

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

In Re:

Case No.: 17-30112

Vanity Shop of Grand Forks,

Debtor.

Chapter 11

**PLAN ADMINISTRATOR’S OBJECTION TO CLAIM OF
LIAONING CHENGDA CO. LTD - CLAIM NO. 56/333**

The Plan Administrator hereby files this Objection (“Objection”) to the Proof(s) of Claim filed by creditor Liaoning Chengda Co. Ltd. (“Chengda”) as Proofs of Claim Nos. 56 and 333 seeking an administrative expense claim under 11 U.S.C. 503(b)(9) in the sum of \$195,588.77 and a general unsecured claim of \$110,142.38. The Objection should be sustained for the following reasons:

CLAIM OBJECTION – BASIS FOR RELIEF

1. U.S.C. § 501 provides for the filing of claims in bankruptcy, and § 502 governs the process for determining whether claims are allowed. In re Sears, 863 F.3d 973, 977 (8th Cir. 2017). A properly filed proof of claim is prima facie evidence of the validity and amount of the claim. *In re Dove-Nation*, 318 B.R. 147, 152 (8th Cir. BAP 2004); *Consumers Realty & Dev. Co., Inc. v. Goetze*, 238 B.R. 418 (8th Cir. BAP 1999); Fed.R.Bankr.P. 3001(f). The objecting party must produce evidence rebutting the claim or else the claimant will prevail. *In re Gran*, 964 F.2d 822, 827 (8th Cir. 1992). Once the objecting party produces evidence rebutting the claim, the burden of proof shifts to the



claimant to produce evidence establishing the validity of the claim. *Id.* “Thus, once an objection is made to the proof of claim, the ultimate burden of persuasion as to the claim's validity and amount rests with the claimant.” *Consumers Realty & Dev. Co., Inc.*, 238 B.R. at 423.

2. 11 U.S.C. § 503(b)(9) grants sellers of goods an administrative priority claim for “the value of any goods *received by the debtor* within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” *See* 11 U.S.C. § 503(b)(9) (emphasis added). A debtor is deemed to have “received” goods, for purposes of Section 503(b)(9), when a debtor or its agent takes physical possession of the goods. *In re World Imports Ltd.*, 862 F.3d 338 (3d Cir. 2017); *In re SRC Liquidation, LLC*, 573 B.R. 537 (Bankr. D. Del. 2017) (goods delivered to common carrier but never physically possessed by debtor or its agent during the 20-days preceding the petition date were not “received” by the debtor within the meaning of Section 503(b)(9)).

3. The invoices attached to Proof of Claim(s) Nos. 56/333 indicate the claim is comprised as follows:

Invoice No.	Amount	Arrival in Los Angeles Port	POC priority asserted
17IN081191003	\$6,996.60	Unknown	Gen Unsec.
17IN081191007	\$62,830.60	Unknown	Gen Unsec.
17IN081107003	\$34,080.25	2/10/2017	503(b)(9)
17IN081191002	\$36,205.40	2/10/2017	503(b)(9)
17IN081191004	\$110,248.75	2/19/2017	503(b)(9)

17IN081191005	\$29,905.95	3/5/2017	Gen. Unsec.
17IN081191006	\$8,608.65	3/18/2017	Gen. Unsec.
17IN081191008	\$16,721.15	3/21/2017	Gen. Unsec.
Total:	\$305,597.35		

4. Debtor filed its petition on March 1, 2017 and the store closing sales commenced immediately thereafter. Debtor did not accept new goods at the warehouse in Fargo, North Dakota after March 1, 2017. Accordingly, the goods that arrived at the port of Los Angeles, California after March 1, 2017 were never received by the Debtor. Chengda is required to provide information as to mitigation for these goods in accordance with the Claim Procedures Order [Doc. 429].

5. The Plan Administrator is unable to verify if the goods that arrived in the port of Los Angeles during February 10 – 19, 2017 were ever received at the Debtor’s warehouse located in Fargo, North Dakota. Chengda, as the administrative expense claimant, has the burden of proving the goods were received by the Debtor to support its 503(b)(9) priority claim.

6. Debtor’s books and records show there was a \$30,000 loss of sales and \$17,062 in crooking issues (dye rub off on goods) that should have been credited.

7. Debtor’s books and records only show the sum of \$157,285.00 was owing to Chengda.

8. Chengda is also the defendant in a preferential transfer adversary proceeding that was filed on February 25, 2019 as Adversary No. 19-07017 [Doc. 1902]. The Plan

Administrator is seeking to recover preferential transfers totaling \$663,833.07 from Chengda. Pursuant to 11 U.S.C. § 502(d), any claim of Chengda and/or its assignee, against the Liquidating Debtor's estate shall be disallowed in full until such time as Chengda pays to the Plan Administrator an amount equal to the aggregate amount of the avoidable transfers, plus interest and costs thereon.

9. The Plan Administrator hereby reserves the right to object in the future modify, amend, and/or supplement this Objection.

Dated this 20th day of March, 2019

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