

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
CBL & ASSOCIATES)	Case No. 20-35226 (DRJ)
PROPERTIES, INC., et al,)	
)	(Jointly Administered)
Debtors.)	
)	

**DEBTORS' FIRST OMNIBUS OBJECTION TO CERTAIN PROOFS OF CLAIM
(TRADE CLAIMS)**

This is an objection to your claim. The objecting party is asking the Court to disallow the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you your claim may be disallowed without a hearing.

Represented parties should act through their attorney.

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within thirty days from the date this motion was filed. Otherwise, the Court may treat the Objection as unopposed and sustain the relief requested.

This Objection seeks to modify certain proofs of claim. Claimants receiving this Objection should locate their names and claims on Exhibit A to the Proposed Order attached to this Objection.

The above-captioned debtors (collectively, the “Debtors”) represent as follows in support of this omnibus claims objection (this “Objection”), and submit the *Declaration of Mark Renzi in Support of the Debtors’ First Omnibus Objection to Certain Proofs of Claim (Trade Claims)* attached hereto as Exhibit 1 (the “Renzi Declaration”):

Relief Requested

1. The Debtors seek entry of the proposed order (the “Order”), substantially in the form of the Order filed with this Objection, pursuant to § 502(b) of the Bankruptcy Code, and

Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), disallowing and expunging the claims identified on Exhibit A to the Order (collectively, the “Objectionable Claims”) in their entirety because the asserted unsecured or priority amount related to such claims is not reflected in the supporting documentation provided in the proof of claim, is not reflected in the Debtors’ books and records, is a claim that has been satisfied by Debtors, is duplicate proof of claim, is unsupported under the Bankruptcy Code (as defined herein), and/or is inconsistent with such claim’s treatment under the confirmed Plan.¹

Jurisdiction, Venue, and Procedural Background

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Bankruptcy Rules, to the entry of a final order.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The relief requested herein is sought pursuant to §§ 105(a) and 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

5. On November 1, 2020 and continuing on November 2, 2020 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of Mark Renzi in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) [Docket No. 3].

¹ “Plan” means the *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications)* [Docket No. 1396], as supplemented from time to time and together with any exhibits, amendments, or supplements thereto.

6. On November 3, 2020, the Court entered orders [Docket Nos. 96, 102–119] authorizing procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). On November 13, 2020, the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 204].

7. On May 26, 2021, the Court entered an *Amended Order (I) Approving Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan, (V) Approving Notice Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (VI) Granting Related Relief* [Docket No. 1168] approving the disclosure statement for solicitation.

8. On August 11, 2021, this Court issued its *Proposed Findings of Fact, Conclusions of Law, and Order (I) Confirming Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors and (II) Granting Related Relief* [Docket No. 1397] (the “Confirmation Order”).

9. Debtors anticipate the Plan will go effective on or abouts November 1, 2021 and Debtors will emerge from bankruptcy at such time.

The Claims Reconciliation Process

10. On February 23, 2021, the Court entered the *Order (I) Establishing Deadline to File Proofs of Claim and (II) Approving form and Manner of Notice Thereof* [Docket No. 902] (the “Bar Date Order”), establishing certain dates and deadlines for filing proofs of claims in these chapter 11 cases (collectively, the “Proofs of Claims”). The Court established: (a) March 21, 2021, at 5:00 p.m., prevailing Central Time, as the deadline for all

non-governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing (the “General Bar Date”); and (b) April 30, 2021 at 5:00 p.m., prevailing Central Time, as the deadline for all governmental units holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing (the “Governmental Bar Date”, and collectively with the General Bar Date, the “Bar Dates”).²

11. On December 31, 2020, the Debtors filed their respective Schedules D, E, and F of the schedules of assets and liabilities (the “Original Schedules D, E, and F”) pursuant to Bankruptcy Rule 1007(b). On December 31, 2020, the Debtors filed their respective Schedules A/B, G, and H, and statements of financial affairs (the “Original Schedules A/B, G, and H, and SOFA”).

12. To date, over 1,583 Proofs of Claims have been filed against, or scheduled by, the Debtors, totaling over \$61.2 billion in the aggregate for liquidated amounts. The Debtors and their advisors have been working diligently to review the Objectionable Claims, including any supporting documentation filed therewith. The Debtors and their advisors believe that the Objectionable Claims should disallowed in the amounts specified in Exhibit A to the Order.

Objection

13. The Debtors object to the Objectionable Claims identified on Exhibit A to the Order. Each of the Objectionable Claims assert a claim that is not reflected in the supporting documentation provided in the proof of claim, is not reflected in the Debtors’ books and records, is a claims that has been satisfied by Debtors, is duplicate proof of claim, is unsupported under

² For clarity, the Bar Date Order further established the deadline by which claims arising from the Debtors’ rejection of unexpired leases and executory contracts and claims related to the amendment of the Debtors’ Schedules must be filed. Each of such deadlines are incorporated into the defined term “Bar Dates” by this reference.

the Bankruptcy Code (as defined herein), and/or is inconsistent with such claim's treatment under the confirmed Plan. As such, the Debtors do not believe they are liable for the Objectable Claims as currently filed as set forth on **Exhibit A** to the Proposed Order.

14. The Debtors request that the Court enter the Order disallowing and expunging the Objectable Claims identified on **Exhibit A** to the Order.

Objectable Claims

15. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under § 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Section 502(b)(1) provides that a court shall not allow a claim if “such claim is not timely filed” *See* 11 U.S.C. § 502(b)(9). Moreover, Bankruptcy Rule 3007 provides certain grounds upon which “objections to more than one claim may be joined in an omnibus objection,” which includes when “the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because . . . they have been satisfied or released during the case in accordance with the [Bankruptcy] Code, applicable rules, or a court order.” Fed. R. Bankr. P. 3007(d).

16. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under § 502(a) of the Bankruptcy Code.³ A proof of claim loses the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. Once such an allegation is refuted, the burden reverts

³ *See, e.g., In re Tran*, 351 B.R. 440, 444 (Bankr. S.D. Tex. 2006), *aff'd*, 369 B.R. 312 (S.D. Tex. 2007) (holding that a properly filed proof of claim is *prima facie* evidence of the validity and amount of the claim).

to the claimant to prove the validity of its claim by a preponderance of the evidence.⁴ Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.”⁵

17. As set forth in the Renzi Declaration, the Debtors have reviewed the Objectionable Claims identified on **Exhibit A** to the Order and their books and records and do not believe that the Objectionable Claims are liabilities of the Debtors. The specific no liability bases are set forth on **Exhibit A** to the Order.

18. Generally, the Debtors are not liable for the Objectionable Claims because the Claimants’ claims are not reflected in the supporting documentation provided in the proof of claim, are not reflected in the Debtors’ books and records, is a claim that has been satisfied by Debtors, are duplicate proof of claim, are unsupported under the Bankruptcy Code (as defined herein), and/or are inconsistent with such claim’s treatment under the confirmed Plan.

19. Failure to disallow the Objectionable Claims could result in the relevant Claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. Elimination of these Objectionable Claims will enable the Debtors to maintain a more accurate claims register and will not prejudice the Claimants.

Reservation of Rights

20. This Objection is limited to the grounds stated herein. It is without prejudice to the rights of the Debtors to object to any claim on any ground whatsoever. The Debtors expressly reserve all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission

⁴ See *In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (“If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to “prove the validity of the claim by a preponderance of the evidence” (quoting *In re WHET, Inc.*, 33 B.R. 424, 437 (D. Mass. 1983)).

⁵ *Id.*

as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

Separate Contested Matter

21. To the extent that a response is filed regarding any Objectionable Claim and the Debtors are unable to resolve any such response, each such Objectionable Claim, and the Objection as it pertains to such Objectionable Claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. The Debtors request that any order entered by the Court regarding an objection be deemed a separate order with respect to each proof of claim.

Notice

22. Notice of the hearing on the relief requested in this Motion will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. The Debtors will provide notice to parties-in-interest, including: (a) the U.S. Trustee for the Southern District of Texas; (b) holders of the Objectionable Claims, and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors request that the Court enter an Order granting the relief requested herein, and such other and further relief as is just and equitable.

Respectfully Submitted,

HUSCH BLACKWELL LLP

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**PROPOSED COUNSEL FOR
DEBTORS**

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' claims, noticing, and solicitation agent.

/s/ Buffey E. Klein
Buffey E. Klein