

As demonstrated below, genuine disputes of material fact preclude entry of summary judgment, and the Trustee's motion should be denied.

Statement of Facts

Undisputed Facts

1. An involuntary Chapter 7 petition was filed against the Debtor on December 30, 2022 (the "**Petition Date**"). The case was converted to Chapter 11 on January 18, 2023, and Derek A. Henderson was appointed as trustee. He later became Liquidating Trustee under the Liquidating Trust Agreement dated March 30, 2024.
2. On February 21, 2025, the Trustee commenced this adversary proceeding by filing his Complaint for Collection and Turnover Over Property of the Estate Pursuant to 11 U.S.C. § 542 and Related Relief ("**Complaint**") seeking to collect \$211,275.89 from AWF for products delivered before the bankruptcy filing.
3. On April 30, 2025, AWF timely filed its Answer and Affirmative Defenses ("**Answer**").
4. AWF is a wholesale furniture distributor based in Indianapolis, Indiana. It has operated for 38 years, is employee-owned through an ESOP since 2017, and employs approximately 60 people. AWF purchases furniture from manufacturers, warehouses it, and resells it to retail and rental stores. Mahin Dep. 11:5–12:8.
5. Joseph Mahin, AWF's General Manager and Vice President of Operations, has served the company since its founding and is its authorized corporate representative. Mahin Dep. 9:24–10:17; Mahin Aff. ¶¶ 1–2.
6. AWF maintained a commercial relationship with the Debtor's subsidiary, Lane Furniture ("**Lane**"), for roughly 20 years. AWF bought living room, bedroom,

dining, and occasional furniture from Lane on an open-stock basis, meaning individual pieces were purchased and inventoried separately to compose sets. Mahin Dep. 15:17–16:25, 34:4–5.

7. AWF placed purchase orders with Lane on a weekly basis and turned over product approximately every 60 days. Mahin Dep. 18:1–3, 20:18–19.

8. As of November 22, 2022, AWF’s books reflected an open invoice balance with the Debtor of \$213,000.00. Mahin Aff. ¶ 4; Mahin Dep. 57:16–17.

9. On May 25, 2023, AWF filed its Proof of Claim as Claim 88-1 (“**Proof of Claim**”),

Disputed Facts

10. Before the Debtor’s operations ceased, both parties had agreed to a 2% discount on open invoices and \$19,907.50 in credits for warranty claims (“**Agreed Discounts**”) and defective or damaged products, reducing the stated balance to \$190,185.72 (“**Invoice Balance**”). Mahin Aff. ¶¶ 5–6; Mahin Dep. 58:20–65:17.

11. However, the Invoice Balance does not account for substantial additional amounts that AWF is entitled to offset. See Proof of Claim, Attachment 1 (pp. 1-4 of 98), generally, which describes and summarizes the documentary evidence in support of offsets (Proof of Claim, Attachment 1, pp. 5-98 of 98) as well as Defendant’s Response to Trustee’s Interrogatory 9, pp. 10-12. These include:

- a. \$48,663.91 in credits AWF was forced to issue to its own customers between November 23, 2022 and March 20, 2023, to resolve warranty claims and problems with damaged or defective Lane product that could no longer be serviced because the Debtor had ceased operations and

parts were unavailable (“**Warranty Credits**”). Mahin Aff. ¶ 7; Mahin Dep. 65:19–66:11.

- b. \$7,798.09 in damaged and defective product still in AWF’s service department as of March 20, 2023, for which the Debtor would customarily have issued dollar-for-dollar credits (“**Defective Products**”). Mahin Aff. ¶ 8; Mahin Dep. 67:1–14.
- c. An estimated \$50,000 in projected warranty obligations over the following twelve months, extrapolated from the four months of actual warranty experience following shutdown (“**Warranty Obligations**”). Mahin Aff. ¶ 11; Mahin Dep. 67:15–68:5.
- d. \$136,354.43 in unsaleable, broken, and mismatched inventory that AWF was left holding when the Debtor abruptly ceased operations (“**Unsaleable Inventory**”). Under the parties’ longstanding practice, such Unsaleable Inventory would have been returned for dollar-for-dollar credit or resolved through corrective shipments. Mahin Aff. ¶ 12; Mahin Dep. 33:20–34:19, 49:2–6.

12. These chargebacks total \$242,816.43 (collectively Warranty Credits, Defective Products, Warranty Obligations, and Unsaleable Inventory, “**Chargebacks**”). When subtracted from the Invoice Balance, the result is a net amount of \$52,630.71 owed to AWF (“**Indebtedness**”), not by it. Mahin Aff. ¶ 14, Proof of Claim 88-1, Attachment 1, pp. 5-98.

13. The Chargebacks were both “usual and customary” in AWF’s relationship with the Debtor and standard within the furniture distribution industry. Mahin Dep. 103:1–7.

14. AWF offered the Trustee’s agents at Hilco the opportunity to retrieve the Unsaleable Inventory during multiple telephone conversations in early 2023. Hilco did not accept, and the Trustee never took possession of the goods. Mahin Dep. 29:1–30:14; Mahin Aff. ¶ 13.

15. AWF’s open-stock business model depended on maintaining balanced inventory sets. When the Debtor shut down without warning, AWF could no longer reorder the specific pieces needed to complete sets, leaving it with hundreds of thousands of dollars of odd, mismatched inventory that was effectively worthless to AWF’s dealer customers. Mahin Dep. 34:5–18, 50:1–25. The product that could be moved was liquidated at roughly fifteen cents on the dollar. Mahin Dep. 39:12–13, 40:12–16.

16. It was the established practice between AWF and the Debtor that invoices would be “trued up” before AWF remitted payment. The Debtor routinely issued credits for mispricings, short shipments, damaged goods, defective product, and warranty repairs, and AWF would deduct agreed-upon credits from its payments. Mahin Dep. 22:14–23:5, 61:14–25, 76:12–19. The parties never completed this reconciliation process because the Debtor abruptly shut down.

Argument

A. Summary Judgment Requires the Absence of Any Genuine Factual Dispute

Under Federal Rule of Civil Procedure 56, made applicable here by Federal Rule of Bankruptcy Procedure 7056, summary judgment is appropriate only when the movant demonstrates that no genuine dispute exists as to any material fact and that the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The movant carries the initial burden of pointing to portions of the record that reveal the absence of a triable factual issue. *Id.* at 323. If it does so, the burden shifts to the nonmovant to identify specific facts, supported by evidence, showing that a genuine dispute remains. *Id.* at 324. In applying this standard, courts must draw all reasonable inferences in favor of the party opposing summary judgment and may not weigh conflicting evidence. *Kennett-Murray Corp. v. Bone*, 622 F.2d 887, 892 (5th Cir. 1980).

Here, AWF has presented sworn testimony, the Affidavit of Joseph Mahin, documentary evidence attached to the Proof of Claim, and detailed financial calculations demonstrating that the amount the Trustee claims is not only contested but is exceeded by AWF's own countervailing claims. Summary judgment is therefore improper.

B. The Claimed Amount Is Not Subject to Turnover Under 11 U.S.C. § 542

Section 542(b) of the Bankruptcy Code requires an entity that owes a matured, prepetition debt to the estate to pay that debt to the trustee – but only “except to the extent that such debt may be offset under section 553.” The turnover remedy was designed for the straightforward collection of undisputed obligations; it was never intended as a mechanism to adjudicate contested claims or force payment where the

very existence and amount of the debt are in dispute. *Trefny v. Bear Stearns Sec. Corp.*, 243 B.R. 300, 320 (S.D. Tex. 1999) citing *In re Charter Co.*, 913 F.2d 1575, 1579 (11th Cir.1990) and *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 202–03 (1983).

Courts have consistently held that § 542 reaches only assets that are “undeniably” property of the estate, and that the trustee must make a showing by clear and convincing evidence that the property belongs to the estate. *In re Patriot Coal Corp.*, 631 B.R. 648, 656 (Bankr. E.D. Mo. 2021). Where a bona fide ownership or amount dispute exists, turnover is unavailable. *Id.* citing *Dershaw v. Ciardi (In re Rite Way Elec., Inc.)*, 510 B.R. 471, 484 (Bankr. E.D. Pa. 2014). As the Fourth Circuit has explained, a debtor “cannot use the turnover provisions to liquidate contract disputes or otherwise demand assets whose title is in dispute.” *Agnew v. United Leasing Corp.*, 680 F. App’x 149, 154 (4th Cir. 2017), citing *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991).

Here, multiple factors demonstrate that the amount the Trustee seeks is genuinely disputed:

First, AWF does not concede that it owes the Debtor any net amount. Further, in the Answer, AWF denied that the Trustee is entitled to utilize § 542 to resolve the pending dispute. Though the Trustee makes the claim that “there can be no dispute, then, that the debts...are owed to the Debtor,” he is incorrect. Through Mr. Mahin’s sworn deposition testimony and Affidavit, AWF has documented chargebacks, warranty expenditures, and inventory losses totaling \$242,816.43 – more than \$50,000 in excess of the \$190,185.72 that the Trustee claims. Mahin Aff. ¶ 14; Mahin Dep. 102:24–103:7.

This denial is supported by internal accounting records, credit correspondence, and itemized calculations produced in discovery and attached to the Proof of Claim.

Second, the invoices underlying the Trustee's claim were never reconciled according to the ordinary course of business between the Debtor and AWF. The parties' longstanding commercial practice required a true-up process in which mispricings, short shipments, damaged goods, and defective product were identified and credited before AWF remitted payment. Mahin Dep. 22:14–23:5. That reconciliation never occurred because the Debtor ceased operations without notice.

Third, the Trustee's own records are internally inconsistent. The Complaint seeks \$211,275.89, the Trustee's books apparently show \$211,275.89, yet the Motion for Partial Summary Judgment requests only \$190,185.72. This disparity underscores that even the Trustee has not settled on a single, definitive figure – further proof that the debt is not the kind of undisputed obligation for which § 542 turnover was designed and contrary to well settled law.

The Trustee is essentially asking the Court and AWF to act like the Debtor had no independent existence prior to his appointment and that the claims of the estate are therefore not subject to defenses that could have been asserted had this bankruptcy case never even been filed. The Trustee cannot now try to treat unreconciled, face-value invoices as an “established debt” when he knows – and knew at the beginning of his appointment – that there were issues with inventory that been sent to AWF. Mahin Dep. 29:1–30:14; Mahin Aff. ¶ 13.

Because genuine factual disputes permeate every aspect of the Trustee's turnover claim, summary judgment on Count One must be denied.²

C. AWF Has Established Viable Setoff and Recoupment Defenses

The Trustee contends that AWF has not demonstrated its entitlement to setoff. That contention is wrong on both the law and the facts.

Section 553(a) of the Bankruptcy Code preserves any right of setoff that exists under applicable nonbankruptcy law, provided three conditions are met: (1) the creditor holds a prepetition claim against the debtor; (2) the creditor owes a prepetition debt to the debtor; and (3) the claim and debt are mutual. *In re Luongo*, 259 F.3d 323, 334 (5th Cir. 2001); *In re Morris*, 616 B.R. 499, 501 (Bankr. N.D. Miss. 2020). Setoff is an affirmative defense, and AWF has the burden of proving it at trial.

The Trustee's only argument is that AWF's claims did not arise before the Petition Date and therefore AWF does not hold a prepetition claim against the Debtor. That argument misapprehends both the record and the nature of the claims.

The undisputed evidence shows that the Agreed Discounts had already been *agreed to* by the Debtor before operations ceased but had not yet been deducted from outstanding invoices. Mahin Dep. 69:15; Mahin Aff. ¶ 5. Those are plainly undisputed, prepetition mutual obligations.

Beyond that, every product underlying the Chargebacks was manufactured by the Debtor and delivered to AWF *before* the Petition Date, under contractual warranty and quality assurance arrangements that were likewise in place *before* that date. Mahin

² Arguably the Trustee, if he insists upon collection of his disputed claim, should be required to file a separate collection action against AWF in the United States District Court for the Southern District of Indiana.

Dep. 35:8-13. The Debtor extended a one-year manufacturer's warranty, and AWF serviced that warranty on the Debtor's behalf at its own expense. Mahin Dep. 25:1-6. It was routine practice – both within the parties' relationship and across the industry – for the Debtor to reimburse AWF through credits for warranty repairs, defective product, and unsaleable inventory such as the Chargebacks. Mahin Dep. 49:2-6, 52:15-18, 103:1-7.

The Trustee conflates the *quantification* of these claims with their *origin*. That some warranty credits were tallied after the Petition Date does not alter the fact that the Debtor's underlying warranty obligations attached at the time of sale and delivery, which undisputedly occurred prior to the Petition Date. Much like contingent claims, a claim "arises" for setoff purposes when the operative facts giving rise to the obligation occur – not when the dollar figure is calculated or becomes final.

AWF also asserts the closely related defense of recoupment, which permits a defendant to reduce the plaintiff's claim by amounts arising from the same transaction or series of transactions. Recoupment is not subject to the prepetition timing requirement that governs setoff; rather, it functions as a defense to ensure that a claimant recovers only the net amount justly owed. *United States Abatement Corp. v. Mobile Exploration & Producing U.S. (In re United States Abatement Corp.)*, 79 F.3d 393, 398 (5th Cir. 1996). AWF's claims for the Chargebacks all arise directly from the same course of dealing – the purchase and resale of Lane furniture – that gives rise to the Trustee's invoices. Those recoupment rights total as much as \$242,816.43 and are more than the \$190,185.72 the Trustee seeks.

This case is, in many ways, just like *Henderson v. Furniture, Mattresses & More, LLC*, Adv. No. 24-01012-SDM, also before this Court. Just as in that case, here the Trustee asserts he has established a prima facie that there is a presently payable debt pursuant to § 542(b). And just as in that case, here, AWF has presented evidence that establishes there is a genuine factual dispute as to AWF's rights of setoff and recoupment, as well as what amounts AWF might be entitled to under either legal theory. In that case, the Court denied the Trustee's request for entry of partial summary judgment, reasoning that because the extent of setoff or recoupment was in dispute, and because the evidence showed there was a genuine dispute as to the net amount presently payable to the trustee, summary judgment was not appropriate. *Henderson v. Furniture, Mattresses & More, LLC*, Adv. No. 24-01012-SDM, *Order Denying Plaintiff's Motion for Summary Judgment*, Docket No. 52, pp. 7-8. Furthermore, the Court denied partial summary judgment as to liability on the account because it would not materially advance the proceeding and may create confusion. *Id.* at p. 8.

At a minimum, the existence and amount of AWF's setoff and recoupment claims present triable issues of fact that preclude summary judgment. Just like in *Henderson v. Furniture, Mattresses & More, LLC*, the Court should deny the Trustee's motion for partial summary judgment and order that these material disputes be resolved at trial.

D. The Trustee's Request for Attorney's Fees Is Premature and Unsupported

The Trustee also seeks attorney's fees under Mississippi Code Annotated § 11-53-81, which authorizes fee-shifting when a party fails to pay an "open account" within 30 days of receiving an itemized demand that correctly states the balance owed.

The statute applies only where there is a “final and certain agreement on price” – in other words, the account must be liquidated. *McLain v. Westside Bone & Joint Ctr.*, 656 So. 2d 119, 123 (Miss. 1995); *Stanton & Assocs. v. Bryant Constr. Co.*, 464 So. 2d 499, 503 (Miss. 1985). A claimant must first obtain a judgment establishing the amount due on the open account before attorney’s fees may be awarded. *Highlander Rx, Inc. v. First Pharmacy Servs. of Tennessee, LLC*, No. 3:13CV277-SAA, 2014 WL 7338864, at *3 (N.D. Miss. Dec. 22, 2014), citing *Magnolia Farm Serv., Inc. v. Tunica Oil Co., Inc.*, 438 So.2d 285, 288 (Miss.1983).

None of those prerequisites are satisfied here. The balance AWF owes – if any – remains wholly unliquidated, hence this litigation. The parties never agreed on a final amount before the Debtor’s closure, and the invoices the Trustee relies on do not “correctly” set forth the amount due, because they omit the credits and adjustments that were integral to every payment cycle. Moreover, no judgment has been entered on the open account, making any fee request inappropriate and contrary to Mississippi law.

Conclusion

The record before this Court is replete with genuine disputes of material fact. AWF has presented sworn testimony, a verified affidavit, and documentary evidence establishing that its chargebacks, setoff claims, and recoupment rights exceed the amount the Trustee seeks by more than \$50,000. The Trustee cannot satisfy his burden under Rule 56, and the turnover mechanism of § 542 is not the proper vehicle for resolving these contested obligations.

WHEREFORE, Defendant American Wholesale Furniture, Inc. respectfully asks this Court to deny the Trustee's Motion for Partial Summary Judgment in its entirety, and to grant AWF such other and further relief as the Court deems appropriate.

Dated: March 30, 2026.

Respectfully Submitted,

MITCHELL, McNUTT & SAMS, P.A.

/s/ D. Andrew Phillips
D. Andrew Phillips (MSB #8509)
P O Box 947
Oxford, MS 38655
(662) 234-4845
aphillips@mitchellmcnutt.com

-and-

/s/ Harley K. Means
Harley K. Means, #23068-32
Kroger, Gardis & Re
111 Monument Circle, Suite 900
Indianapolis, IN 46204
(317) 692-9000 Telephone
hmeans@kgrlaw.com

Counsel to American Wholesale Furniture, Inc

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing pleading was filed electronically through the Court's CM/ECF system and served electronically on all parties enlisted to receive service electronically.

SO CERTIFIED, this 30th day of March, 2026.

/s/ D. Andrew Phillips