

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

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 18-33836 (MI)

Jointly Administered

**UNSECURED CREDITOR TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 525,
FILED BY SPRING GULCH, LLC**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THESE BANKRUPTCY CASES. 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.

Mark Shapiro, the Trustee of the Unsecured Creditor Trust (the "**Unsecured Creditor Trustee**") files this *Unsecured Creditor Trustee's Objection to Proof of Claim No. 525 Filed by Spring Gulch, LLC* (this "**Objection**"). In support of this Objection, the Unsecured Creditor Trustee respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this case and this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

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 was: 10800 Richmond Avenue, Houston, Texas 77042.



2. The predicates for the relief requested herein are section 502(b) of title 11 of the United States Code (“**Bankruptcy Code**”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

Relief Requested

3. The Unsecured Creditor Trustee respectfully requests entry of an order, substantially in the form filed herewith (the “**Proposed Order**”) disallowing Claim No. 525 (as such term is defined herein below) for the reasons set forth herein.

General Background

4. On July 12, 2018 and July 23, 2018, Neighbors Legacy Holdings Inc. and certain of its affiliates and subsidiaries (collectively, the “**Debtors**”) each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code.

5. On February 20, 2019, the Debtors filed their *First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 772] (the “**Plan**”) and accompanying *Second Amended Disclosure Statement* [Docket No. 773].

6. On March 22, 2019, the Court entered its *Order Approving Debtors’ Second Amended Disclosure Statement and Confirming Debtors’ First Amended Joint Plan of Liquidation of Neighbors Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 847] (the “**Confirmation Order**”).

7. The Confirmation Order and Plan, among other things, approved the form of the Unsecured Creditor Trust Agreement and the appointment of the Unsecured Creditor Trustee to administer the Unsecured Creditor Trust. Additionally, the Plan provided for the establishment

of the Unsecured Creditor Trust effective on the effective date of the Plan, which occurred on April 8, 2019 (the “**Effective Date**”). *See* Section V.D. of the Plan; Docket No. 862.

8. Article VIII.B of the Plan expressly provides, “with respect to all Claims other than Administrative and Priority Claims, the Unsecured Creditor Trustee shall have the exclusive right to File, Settle, compromise, withdraw or litigate to judgment any objections as permitted under the Plan.” The Plan defines claims in Class 4 as General Unsecured Claims; and claims in Class 5 as Bankruptcy Code Section 510(b) Claims. Article V, Section A of the Plan provides that the Plan is a “joint plan of liquidation for all of the Debtors and results in the consolidation of the Debtors and their respective Estates solely for purposes of . . . making Distributions pursuant the Plan”. Furthermore, Article V(A)(b) provides that “. . .any duplication of claims arising from both primary operative documents and guaranty and/or other secondary obligations shall be eliminated and all such claims against the Debtors shall be treated as a single claim that eliminates such duplications”

9. Pursuant to Section VIII.C. of the Plan, the original deadline to file objections to claims was 180 days after the Effective Date, i.e. October 5, 2019. On October 21, 2019, the Court extended the Deadline to December 31, 2019 [Docket No. 1005]; on December 4, 2019, the Court extended the Deadline April 29, 2020 [Docket No. 1032]; on April 16, 2020 the Court extended the Deadline to June 30, 2020 [Docket No. 1064]; on July 8, 2020, the Court extended the Deadline to September 30, 2020 [Docket No. 1099]; and on October 28, 2020, the Court extended the Deadline to December 31, 2020 [Docket No. 1151] (the “**Claims Objection Deadline**”).

The Claims Reconciliation Process

10. On July 12, 2018, the Court entered the *Order Granting Complex Chapter 11 Bankruptcy Case Treatment* [Docket No. 14], which established a deadlines for filing proofs of claim. On October 5, 2018, the Debtors filed their Notice of Deadlines for Filing Proofs of Claim [Docket No. 551] (the “**Bar Date Notice**”), which provided notice that the deadline for all entities, other than Governmental Unites, to file proofs of claim was November 14, 2018 (the “**General Bar Date**”). The deadline for governmental unites to filed proofs of claims was 180 days after the Petition date, or January 8, 2019 (the “**Governmental Unit Bar Date**” and collectively, with the General Bar Dates, the “**Bar Dates**”).

11. The official claims register, prepared and maintained by the Debtors’ claims agent, reflects that over 1,700 proofs of claim were filed against the Debtors’ estates, and that such claims, coupled with the claims scheduled by the Debtors, represented in the aggregate in excess of \$1.5 Billion in unsecured, non-priority claims.

12. Since the Effective Date, the Unsecured Creditor Trustee and its advisors have been working diligently to review these proofs of claim, including any supporting documentation filed together with any proof of claim. In this regard, the Court has previously sustained each of the Unsecured Creditor Trustees’ five previous omnibus claim objections to date. *See* Docket Nos. 1085-1087, 1121, 1154.

13. The Unsecured Creditor Trustee has reviewed and reconciled claims for which he is responsible in order to administer the Unsecured Creditor Trust and has identified Claim No. 525 (“**Claim No. 525**”) filed by Spring Gulch, LLC (“**Spring Gulch**”), which is the subject of, *inter alia*, this Objection. More particularly, the Unsecured Creditor Trustee identified that Claim No. 525, related to the rejection of a commercial real property lease, *nunc pro tunc* to the

Petition Date, does not comply with the applicable rules, including, *inter alia*, the inclusion of a \$3.3 million “loss in property value” component without further documentation or explanation, does not assert that Spring Gulch made any attempt to mitigate its damages with respect to the amounts set forth in the claim, and does not appear to comply with the damages cap set forth in Bankruptcy Code Section 502(b)(6).

14. Attached hereto as **Exhibit A** is the *Declaration of Mark Shapiro in Support of the Unsecured Creditor Trustee’s Objection to Proof of Claim No. 525 Filed by Spring Gulch, LLC* (the “**Declaration**”).

Basis for Relief

15. Pursuant to section 502(a) of the Bankruptcy Code, a filed proof of claim is deemed allowed, unless a party in interest objects. 11 U.S.C. § 502(a). A properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. FED. R. BANKR. P. 3001(f). To receive the benefit of *prima facie* validity, however, a proof of claim must assert factual allegations which would entitle the claimant to a recovery. *In re Heritage Org., LLC*, 04-35574 (BJH), 206 WL 6508477, at *8 (Bankr. N.D. Tex. Jan. 27, 2006). Additionally, a claimant’s proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes at least one of the allegations that is essential to the claim’s legal sufficiency. *In re Starnes*, 231 B.R. 903, 912 (N.D. Tex. 1998). Once an allegation is refuted, “the burden shifts to the claimant to prove by a preponderance of the evidence.” *In re Congress, LLC*, 529 B.R. 213, 219 (Bankr. W.D. Tex. 2015); *see also Cavu/Rock Props. Project I, LLC v. Gold Star Constr., Inc. (In re Cavu/Rock Props. Project I, LLC)*, 516 B.R. 414, 422 (Bankr. W.D. Tex. 2014). “The

ultimate burden of proof always lies with the claimant.” *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

16. Bankruptcy Rule 3007 requires that an objection to a proof of claim be made in writing, and that the claimant be provided with not less than thirty days’ notice of the hearing to be held in respect of such objection. See FED. R. BANKR. P. 3007(a). Objections of up to one hundred claims may be joined in an omnibus objection if all such claims were filed by the same entity or such objections are based on the grounds that the claims should be disallowed, in whole or in part, for any of eight enumerated reasons, including that the claims “are presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the non-compliance.” See FED. R. BANKR. P. 3007(d)(6).

17. Here, Claim No. 525 is deficient in several respects, such that Trustee is unable to determine the validity of the claim because of Spring Gulch’s non-compliance with the applicable rules. As an initial matter, Claim No. 525 includes a line item of \$3.3 million related to “loss in property value” but does not provide any further description or justification for the inclusion of this amount, any documentation to support its inclusion in Claim No. 525, or any basis for the Debtors’ purported liability. Furthermore, as a claim for damages related to the rejection of the commercial real property lease underlying Claim No. 525, Spring Gulch must comply with the rejection damages cap set forth in Bankruptcy Code Section 502(b)(6). However, a review of Claim No. 525 and the analysis contained within Exhibit E thereto reveals that Spring Gulch made no attempt to comply with the Bankruptcy Code. In addition, nothing contained within Claim No. 525 indicates that Spring Gulch made any attempt to mitigate its damages with respect to the rejection of the lease at issue within Claim No. 525, such that the

Unsecured Creditor Trustee is unable to determine whether or not any amount within Claim No. 525 may be properly asserted against the Debtors' estates as damages by Spring Gulch in connection with the rejection of its lease by the Debtors.

18. Accordingly, the Unsecured Creditor Trustee respectfully requests that the Court disallow Claim No. 525 in its entirety.

Reservation of Rights

19. In the event that Claim No. 525 is not disallowed on the grounds asserted herein, the Unsecured Creditor Trustee hereby reserves his rights to object to such claim on any other grounds. Additionally, the Unsecured Creditor Trustee expressly reserves the right to amend, modify, or supplement the objections asserted herein and to file additional objections to the Proofs of Claim or any other claims that may be asserted against the Debtors' estates.

20. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity or such Debtor entity's estate; (b) a waiver of any party's 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 section 365 of the Bankruptcy Code; or (f) a waiver of the Unsecured Creditor Trustee's rights under the Bankruptcy Code or any other applicable law.

Notice

21. Notice of this Objection has been given to: (a) all parties on the Master Service List; and (b) Spring Gulch. The Unsecured Creditor Trustee respectfully submits that such

notice is sufficient and proper under the circumstances and that no other or further notice is required.

Conclusion

WHEREFORE, based upon the foregoing, the Unsecured Creditor Trustee respectfully request that the Court: (a) sustain this Objection; (b) enter the Proposed Order sustaining this Objection providing that Claim No. 525 shall be disallowed; and (c) grant such other and further relief as the Court deems just and proper under the circumstances.

Dated: December 31, 2020

Respectfully submitted,

/s/ Michael D. Warner

Michael D. Warner (TX Bar No. 00792304)

Benjamin L. Wallen (TX Bar No. 24102623)

COLE SCHOTZ P.C.

301 Commerce Street, Suite 1700

Fort Worth, TX 76102

Telephone: (817) 810-5265

Facsimile: (817) 977-1611

Email: mwarner@coleschotz.com

bwallen@coleschotz.com

*Counsel for Mark Shapiro, Unsecured Creditor
Trustee*

EXHIBIT A

Declaration of Mark Shapiro

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

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 18-33836 (MI)

Jointly Administered

**DECLARATION OF MARK SHAPIRO IN SUPPORT OF
UNSECURED CREDITOR TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 525,
FILED BY SPRING GULCH, LLC**

Pursuant to 28 U.S.C. § 1746, I, Mark Shapiro, hereby declare as follows:

1. I am the duly appointed Unsecured Creditor Trustee of the Unsecured Creditor Trust. My business address is 3500 Maple Avenue, Suite 420, Dallas, Texas 75219.
2. Contemporaneously with the filing of this Declaration, the Unsecured Creditor Trustee filed the *Unsecured Creditor Trustee's Objection to Proof of Claim No. 525 Filed by Spring Gulch, LLC* (the "**Objection**").²
3. I am duly authorized to make and submit this Declaration in support of the Objection.
4. The facts set forth in this Declaration are based upon my personal knowledge or upon records kept in the ordinary course of my business as the Unsecured Creditor Trustee, as

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 was: 10800 Richmond Avenue, Houston, Texas 77042.

² All capitalized terms used but not defined herein shall have the meanings given to them in the Objection.

well as the Debtors' business records provided to me that were reviewed by me or professionals of I have retained to represent me and the Unsecured Creditor Trust under my supervision and direction. If called and sworn as a witness, I could and would testify competently to the matters set forth herein.

5. I have coordinated and supervised the claims reconciliation process. Accordingly, I, or other professionals retained by me, under my supervision and direction, reviewed and analyzed Claim No. 525.

The Objection

6. Claim No. 525 is deficient in several respects, such that I am unable to determine the validity of the claim because of non-compliance with applicable rules. As an initial matter, Claim No. 525 includes a line item of \$3.3 million related to "loss in property value" but does not provide any further description or justification for the inclusion of this amount, any documentation to support its inclusion within Claim No. 525, or any basis for liability of the Debtors with respect thereto. Furthermore, as a claim for damages related to the rejection of the commercial real property lease underlying Claim No. 525, Spring Gulch must comply with the rejection damages cap set forth in Bankruptcy Code Section 502(b)(6). However, a review of Claim No. 525 and the analysis contained within Exhibit E thereto reveals that Spring Gulch made no attempt to comply with the Bankruptcy Code. Furthermore, nothing contained within Claim No. 525 indicates that Spring Gulch made any attempt to mitigate its damages with respect to the rejection of the lease at issue within Claim No. 525, such that I am unable to determine whether or not any amount may be properly asserted as damages against the Debtors' estates by Spring Gulch in connection with the rejection of its lease by the Debtors.

7. For these reasons, I respectfully request that the Court disallow Claim No. 525 in its entirety.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 31, 2020

/s/ Mark Shapiro

Mark Shapiro
solely in his official capacity as Unsecured
Creditor Trustee

Proposed Order

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

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 18-33836 (MI)

Jointly Administered

**ORDER SUSTAINING UNSECURED CREDITOR TRUSTEE'S OBJECTION TO
PROOF OF CLAIM NO. 525, FILED BY SPRING GULCH, LLC**

[Related Docket No. ____]

Upon the objection (the “**Objection**”)² of Mark Shapiro, Unsecured Creditor Trustee of the Unsecured Creditor Trust (the “**Unsecured Creditor Trustee**”) seeking entry of an order (this “**Order**”) disallowing the Claim No. 525 filed by Spring Gulch, LLC, it is **HEREBY ORDERED THAT:**

1. Pursuant to Section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, Claim No. 525 is disallowed in its entirety.
2. The Debtors’ Claims Agent is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Order.
3. Except as otherwise provided in this Order, nothing in this Order shall be deemed:
(a) an admission as to the validity of any prepetition claim against a Debtor entity or such Debtor

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Objection.

entity's estate; (b) a waiver of any party's 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 section 365 of the Bankruptcy Code; or (f) a waiver of the Unsecured Creditor Trustee's rights under the Bankruptcy Code or any other applicable law.

4. The terms and conditions of this Order will be immediately effective and enforceable upon its entry.

5. The Unsecured Creditor Trustee, the Claims Agent, and the Clerk of the Court are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Objection.

6. This Court shall retain exclusive jurisdiction to resolve any dispute arising from or related to this Order.

Dated: _____, 2021

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE