relief from the automatic stay to permit Lessors to recover and dispose of the Leased Vehicles. Stipulation, §§ 2-3. In addition, pursuant to the Stipulation, Debtors and Lessors agreed to the manner and process of Lessors’ disposition of the Leased Vehicles and imposition of the costs associated with the disposition as obligations under the Lease Agreements. Stipulation, §§ 4-12.

4. At the time of the Stipulation, Debtors continued to possess the Leased Vehicles at their various locations scattered throughout the United States, including Hawaii. The exact location of each of the Leased Vehicles and the number of Leased Vehicles rented and possessed by Debtors’ customers were unknown to Lessors at the time. Brodsky Decl., ¶ 13. Further, the locations of where the Leased Vehicles were parked and stored were unknown, including the Leased Vehicles that were at mechanics’ location, impound lots, dispersed parking lots, airport terminals, or parked on public streets.

OBJECTION

A. The Court Has No Ability to Grant the Relief Sought

² See Declaration of Jeff Brodsky [Etc.] [Dkt. 217] (the “Brodsky Decl.”), ¶ 2; See Declaration of Paul Kerwin [Etc.] [Dkt. 216] (the “Kerwin Decl.”), ¶ 3.

5. Pursuant to the Motion, Debtors are seeking relief in the form of a further order of the Court to amend, clarify, or modify a prior order entered by the Court. Bankruptcy Rule 9023 provides for the precise procedures for the relief requested in the Motion:

Except as provided in this rule and Rule 3008, Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.

Fed. Rule Bankr. Proc. 9023 (emphasis added).

6. The Order that Debtors are seeking to amend, clarify, or modify was entered by this Court on June 30, 2020. Accordingly, the Motion was required to have been filed within 14 days of entry of that Order – July 14, 2020, in order for this Court to be able to entertain the Motion and grant the relief requested. In this case, the Motion was filed over one year after entry of the Order. Thus, the Court simply has no ability to grant the relief requested in the Motion pursuant to Bankruptcy Rule 9023.

7. The Motion seeks to circumvent this inherent impasse by avoiding any mention of Bankruptcy Rule 9023, and instead, relying on section 105(a) of the Bankruptcy Code as the authority supporting the Court’s jurisdiction and ability to grant the Motion. Section 105(a) provides that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). However, as noted by the U.S. Supreme Court, “it is hornbook law” that section 105(a) cannot be used by a bankruptcy court to contravene express provisions of bankruptcy law. *Law v. Siegel*, 571 U.S. 415 (2014). In this situation, Bankruptcy Rule 9023 provides for the timing and process by which the Motion was to

have been brought, and Debtors cannot now evoke the equitable powers of the Court under section 105(a) to somehow make an end-run around applicable law.

B. The Order Is Unambiguous and Debtors Are Essentially Seeking New Relief

8. Even if the Motion was timely, the Order is not ambiguous and in need of clarification as requested in the Motion. The Order approved the Stipulation regarding the granting of relief from the automatic stay in favor of Lessors and the rejection of the Lease Agreements. Stipulation, §§ 2, 3. The Order and Stipulation provided detailed procedures agreed to by Lessors and Debtors by which Debtors were to release and deliver possession of the Leased Vehicles and the keys to the Leased Vehicles (Stipulation, § 4, Leased Recovery Plan Addendum) and release their interests in title to the Leased Vehicles (Stipulation, § 5), as well as the sufficiency of notice of the disposition of the Leased Vehicles (Stipulation, § 5), the standard of care to be used in connection with the disposition of the Leased Vehicles (Stipulation, § 7), the payment of costs of the recovery effort and disposition and the inclusion of such costs as obligations under the Lease Agreements (Stipulation, § 7.b.), and the handling of and responsibilities with respect to casualty claims for damaged, stolen, or salvaged vehicles (Stipulation, § 10).

9. With respect to the subject matter of the Order – the granting of relief from the automatic stay, the rejection of the Lease Agreements, and the procedures for the recovery and disposition of the Leased Vehicles, the terms of the Order are extensive, comprehensive, and unambiguous.³ Nowhere in the Motion do Debtors cite a specific term of the Order as ambiguous.

10. Instead of clarifying ambiguous terms of an order, Debtors are seeking entirely new relief. In particular, one of the matters raised in the Motion is the incurring of tolls associated with

³ *In re Kaib*, 448 B.R. 373, 375 (Bankr. W.D. Pa. 2011) (“With this order being clear and unambiguous, the Court sees no need to ‘clarify’ it.”).

toll transponder devices that Debtors left in the Leased Vehicles. The transponders were devices obtained or licensed for use by Debtors in connection with agreements between Debtors and various highway agencies, and Debtors are now seeking to summarily shift the liability of the tolls incurred by Debtors' failure to remove their transponders from vehicles and to terminate their agreements with highway agencies.

C. An Adversary Proceeding, and Not a Motion Seeking Summary Relief, Is the Appropriate Procedure

11. As noted above, Debtors are not seeking to clarify the Order, but essentially are seeking declaratory relief against Lessors with respect to the liability of certain claims and obligations.

12. The proper procedure for such a judgment is by way of an adversary proceeding pursuant to Bankruptcy Rules 7001 *et seq.*, which would afford the parties with the opportunity to conduct discovery and present evidence at a trial. In particular, Section 7001 provides “[t]he following are adversary proceedings: (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002.” Fed. Rule Bankr. Proc. 7001. Such cause of action must be asserted in an “adversary proceeding” under Bankruptcy Rule 7001. *See, e.g., In re WorldCorp, Inc.*, 252 B.R. 890, 895 (Bankr. D. Del. 2000); *In re DBSI, Inc.*, 432 B.R. 126, 130, 135 (Bankr. D. Del. 2010) (denying motion seeking declaration that creditor was entitled to certain funds because such declaratory relief “falls clearly within the types of proceedings specified by Bankruptcy Rule 7001 to be adversary proceedings”); *In re Sensibaugh*, No. 12-13546, 2015 WL 4664441, at *1 (N.D. Ind. July 21, 2015) (overruling objection to claim that “appear[ed] to be a request for some type of declaratory relief).

13. Further, to the extent any recovery by the estates against Lessors would be pursuant to a claim under section 506(c) of the Bankruptcy Code, the ability to surcharge Lessors or their assets for such costs was waived and approved by this Court pursuant to the Order and Stipulation.⁴

D. The Motion Is Deficient and Not Supported By Evidence

14. The obligations and liability that the Motion is seeking to impose on Lessors are many and varied. With respect to the toll transponders, Debtors, not Lessors, were the owners or licensees of the transponder devices, the parties to agreements with various highway agencies, and the parties responsible for their use, operation, and removal from vehicles. The incurring of tolls, parking tickets, and fines depend upon an array of factors and circumstances, such as the time the charges were incurred and whether the vehicle to which the charge relates was in the possession of Debtors, a customer of Debtors, or another party at the time each charge was incurred. Further, the amounts and scope of the obligations at issue are unknown. The Motion is devoid of any detail by which Lessors – or the Court – could understand the scope, nature, and amounts of the charges, and determine whether Debtors’ estates, Lessors, another secured party or lessor, or some other party was responsible or liable for each particular charge.

15. Further, the declaration of Al Farrell, the only evidence in support of the Motion, fails to provide any specific facts and details of the claims. Because the declaration fails to identify and describe any specific facts and circumstances relating to particular charges, and only discusses

⁴ “Section 506(c) Waiver. Debtors, on behalf of themselves, their estates, and any successors thereto or any representatives thereof, including any trustees appointed in the above-captioned cases, shall be deemed to have waived any rights, benefits, or causes of action under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against Lessors and/or any Leased Vehicles, the Credits, the Cash Deposit, the Proceeds, the Casualty Recoveries, or other asset in which Lessors have or asset an interest (“Lessor Assets”). Nothing contained in this Stipulation or Order approving this Stipulation shall be deemed a consent by Lessors to any charge, lien, interest, assessment, or claim against the Leased Vehicles or other Lessor Asset under section 506(c) of the Bankruptcy Code or otherwise.” Stipulation, § 13.

general categories of issues and liabilities, it is questionable whether the declarant has personal knowledge with respect to the facts asserted or at issue.

CONCLUSION

16. For the foregoing reasons, Lessors respectfully request that the Court deny the Motion and the relief requested therein and grant such other and further relief as may be appropriate.

Dated: August 24, 2021
Wilmington, Delaware

**HFC ACCEPTANCE, LLC
WESTLAKE FLOORING COMPANY, LLC**

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