

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,

Debtors.¹

§
§ Chapter 11
§
§ Case No. 18-33836
§
§ (Jointly Administered)
§

**DEBTORS' OBJECTION TO INFINITY EMERGENCY
MANAGEMENT GROUP, LLC'S CLAIM NO. 223**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW ALL OR A PORTION OF THE CLAIM THAT YOU FILED IN THESE BANKRUPTCY CASES. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED.

THIS MATTER HAS BEEN SET FOR HEARING ON MAY 9, 2019, AT 10:00 A.M. (CENTRAL TIME) BEFORE THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE, 515 RUSK AVENUE, 4TH FLOOR, COURTROOM 404, HOUSTON, TEXAS 77002.

Neighbors Legacy Holdings, Inc. ("NLH") and certain of its affiliates and subsidiaries, as debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), file this Objection (the "Objection") to Infinity Emergency Management Group, LLC's ("Infinity") Claim No. 223 (the "Claim").

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors' principal place of business and the Debtors' service address is: 10800 Richmond Avenue, Houston, Texas 77042.



PRELIMINARY STATEMENT

1. Infinity asserts a general unsecured claim for approximately \$8.6 million against the Debtors. Infinity's Claim should not be afforded prima facie validity as the Claim fails to provide supporting documentation sufficient to establish i) the amount of the Claim; ii) the basis of the Claim; iii) that the Claim is properly asserted against the Debtors; iv) that Infinity has standing to assert the Claim at all; and v) even if there is a claim, why the claim is a general unsecured claim instead of a claim to be subordinated under Section 510 of the Bankruptcy Code. As to the fourth issue, Infinity cannot prove standing as the Claim appears to be based on claims Infinity asserts in the Adversary Case, defined below, all of which are derivative claims that are property of the estate.

BACKGROUND

2. On July 12, 2018, and July 23, 2018, the Debtors each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). [Docket No. 10].²

3. Prepetition, Infinity filed a lawsuit against various Defendants, including Debtors Neighbors Health, LLC and Neighbors GP, LLC (the "State Court Lawsuit"), in cause no. 2017-73050 pending in the 269th Judicial District Court in Harris County, Texas. On September 19, 2018, Michael Chang, Andy Chen, Quang Henderson, and Hitesh Patel removed the State Court Lawsuit to this Court by commencing adversary no. 18-3276 (the "Adversary Case").

² On July 23, 2018, NEC Beaumont Emergency Center, LP (Case No. 18-34031) and NEC Beaumont Asset Holdings, LLC (Case No. 18-34030) each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (the "Beaumont Cases"). The Beaumont Cases are jointly administered with the above-captioned case by Orders entered in each Beaumont Case Directing that Certain Orders in the Chapter 11 Cases of Neighbors Legacy Holdings, Inc., et al. Apply to the Beaumont Cases (Docket No. 3 in NEC Beaumont Asset Holdings, LLC and Docket No. 4 in NEC Beaumont Emergency Center, LP).

4. On December 14, 2018, in the Adversary Case, Infinity filed its *Third Amended Complaint*, which is the live complaint. [Docket No. 17]. The Third Amended Complaint asserts various claims, including various derivative claims, none of which Infinity has standing to assert.

5. Infinity has a limited interest in the limited partner of a Series Limited Liability Company (NHS Emergency Centers, LLC referred to herein as “NHS LLC”) and in particular a limited interest in Series 114 Eastside (“Eastside”) and Series 115 Zaragoza (“Zaragoza”). Infinity’s rights under the contracts at issue do not include the right to bring claims or lawsuits, but are merely limited to a partial share in the net profits or losses of Eastside and Zaragoza.

6. On November 2, 2018, Infinity filed its Claim, which asserts a general unsecured claim in the amount of \$8,646,313.01. Infinity attaches a *single one-page* document to support its more than \$8 million asserted claim. The document appears to be a spreadsheet with various calculations and some notations, none of which provides support for the Claim. With such little information, the Debtors can only assume that the Claim is based on Infinity’s claims asserted in the State Court Lawsuit and now the Adversary Case. But with the single document provided it is impossible for the Debtors to evaluate the basis of Infinity’s Claim.

ARGUMENT

7. Under section 502 of the Bankruptcy Code, a proof of claim is deemed allowed “unless a party in interest . . . objects.” 11 U.S.C. § 502. Pursuant to section 502(b), the starting point for this analysis is whether a claim passes muster under applicable non-bankruptcy law. 11 U.S.C. § 502(b)(1) (requiring disallowance of any claim that is “unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . .”). Section 558 further allows the Debtors to assert any affirmative defense available to the Debtors. 11 U.S.C. § 558; *see also* 4 Collier on Bankruptcy ¶ 502.3 (16th 2018) (explaining that “[s]ection 558 . . . specifically provides for the availability of the debtor’s defenses.”).

8. Bankruptcy Rule 3001(f) provides that “[a] proof of claim executed and filed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim.” *See, e.g., In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010). “Ultimately, a proof of claim must fulfill its essential purpose of providing objecting parties with sufficient information to evaluate the nature of the claims.” *In re High Standard Manufacturing Co., Inc.*, 2016 WL 5947244, *2 (Bankr. S.D. Tex. Oct. 13, 2016).

9. A proof of claim loses the presumption under Bankruptcy Rule 3001(f) when an objecting party refutes at least one allegation that is essential to the claim’s legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). The burden then shifts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Even with the burden shifting framework, “the ultimate burden of proof always lies with the claimant.” *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep’t of Rev.*, 530 U.S. 15 (2000)).

A. The Claim Fails to Attach Sufficient Supporting Documentation.

10. The Claim wholly fails to provide the Debtors with sufficient information to evaluate the nature and propriety of the claim. Whatever the spreadsheet represents, it does not support a claim against the Debtors, much less a general unsecured claim for over \$8 million.

11. The Claim attaches one document with various calculations and a notation of “Data as reported in Neighbors financial reports from August 2015 – May 2018.” There is no explanation or support, however, for the basis of the calculation or the basis for the claim asserted against the Debtors. The Claim does not attach any documentation that tends to prove that the Debtors are liable for the Claim. Nor does the Claim include documents or information that provide any support that Infinity properly holds a Claim against the Debtors.

12. The Debtors do not have enough information to evaluate the Claim and therefore the Claim is not entitled to prima facie validity.

B. To the Extent the Claim is Premised on the Allegations in the Adversary Proceeding Infinity Lacks Standing.

13. Infinity does not have standing to assert a Claim against the Debtors a) in its own capacity or b) on behalf of a voting member or Series 114- Eastside or Series 115- Zaragoza. Under the agreements signed by the parties, Infinity only has a right to share in the profits and losses of the series LLC. Moreover, Infinity cannot recover damages for wrongs done to the corporation. *Linegar v. DLA Piper LLP (US)*, 495 S.W.3d 276 (Tex. 2016); *Wingate v. Hajdik*, 795 S.W.2d 717 (Tex. 1990); *Nauslar v. Coors Brewing Co.*, 170 S.W.3d 242, 250 (Tex. App.—Dallas 2005, no pet.); *Hall v. Douglas*, 380 S.W.3d 860, 873–74 (Tex. App.—Dallas 2012, no pet.).

14. In its Adversary Case, Infinity expressly asserts derivative claims, which are clearly property of the estate. *See, e.g., In re Educators Group Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994). Infinity asserts additional claims that are likewise property of the estate. *See Torch Liquidating Trust v. Stockstill*, 561 F.3d 377, 386 (5th Cir. 2009) (“By definition . . . a cause of action for breach of fiduciary duty owed to the corporation that is property of the corporation [at the petition date] becomes property of the estate regardless of whether outside of bankruptcy the case was more likely to be brought by the corporation directly or by a shareholder or creditor through a derivative suit.”); *In re E.F. Hutton SW Props. II, Ltd.*, 103 B.R. 808, 812–13 (Bankr. N.D. Tex. 1989) (“While normally that fiduciary obligation [of a director owed to a corporation] is enforceable directly by the corporation, or through a stockholder’s derivative action, it is, in the event of bankruptcy of the corporation, enforceable by the trustee.”).

15. Because Infinity does not have standing to assert its Claim, its Claim should be disallowed.

CONCLUSION AND RELIEF REQUESTED

16. The Debtors respectfully requests that the Court sustain the Debtors' Objection and disallow the Claim and grant the Debtors any such further relief as may be just and proper.

Dated: Houston, Texas
March 5, 2019.

PORTER HEDGES LLP

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**COUNSEL FOR DEBTORS
AND DEBTORS IN POSSESSION**

Certificate of Service

I certify that on March 5, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ John F. Higgins
John F. Higgins

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

**NEIGHBORS LEGACY HOLDINGS, INC.,
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Debtors.¹

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Chapter 11

Case No. 18-33836

(Jointly Administered)

**ORDER SUSTAINING OBJECTION TO INFINITY EMERGENCY
MANAGEMENT GROUP, LLC'S CLAIM NO. 223**

(Relates to Doc. No. _____)

Upon consideration of the Debtors' Objection to Infinity Emergency Management Group, LLC's Claim No. 223 (the "Objection"), the Court concludes that the Claimant failed to sufficiently demonstrate that the Debtors are obligated on the Claim. It is therefore

ORDERED that Claim No. 223, filed by Infinity Emergency Management Group, LLC, shall be **DISALLOWED** in its entirety and expunged.

SIGNED:

**MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE**

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