

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA DIVISION)**

In re:

LODGING ENTERPRISES, LLC,

Debtor.

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Chapter 11

Case No. 24-40423

**AMENDED DEBTOR’S OBJECTION TO PROOF OF CLAIM NO. 135 FILED BY
AMERICAN HOTEL INCOME PROPERTIES REIT INC. AND PROOF OF CLAIM
NO. 136 FILED BY AHIP CARGO ENTERPRISES LLC**

The above-captioned debtor and debtor in possession (the “Debtor”) submits this objection (the “Objection”) to Proof of Claim No. 135 filed by American Hotel Income Properties REIT Inc. (the “AHIP REIT”) in the sum of \$7,000,000 (the “AHIP REIT Claim”) and Proof of Claim No. 136 filed by AHIP Cargo Enterprises LLC (“AHIP Cargo”) in the sum of \$7,000,000 (the “AHIP Cargo Claim”). The AHIP REIT Claim and the AHIP Cargo Claim (jointly referred to as the “AHIP Claim”)¹ are mirror images of the same \$7,000,000 claim. In support of this Objection, Debtor states as follows:

PRELIMINARY STATEMENT

1. AHIP REIT and AHIP Cargo (jointly referred to as “AHIP”) do not have a claim against the Debtor. Instead, at most, AHIP has a claim against VCM Lodging,² the Debtor’s sole equity holder. There is no basis in fact or law for AHIP to convert its disputed claim against the Debtor’s equity holder to a direct claim against the Debtor that would be paid *pari passu* with the claims of the Debtor’s valid unsecured creditors.

¹ The claim numbers referenced here are the ones reflected on the Court’s claim register. The AHIP Cargo Claim and the AHIP REIT Claim have been assigned claim nos. 124 and 126, respectively, on the claims register maintained by Kroll Restructuring Administration LLC, the Debtor’s claims, noticing, and solicitation agent.

² Capitalized terms used but not defined in this Preliminary Statement have the meanings given to them in other sections of this Objection.

2. The \$7,000,000 of Subject Funds are proceeds of the Loan made to the Debtor in 2019 and secure the obligations of the Debtor under the Loan Agreement. The Subject Funds have been in the Debtor's bank account since the Loan was funded in 2019. The Subject Funds did not come from AHIP. Moreover, AHIP's failure to assert a claim related to the Subject Funds against VCM Lodging, let alone against the Debtor, for the last four years suggests that even AHIP knows that it does not have a valid claim against the Debtor. For the reasons set forth herein, the Debtor respectfully requests that the Court disallow the AHIP Claim.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the District of Kansas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference*, dated June 24, 2013. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 502(b) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

5. On June 26, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On July 17, 2024, the United States Trustee appointed an Official Unsecured Creditors' Committee (the "Committee") in this Chapter 11 Case [Docket No. 96]. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case.

8. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this chapter 11 case, is set forth in more detail in the *Declaration of Tom Werner in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 15] (the “First Day Declaration”), which is incorporated herein by reference.³

I. The AHIP Sale

9. On or about July 11, 2019, the Debtor’s sole equity holder, VCM Lodging Enterprises, LP (“VCM Lodging”), as purchaser, and AHIP, as seller, entered into that certain Purchase and Sale Agreement (the “PSA”),⁴ for the purchase and sale of the hotels and restaurants that comprise the Debtor’s business (the “Sale”).

10. On November 25, 2019, VCM Lodging and AHIP entered into that certain First Amendment to Purchase and Sale Agreement (the “PSA Amendment” and the PSA as amended by the PSA Amendment, the “Amended PSA”). Under the Amended PSA, VCM Lodging purchased 100% of the equity interests in Lodging Properties LLC and the Debtor from AHIP for a set aggregate purchase price, subject to adjustment as provided under the Amended PSA.

11. The PSA Amendment, among other things, added a new provision to the PSA related to the renewal of an agreement between the Debtor and Union Pacific Railroad Company (the “UP 15 Agreement”) for the provision of lodging services at certain of the Debtor’s hotels. PSA Amendment § 2.3. Under this provision, AHIP was required to deliver \$7,000,000 to VCM Lodging, which was, in turn, required to deposit the amount with the Prepetition Secured Parties.

³ Capitalized terms used but not defined herein have the meanings given to them in the First Day Declaration.

⁴ Copies of the PSA and PSA Amendment are not attached hereto but will be furnished upon request to the Court or any party entitled to review such documentation, subject to satisfaction of the conditions contained therein regarding the disclosure of their terms and the adequate protection thereof. Upon information and belief, copies of the PSA and PSA Amendment are in the possession of AHIP.

Amended PSA § 2.13(a). VCM Lodging was required to pay this amount to AHIP upon the satisfaction of certain “Release Conditions” set forth in the PSA Amendment and discussed more fully below. *Id.* § 2.13(b).

12. Despite the language in the Amended PSA, AHIP never delivered any funds to VCM Lodging, nor did VCM Lodging deposit any funds with the Prepetition Secured Parties. Instead, the \$7,000,000 currently being held by the Debtor subject to the Prepetition Secured Parties’ security interest (the “Subject Funds”) are loan proceeds advanced directly by the Prepetition Secured Parties to the Debtor.

II. The Loan Agreement

13. On or about November 27, 2019, the Debtor entered into the Loan Agreement with the Prepetition Secured Parties under which the Debtor borrowed \$145,000,000, which was used to finance part of the purchase price under the Amended PSA. A copy of the Loan Agreement is attached hereto as **Exhibit A**.

14. The Loan Agreement contains terms governing the treatment of the Subject Funds.⁵ Specifically, section 6.6.1 of the Loan Agreement provides that the Debtor was required to deposit \$7,000,000 with the Prepetition Secured Parties, and that such funds would be subject to security interests of the Prepetition Secured Parties. Loan Agreement § 6.6.1.

15. The Subject Funds are loan proceeds and were deposited with the Prepetition Secured Parties in accordance with the terms of the Loan Agreement. The loan closing statement identifies the \$7,000,000 of Subject Funds as the Rail Contract Renewal Reserve. A copy of the loan closing statement is attached hereto as **Exhibit B**.

⁵ The Loan Agreement refers to the Subject Funds as the “Railroad Contract Renewal Funds.”

16. Section 6.6.2 of the Loan Agreement governs the release of the Subject Funds. Importantly, section 6.6.2 of the Loan Agreement provides that the Subject Funds would be released upon certain conditions, and then only as follows: “(i) during the continuation of a Cash Management Trigger Event, transferred to the Cash Management Account or (ii) in the absence of an existing Cash Management Trigger Event, remitted to Borrower.” Thus, the Loan Agreement provides that the Subject Funds only would be released to pay the obligations under the Loan Agreement or to the Borrower. Schedule A of the PSA Amendment contains substantially the same language and confirms that AHIP agreed that the Subject Funds only would be released to pay the obligations under the Loan Agreement or to the Borrower.

17. As of the date of this Objection, the Prepetition Secured Parties maintain that a Cash Management Trigger Event occurred and is continuing, and the Subject Funds are in the Cash Management Account. The Subject Funds are not subject to release to the Debtor until the resolution of the Cash Management Trigger Event, which has not occurred.

III. The AHIP Claim

18. On September 9, 2024, AHIP filed the AHIP Claim asserting a claim against the Debtor in the amount of \$7,000,000.⁶ The AHIP Claim is predicated on the erroneous assertion that the Subject Funds somehow belong to, or originated from, AHIP. The AHIP Claim recites that, pursuant to section 2.13 of the Amended PSA, AHIP was required to deposit \$7,000,000 with “[VCM Lodging’s] Lender.” This assertion is wrong on two counts. First, it is undisputed that VCM Lodging does not have a “Lender.” As noted above, the Debtor (not VCM Lodging) was the party to the Loan Agreement. VCM Lodging is not a party to the Loan Agreement and,

⁶ Though two separate claims were filed by AHIP Cargo and AHIP REIT, both claims assert the same alleged liability.

accordingly, does not have a “Lender.” Second, AHIP did not deposit any money with the Prepetition Secured Parties. Instead, the Subject Funds were funded by the Prepetition Secured Parties under the Loan Agreement to the Debtor and held under the terms of the Loan Agreement in a bank account owned by the Debtor. Again, AHIP is not a party to the Loan Agreement and has no rights thereunder.

19. The AHIP Claim asserts that AHIP is entitled to the Subject Funds on the following legal theories: (i) breach of contract, (ii) breach of the implied covenant of good faith and fair dealing, (iii) constructive trust, (iv) unjust enrichment, and/or (v) alter ego.

OBJECTION

20. Section 502(a) of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under section 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Moreover, section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law” 11 U.S.C. § 502(b)(1).

21. As set forth in Bankruptcy Rule 3001(f), 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. *See, e.g., In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010).⁷ A proof of claim loses the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim’s legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its

⁷ [NTD: Will need to update citations to Kansas or 10th Cir. Cases.]

claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, “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)).

I. The AHIP Claim Fails to Establish *Prima Facie* Validity

22. The AHIP Claim fails to establish *prima facie* validity because it acknowledges that AHIP’s contract (the Amended PSA) was with VCM Lodging, not the Debtor. To the extent AHIP has any claim at all, such claim is against VCM Lodging. The Debtor is not a party to the Amended PSA or any other applicable contract with AHIP. Therefore, the AHIP Claim fails to establish *prima facie* validity under the breach of contract and breach of the implied covenant of good faith and fair dealing legal theories.

23. AHIP also fails to assert any facts that would support its constructive trust, unjust enrichment, or alter ego legal theories. Simply inserting these words into a proof of claim does not automatically result in *prima facie* validity. Instead, each of these legal theories would require detailed factual allegations and the AHIP Claim contains no such allegations. Accordingly, the AHIP Claim does not have any presumption of *prima facie* validity for claims based on these legal theories.

24. On the face of the AHIP Claim, AHIP is not a creditor of the Debtor and the AHIP Claim should be disallowed.

II. The AHIP Claim Should Be Disallowed

25. Even if it established *prima facie* validity, the AHIP Claim should be disallowed because none of the legal theories identified in the AHIP Claim support a valid claim against the Debtor.

26. AHIP does not have a valid breach of contract claim or a valid claim based on the implied covenant of good faith and fair dealing because AHIP and the Debtor are not parties to any express or implied contract, written or otherwise.

27. Moreover, despite the language in the Amended PSA, the Subject Funds did not come from AHIP. The Subject Funds were borrowed by the Debtor under the Loan Agreement and instead of being used to pay AHIP as part of the consideration for the Sale, were deposited in accordance with the Loan Agreement as security for the Debtor's obligations to the Prepetition Secured Parties. AHIP is not a party to the Loan Agreement, which expressly disclaims any third-party beneficiaries. Loan Agreement § 11.31(b).

28. AHIP is a sophisticated commercial party that was represented by competent counsel in connection with the negotiation and execution of the PSA and PSA Amendment. The Sale could have been structured to provide AHIP with a claim against the Debtor. The parties did not agree to such a transaction. Instead, (i) the Debtor and AHIP are not parties to any contract; (ii) the Loan Agreement between the Debtor and the Prepetition Secured Parties provides that the Subject Funds would be released only to the Debtor or to pay obligations under the Loan Agreement; and (iii) Schedule A of the PSA Amendment confirms that AHIP agreed to this as well.

29. AHIP's decision to file the AHIP Claim does not somehow now give AHIP a "hook" into the Debtor. To the extent AHIP has a claim under the Amended PSA, it may assert such claim against VCM Lodging, the counterparty to the Amended PSA, subject to any defenses and counterclaims available to VCM Lodging.

30. Accordingly, the Debtor objects to the breach of contract and breach of the implied covenant of good faith and fair dealing claims.

31. AHIP also does not have valid claims for unjust enrichment or alter ego against the Debtor. The AHIP Claim fails to identify any facts, let alone any detailed facts that would be required to support unjust enrichment or alter ego claims against the Debtor. Nor does the AHIP Claim identify any facts that would show it is entitled to the imposition of a constructive trust as an equitable remedy.

32. Instead of supporting these claims against the Debtor, the unambiguous language of the Loan Agreement and the Amended PSA confirm that AHIP has no claim against the Debtor. The Debtor therefore objects to the constructive trust, unjust enrichment, and alter ego claims.

33. Accordingly, the AHIP Claim should be disallowed in its entirety.

WHEREFORE, the Debtor respectfully requests that the Court enter an order disallowing the AHIP Claim and granting such other and further relief as may be just and proper.

Dated: October 1, 2024

Respectfully submitted,

/s/ Jonathan A. Margolies

Jonathan A. Margolies
SEIGFREID & BINGHAM, P.C.
(MO #30770, KS Fed #70693)
2323 Grand Boulevard, Ste. 1000
Kansas City, MO 64108
Telephone: (816) 421-4460
Email: jmargolies@sb-kc.com

Timothy A. ("Tad") Davidson II (*pro hac vice pending*)
(Texas Bar No. 24012503)
Brandon Bell (admitted *pro hac vice*)
(Texas Bar No. 24127019)
Kaleb Bailey (*pro hac vice pending*)
(Texas Bar No. 24136717)
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, TX 77002
Telephone: (713) 220-4200
Email: taddavidson@HuntonAK.com
bbell@HuntonAK.com
kbailey@HuntonAK.com

- and -

Jason W. Harbour (admitted *pro hac vice*)
(Virginia Bar No. 68220)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Email: jharbour@HuntonAK.

Co-Counsel to the Debtor and Debtor-in-Possession

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of October, 2024, a true and correct copy of the above and foregoing was electronically filed with the court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Jonathan A. Margolies
Attorney for Debtor