

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	§	Chapter 11
	§	
AUTO PLUS AUTO SALES, LLC ¹	§	Case No. 23-90055 (CML)
	§	
Wind-Down Debtors.	§	(Formerly Jointly Administered under Lead Case IEH Auto Parts Holding LLC, Case No. 23-90054)

**RESPONSE OF CLARIT REALTY, LTD. TO
GUC TRUSTEE'S TWELFTH OMNIBUS OBJECTION TO CLAIMS**

Clarit Realty, Ltd. ("Clarit"), by and through its undersigned counsel, files this response (this "Response") in opposition to the *Twelfth Omnibus Objection to Claims* (the "Objection"), filed by Michael D. Warner, solely in his capacity as trustee (the "GUC Trustee") of the Auto Parts GUC Trust, and in support thereof respectfully states as follows:

BACKGROUND

1. On January 31, 2023, IEH Auto Parts Holding LLC (the "Debtor") and its affiliated debtors (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (this "Court").

¹ On January 16, 2024, the Court entered a *Final Decree Closing Certain of the Chapter 11 Cases* (Case No. 23-90054, Dkt.1043) closing each Debtor's chapter 11 case except the case of Auto Plus Auto Sales LLC (Case No. 23-90055). The following is a complete list of the Debtor entities in these chapter 11 cases, along with the last four digits of each entity's federal tax identification number: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Wind-Down Debtors' service address is: 5330 Caramel Crest Lane, Charlotte, NC 28226.



THE LEASES

5900 Front Street, Kansas City, Missouri

2. On or about November 1, 2004, Clarit, as landlord, and the Debtor, as tenant, entered into that certain lease agreement (as amended from time to time thereafter, the “5900 Lease”), regarding certain premises located at 5900 Front Street, Kansas City, Missouri 64109, as more particularly described in the 5900 Lease (the “5900 Premises”).

2771 Chouteau Avenue, St. Louis, Missouri

3. On or about April 30, 2019, Clarit, as landlord, and the Debtor, as tenant, entered into that certain amended and restated lease agreement (as amended from time to time thereafter, the “2771 Lease”), regarding certain premises located at 2771 Chouteau Avenue, St. Louis, Missouri 63103, as more particularly described in the 2771 Lease (the “2771 Premises”).

1281 St. Paul Street, Rochester, New York

4. On or about September 29, 2016, Clarit, as landlord, and the Debtor, as tenant, entered into that certain lease agreement (as amended from time to time thereafter, the “1281 Lease”), regarding certain premises located at 1281 St. Paul Street, Rochester, New York, as more particularly described in the 1281 Lease (the “1281 Premises”).

30 Pickering Street, Brookville, Pennsylvania

5. On or about June 10, 2019, Clarit, as landlord, and the Debtor, as tenant, entered into that certain amended and restated lease agreement (as amended from time to time thereafter, the “30 Lease”), regarding certain premises located at 30 Pickering Street, Brookville, Pennsylvania, as more particularly described in the 30 Lease (the “30 Premises”).

270 Braddock Avenue, Turtle Creek, Pennsylvania

6. On or about April 30, 2019, Clarit, as landlord, and the Debtor, as tenant, entered into that certain amended and restated lease agreement (as amended from time to time thereafter, the “270 Lease”, and together with the 5900 Lease, the 2771 Lease, the 1281 Lease, and the 30 Lease, collectively referred to as, the “Clarit Leases”), regarding certain premises located at 270 Braddock Avenue, Turtle Creek, Pennsylvania, as more particularly described in the 270 Lease (the “270 Premises”, and together with the 5900 Premises, the 2771 Premises, the 1281 Premises, and the 30 Premises, collectively referred to as, the “Premises”).

7. On August 10, 2023, the Court entered the Order Granting Debtors’ Fourth Omnibus Motion for Entry of an Order (A) Authorizing and Approving (A) The Rejection of Certain Unexpired Leases of Non-Residential Real Property, (B) the Rejection of Certain Executory Contracts, and (C) Abandonment of Certain Personal Property, if any, Each Effective as of the Respective Effective Rejection Date, and (II) Granting Related Relief (Docket No. 851, the “Rejection Order”). The Rejection Order approved the rejection of, among others, the Clarit Leases.

THE CLARIT CLAIM

8. As a result of the Debtor’s rejection of the Clarit Leases, on September 8, 2023, Clarit timely filed claim no. 728 asserting a general unsecured claim for lease rejection damages, as well as property damages, due Clarit under the terms of each respective Clarit Lease, in the aggregate sum of \$885,249.00 (the “Clarit Claim”).

9. In support of the Clarit Claim, Clarit provided a rejection damages summary (the “Damages Summary”) for each of the Clarit Leases, which provided a detailed breakdown of the rent amount due Clarit pursuant to section 502(b)(6) of the Bankruptcy Code.

10. In addition, the Damages Summary also detailed the amount due Clarit on account of the property damage caused by the Debtor to each of the Premises. In further support of the Clarit Claim relating to the property damages, Clarit provided a property inspection report (collectively, the “Property Inspection Reports” and each a “Property Inspection Report”) for each of the Premises that, among other things, detailed the property damage caused by the Debtor to each Premise and the cost to repair such damage (the “Property Damages Claim”).

11. On November 5, 2023, Clarit filed an amended motion seeking the allowance and payment of the Property Damages Claim as an administrative expense claim pursuant section 503(b) of the Bankruptcy Code, on the basis that the Debtor caused significant post-petition damage to each Premise, requiring repair at the expense of Clarit. (Case No. 23-90054, Docket No. 982).

12. On December 18, 2023, the Debtors filed an objection to the Admin Claim Motion (the “Admin Claim Objection”), asserting, among other things, that the Property Damages Claim was not entitled to administrative expense priority because: (i) it did not provide an “actual, necessary benefit” to the Debtors’ estate; and (ii) claims for damages arising from a debtor’s breach of its clean-up obligation are not entitled to administrative expense priority. (Case No. 23-90054, Docket No. 1022).

THE OBJECTION

13. On October 9, 2024, the GUC Trustee filed the Objection seeking the entry of an order (the “Proposed Order”) reducing the amount of each general unsecured claim identified on Schedule 1 to the Proposed Order, including the Clarit Claim, to the amount that the GUC Trustee alleges is the true liability owed as of the Petition Date. (Case No. 23-90055, Docket No. 220).

The GUC Trustee's proposed reduced amount is reflected in the "Modified GUC Claim Amount" column of Schedule 1.

14. According to Schedule 1 of the Proposed Order, the GUC Trustee is seeking to reduce the Clarit Claim from the aggregate sum of \$885,249.00 to zero dollars (\$0.00). The GUC Trustee, however, does not provide any justification for the proposed reduction of the Clarit Claim, nor does he provide any supporting documentation. In fact, nowhere in the Objection does the GUC Trustee state the specific alleged basis for the proposed reduction of the Clarit Claim. The only document submitted by the GUC Trustee in support of the Objection is the Declaration of Susanne Edwards (the "Edwards Declaration"), a former assistant vice president of finance for IEH Auto Parts, LLC, which alleges only generic non-specific grounds for the basis of the Objection as to each respective proof of claim identified on Schedule 1 to the Proposed Order. Further, the Edwards Declaration does not state with particularity the alleged basis on which the GUC Trustee seeks to reduce the Clarit Claim, but rather makes sweeping general assertions that are targeted to all creditors listed on Schedule 1 to the Proposed Order.

15. Accordingly, Clarit submits that the GUC Trustee has failed to meet the evidentiary burden to sustain the Objection and, thus, the Objection should be denied with respect to the Clarit Claim.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

17. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B).

18. Venue of these cases and this Response in this district is proper under 28 U.S.C. §§ 1408 and 1409.

ARGUMENT

A. The GUC Trustee Did Not Provide Evidence to Rebut The Presumption of the Validity of the Clarit Claim

19. Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that “[a] proof of claim executed and filed in accordance with [the Federal Rules of Bankruptcy Procedure] shall constitute prima facie evidence of the validity and amount of the claim.” The prima facie validity of the proof of claim is “strong enough to carry over a mere formal objection without more.” *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). *See In re O'Connor*, 153 F.3d 258, 260 (5th Cir.1998) (“Properly filing a proof of claim constitutes prima facie evidence of the claim’s validity and amount.”). However, where an objection is filed, the objecting party bears the initial burden of presenting sufficient evidence to overcome the presumed validity and amount of the claim. *In re O'Connor* at 261 (“If the Trustee objects, it is his burden to present enough evidence to overcome the prima facie effect of the claim.”); *See In re Northstar Offshore Group LLC*, 2024 WL 2930046, (Bankr. S.D. Tex. June 7, 2024) (internal citations omitted) (“Properly filing a proof of claim constitutes prima facie evidence of the claim's validity and amount. The objecting party must then produce evidence rebutting the claimant or else the claimant will prevail.”); *See also In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173–74 (3d Cir. 1992) (stating that “[t]he objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claims’ legal sufficiency”).

20. Accordingly, to rebut the presumption of the prima facie validity of the Clarit Claim, the GUC Trustee is required to present to this Court “evidence *equal in force* to the prima facie case.” *In re Allegheny Int'l*, 954 F.2d at 173 (emphasis added). *See Official Committee of Unsecured Creditors of Radnor Holdings Corp. v. Tennebaum Capital Partners, LLC (In re Radnor Holdings Corp.)*, 353 B.R. 820, 840-41 (Bankr. D. Del. 2006) (“the debtor is required to

present to the Court “substantial evidence” in support of its Objection”) (*citing In re Mid-American Waste Sys., Inc.*, 284 B.R. 53, 65 (Bankr. D. Del. 2002) (“party objecting to properly filed proof of claim bears the initial burden of presenting sufficient evidence to overcome the presumed validity and amount of claim”); *See also In re Planet Hollywood Int’l*, 274 B.R. 391, 394 (Bankr. D. Del. 2001) (“Where an objection is filed, the objecting party bears the initial burden of presenting sufficient evidence to overcome the presumed validity and amount of the claim.”); *See also In re Genrette*, 2020 WL 5751524, *6, D. Del. (“The objector must produce actual evidence – “[m]ere allegations, unsupported by evidence, are insufficient to rebut the movant’s prima facie case.”).

21. In short, the GUC Trustee must “show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.” *In re Holm*, 954 F.2d at 623. The GUC Trustee has failed to meet this burden.

22. Moreover, it is only when the objector (here the GUC Trustee) produces sufficient evidence to overcome the prima facie validity of the claim will the burden revert to the claimant. *In re Allegheny Int’l*, 954 F.2d at 174. Accordingly, when considering an objection to a filed claim, courts must first determine whether an objector has produced evidence sufficient enough to rebut at least one of the allegations essential to the claim’s legal sufficiency. *Id.* at 2. *See also In re L. Washington & Assoc., Inc.*, Case No. 00-12173 DWS, 2000 WL 1780329, at *2 (Bankr. E.D. Pa. Nov. 22, 2000) (“The threshold question then is whether the Debtor has rebutted the otherwise prima facie effect of the proof of claim.”)

23. Here, the Objection contains no “substantial evidence” to overcome the presumptive validity of the Clarit Claim. Clarit submits that the Objection only presents minimal evidence, and such evidence is far less than equal in force to Clarit’s well-documented and

detailed prima facie valid claim. Other than general assertions as to the basis for objecting to all the claims listed on Schedule 1 to the Proposed Order, including the Clarit Claim, the GUC Trustee has not provided any grounds that would support the proposed reduction of the Clarit Claim. Conversely, in support of the Clarit Claim, Clarit has provided specific details with respect to the asserted amounts due and appropriate and substantial documentation to substantiate the prima facie validity of the Clarit Claim. Clarit submits that the evidence it has provided to support the Clarit Claim is of greater force than that submitted by the GUC Trustee and more than adequate to support the allowance of the Clarit Claim in its filed amount.

B. The Property Damages Claim is Permitted Under the Clarit Lease and Should be an Allowed Claim

24. Under the terms of the Clarit Leases, the Debtor was required to take good care of the Premises and, at its sole cost and expense, maintain the Premises, and make all nonstructural, ordinary repairs to the Premises, and take such other actions as may be necessary to preserve the same in good order, condition and state of repair. As evidenced through the Property Inspection Reports, the Debtor breached its obligations under the Clarit Leases and failed to maintain the Premises and to make the necessary and required repairs. Accordingly, even if not accepted as an administrative expense claim, the Debtor is liable to Clarit for the cost of the damages done to the Premises and the Property Damages Claim should be allowed and paid as a general unsecured claim.

25. Moreover, the Property Damages Claim is not subject to the statutory cap imposed under section 502(b)(6) of the Bankruptcy Code because such damages did not arise from the termination of the Clarit Leases and Clarit would have the same claim against the Debtor if the Debtor were to assume the Clarit Leases. *In re El Toro Materials Co., Inc.*, 504 F.3d 978, 980–81 (9th Cir. 2007) (stating that the § 502(b)(6) cap applies to damages resulting from rejection of

the lease and that “[a] simple test reveals whether the damages result from the rejection of the lease: Assuming all other conditions remain constant, would the landlord have the same claim against the tenant if the tenant were to assume the lease rather than rejecting it”); *See, e.g., In re Atlantic Container Corp.*, 133 B.R. 980, 988 (Bankr. N.D. Ill. 1991) (“Under the damage scheme outlined in the Leases, costs incurred to remedy damage to the leased Premises caused by a lack of maintenance may be characterized either as damages from the tenants' breach of the covenant to repair and maintain or as costs of preparing the property for reletting. Outside of bankruptcy, it does not matter into which category these costs are placed because they are recoverable regardless of how they are characterized.”); *See also In re Best Products Co., Inc.*, 229 B.R. 673, 678 (Bankr. E.D. Va. 1998) (“Rather, the weight of authority in reported opinions where landlords have actually claimed damages for such items as maintenance and repairs is that these damages do *not* result “from the termination of a lease of real property” and are therefore not subject to the cap of § 502(b)(6)(A).”); *See also, In re Filene's Basement, LLC*, 2015 WL 1806347, at *10 (Bankr. D. Del. April 16, 2015) (“One major purpose of bankruptcy law is to allow creditors to receive an aliquot share of the estate to settle their debts. Metering these collateral damages by the amount of the rent would be inconsistent with the goal of providing compensation to each creditor in proportion with what it is owed. Landlords in future cases may have significant claims for both lost rental income and for breach of other provisions of the lease. To limit their recovery for collateral damages only to a portion of their lost rent would leave landlords in a materially worse position than other creditors. In contrast, capping rent claims but allowing uncapped claims for collateral damage to the rented premises will follow congressional intent by preventing a potentially overwhelming claim for lost rent from draining the estate, while putting landlords on equal footing with other creditors for their collateral claims.”).

26. Further, although the Debtor asserts in the Objection that Clarit is not entitled to an unsecured claim and is owed nothing, in the Admin Claim Objection, the Debtor has already conceded that the Property Damages Claim is, at the very least, a general unsecured claim. (*See Admin Claim Objection* at ¶ 38 “...the Damages Claim is solely related to the pre-petition leases which were rejected and created a pre-petition unsecured claim.”). Clarit submits that the Debtor/GUC Trustee cannot now retract its previous argument and assert contradictory positions to support whatever argument the Debtor/GUC Trustee is making at the time.

27. In light of the foregoing, the evidence provided by the GUC Trustee in support of the Objection represents the slimmest of evidence and is patently insufficient to rebut the validity of the Clarit Claim. It is undisputed that the Debtor rejected the Clarit Leases and Clarit is entitled to a claim on account of damages caused by such rejection, as well as a claim for any and all collateral damage done to the Premises. Therefore, the Objection must be denied as it relates to the Clarit Claim.²

WHEREFORE, Clarit respectfully requests that this Court deny the Objection as it relates to the Clarit Claim and grant such other and further relief as this Court may deem just and proper.

Dated: November 8, 2024

² Clarit reserves the right to supplement this Response and to raise additional objections to the relief requested in the Objection.

Respectfully submitted,

SINGER & LEVICK, P.C.

By: /s/ Michelle E. Shriro
Michelle E. Shriro
State Bar No. 18310900

16200 Addison Road, Suite 140
Addison, Texas 75001
Phone: 972.380.5533
Fax: 972.380.5748
Email: mshriro@singerlevick.com

AND

BOND, SCHOENECK & KING, PLLC
Sara C. Temes, *Pro Hac Vice*
One Lincoln Center
Syracuse, New York 13202
Telephone: (315) 218-8327
Facsimile: (315) 218-8100
Email: stemes@bsk.com

Attorneys for Clarit Realty, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District, which includes the parties listed below, and via electronic mail to counsel for the GUC Trustee, on this 8th day of November, 2024.

<u>WIND-DOWN DEBTORS:</u> Auto Plus Auto Sales LLC 5330 Caramel Crest Lane Charlotte, NC 28226 VIA ECF Noticing through its attorney	<u>COUNSEL FOR WIND-DOWN DEBTORS:</u> Maha Chyas Zachary S. McKay Emily Meraia Matthew D. Cavenaugh Veronica A. Polnick Vienna Anaya Jackson Walker LLP 1401 McKinney Street, Suite 1900 Houston, TX 77010 VIA ECF Noticing
<u>COUNSEL FOR THE GUC TRUST AND THE AUTO PARTS GUC TRUST:</u> Joseph M. Coleman (jcoleman@krcl.com) John J. Kane (jkane@krcl.com) Kyle Woodard (kwoodard@krcl.com) JaKayla J. DaBera (kdabera@krel.com) Kane Russell Coleman Logan PC 901 Main Street, Suite 5200 Dallas, TX 75202 VIA ECF Noticing	<u>US TRUSTEE:</u> Alicia L. Barcomb Vianey Garza Jayson B. Ruff Millie Aponte Sall Office of the US Trustee 515 Rusk Avenue, Suite 3516 Houston, TX 77002 VIA ECF Noticing

/s/ Michelle E. Shriro
 Michelle E. Shriro