

STATE OF NORTH CAROLINA
CLEVELAND COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 767

LIVE OAK BANKING COMPANY,

Plaintiff,

v.

MAFIC USA LLC,

Defendant.

**ORDER ON
CLAIM OBJECTIONS**

1. On 18 October 2023, the Receiver for Defendant Mafic USA LLC (“Mafic”), Richard S. Wright, filed objections to ten claims made upon the receivership estate. (ECF Nos. 78–81, 83–88.) The Court sustained the Receiver’s Omnibus Objection to Secured Claims, (ECF No. 88), in a previous order. (ECF No. 98.) For the following reasons, the Court now **SUSTAINS** the remaining objections.

2. **Background.** Mafic, a manufacturer of basalt fiber and thermoplastic resins, ceased operations in early 2023. At some point, it also ceased making payments to its creditors, including Plaintiff Live Oak Banking Company (“Live Oak”). After learning that Mafic no longer had any active board members, Live Oak petitioned the Court to appoint a receiver to protect creditors’ interests and to oversee an orderly liquidation process. (ECF No. 3.) The Court appointed Wright, an attorney at Moon Wright & Houston, PLLC, as general receiver of Mafic under N.C.G.S. § 1-507.24(e). (ECF No. 12; ECF No. 35.)

3. In July 2023, the Receiver requested approval of certain procedures to notify creditors of their right to submit a proof of claim against the receivership estate and procedures for administering those claims. (ECF No. 44.) The Court granted that

request. The deadline for creditors to submit their claims to the Receiver was 24 August 2023. (ECF No. 48; *see also* ECF No. 52.)

4. The Receiver timely filed objections to the claims submitted by AFC Worldwide Express Inc.; Alvaro Ruiz Emparanza (“Ruiz”); CP Metal Crafters, Inc.; JEC Group; Metallix Refining Inc.; Pitney Bowes Inc.; R+L Carriers, Inc.; Université de Sherbrooke; and Electric Glass Fiber America, LLC (“EGFA”), (ECF Nos. 78–81, 83–87). The Court held a hearing on the objections on 9 November 2023. Only the Receiver, claimant Ruiz, and counsel for Live Oak attended that hearing.

5. **Legal Standard.** The North Carolina Commercial Receivership Act allows a receiver to “file an objection to a claim stating the grounds for the objection” and directs that “[c]laims allowed by court order” and “claims properly submitted or scheduled and not disallowed by the court” are “entitled to share in distributions of receivership property.” N.C.G.S. § 1-507.50(a). But the Act “does not set forth a framework for the presentation of evidence and burden of proof necessary to determine the reasonableness or validity of a claim accepted or rejected by a Receiver.” *Nerko, L.L.C. v. Blue Bridge Benefits LLC*, 2022 NCBC LEXIS 141, at *4 (N.C. Super. Ct. Nov. 28, 2022).

6. To fill that gap, this Court has looked to the federal Bankruptcy Code and its “burden-shifting framework” as an “instructive” guide. *Id.* at *5–6. The Bankruptcy Code puts the initial burden on the claimant to submit a timely proof of claim. A claim “is deemed allowed” if the creditor does so and no interested party objects. 11 U.S.C § 502(a). If there is an objection, the burden shifts to the objector

to produce evidence to rebut the claim. *See Nerko*, 2022 NCBC LEXIS 141, at *5 (citing 11 U.S.C. § 502(b)). The burden then shifts back to the claimant to prove “the amount and validity of the claim by a preponderance of the evidence.” *Id.* (citing Fed. R. Bankr. P. 9017 and Fed. R. Evid. 301).

7. Here, the claims against Mafic arise under contract law. In North Carolina, the party seeking relief for a breach of contract bears the burden of proving by a preponderance of the evidence that a valid contract existed and that the opposing party breached that contract. *See Poor v. Hill*, 138 N.C. App. 19, 26 (2000). Therefore, each claimant bears the ultimate burden of proving these elements by a preponderance of the evidence.

8. **AFC Worldwide Express Inc.** AFC claims that Mafic owes it \$13,045.57 for freight services. To support its claim, AFC attached an account statement listing the numbers, dates, and amounts of the invoices that it allegedly sent to Mafic, but not the invoices themselves. (*See* Ex. R.A(2).)¹ The Receiver objects that Mafic does not owe the amounts alleged. Based on evidence submitted by the Receiver, it appears that Mafic has no record of having received these invoices or having purchased goods or services from AFC on the dates listed in the account statement. At the hearing, the Receiver also presented three bills of lading from AFC with accompanying invoices, none of which reflects receipt of services as alleged in the proof of claim. (*See* Exs. R.A(1), R.A(3)–(5).) AFC did not appear at the hearing or

¹ All exhibits cited in this order may be found at ECF No. 100 in the document titled “Receiver’s Exhibits Related to Claim Objections.”

submit evidence in response to the objection. The Court concludes that the Receiver has rebutted the proof of claim, sustains his objection, and disallows AFC's claim.

9. **Alvaro Ruiz Emparanza**. Ruiz, a former employee of Mafic, claims that Mafic owes him \$99,875.00 in bonus payments based on a document titled "Employment Proposal Letter." Ruiz contends that the proposal letter is a valid employment contract; the Receiver contends that it is an unenforceable agreement to agree. The Receiver is correct. The proposal letter twice states that it "is contingent upon the execution of a mutually agreeable employment agreement which shall include the terms of your employment." It further states that the terms of any bonus compensation were "subject to further refinement" and would require the parties to negotiate "agreed-upon targets." (Exs. R.B(2), R.B(4).) By its own terms, the proposal letter is not a binding contract. *See Boyce v. McMahan*, 285 N.C. 730, 734 (1974) (holding that "a contract, or offer to contract, leaving material portions open for future agreement is nugatory and void for indefiniteness" and that the language of a writing can establish "its incompleteness by emphasizing its preliminary character").²

10. Ruiz had the burden to prove the existence of a valid contract and his entitlement to the alleged bonus. Although he appeared at the hearing (without counsel), he did not carry that burden. The Court sustains the Receiver's objection and disallows Ruiz's claim in its entirety.

² Ruiz is a Florida resident. He has not argued that Florida law governs his claim. Even if it did, the result would be the same. *See, e.g., Deauville Hotel Mgmt., LLC v. Ward*, 219 So. 3d 949, 953 (Fla. Dist. Ct. App. 2017) ("To prevail in a breach of contract action, a plaintiff must prove: (1) a valid contract existed; (2) a material breach of the contract; and (3) damages.").

11. **CP Metal Crafters, Inc.** CP Metal Crafters claims that Mafic owes it \$54,548.76 for goods sold. The proof-of-claim form attaches an account statement but no copies of invoices or contracts. (Ex. R.C(2).) The Receiver concedes that Mafic owes \$31,297.50 in unpaid invoices but objects that it has no record of invoices above that amount. Evidence offered by the Receiver supports that assertion. (See Exs. R.C(1), R.C(3).) CP Metal Crafters did not appear at the hearing or offer evidence in response to the objection. The Court concludes that CP has failed to prove by a preponderance of the evidence that Mafic owes it more than \$31,297.50. The Court therefore sustains the Receiver's objection, allows an unsecured claim for \$31,297.50, and disallows the remainder of the claim.

12. **JEC Group.** JEC Group claims that Mafic owes €15,096.80 for cancelling its planned participation in a trade show in 2023. The terms of the relevant contract state that it would become effective only upon JEC Group's receipt of a down payment from Mafic. According to the Receiver, Mafic did not make a down payment and made no payments at all to JEC Group after January 2020, over two years before it submitted its application to the 2023 exhibition. (See Exs. R.D(1)–(3).) JEC Group did not appear at the hearing or offer evidence to show that Mafic made the required down payment. The Court therefore concludes that JEC Group has not carried its burden to prove by a preponderance of the evidence that a valid contract existed between it and Mafic. As a result, the Court disallows the claim in its entirety.

13. **Metallix Refining Inc.** Metallix Refining claims that Mafic failed to pay two invoices—one totaling \$1,850 and the other \$1,400—for goods and shipping

charges. (*See* Ex. R.E(2).) Evidence offered by the Receiver shows that Mafic received only the second invoice for \$1,400 related to a canceled order. (Exs. R.E(1), R.E(3).) The Receiver objects to the invoice for \$1,850 on the ground that Mafic did not receive it and does not owe that amount. Metallix Refining did not appear at the hearing or offer evidence in response to the objection. The Court therefore concludes that the Receiver has rebutted Metallix Refining's claim, sustains his objection, allows an unsecured claim for \$1,400, and disallows the remainder of the claim.

14. **Pitney Bowes Inc.** Pitney Bowes claims that Mafic owes \$1,091.50 arising from its rejection of an equipment lease. In support, Pitney Bowes attached an account statement but did not attach the lease; it is unclear how the amounts in the account statement were calculated. (*See* Ex. R.F(2).) The Receiver offered evidence from Mafic's records to show that it owes only \$195.25 in unpaid invoices to Pitney Bowes. (*See* Ex. R.F(1).) Pitney Bowes did not appear at the hearing or offer evidence in response to the objection. The Court therefore concludes that Pitney Bowes has failed to carry its burden to prove the amount of its claim by a preponderance of the evidence. The Court sustains the Receiver's objection, allows an unsecured claim for \$195.25, and disallows the remainder of the claim.

15. **R+L Carriers, Inc.** R+L Carriers submitted two proof-of-claim forms that duplicate one another. The Court treats these as a single claim. In support of its claim, R+L Carriers attached four invoices for \$15,342.34 for freight services performed for Mafic. (*See* Exs. R.G(2), R.G(3).) The Receiver objects that Mafic owes only \$2,200.05. At the hearing, he presented five invoices, four of which bear the

same invoice numbers and dates as those attached to the proof-of-claim form. The invoices offered by the Receiver show that R+L Carriers gave Mafic a discount on each charge so that the total amount due is only \$2,200.05. (*See* Ex. R.G(4).) R+L Carriers did not appear at the hearing or present additional evidence in response to the objection. The Court therefore concludes that the Receiver has rebutted the claim, sustains his objection, allows an unsecured claim for \$2,200.05, and disallows the remainder of the claim.

16. **Université de Sherbrooke.** Sherbrooke, a Canadian university, submitted a proof-of-claim form stating that Mafic owes a substantial sum under a research agreement. As the Receiver correctly observes, however, Sherbrooke’s agreement was with “Mafic Inc.”—not Mafic USA. (*See* Exs. R.H(1)–(7).) There is no evidence that Mafic USA had any relationship with Sherbrooke or that it was responsible for any amounts owed to the university. At the hearing, the Receiver represented that officials of Sherbrooke now acknowledge the mistaken identity and agree with his objection. The Court therefore sustains the objection and disallows Sherbrooke’s claim.

17. **Electric Glass Fiber America, LLC.** EGFA submitted a claim for \$73,864.24 for bushing fabrication and engineering services. The Receiver objects to this claim on the basis that it is untimely. He is correct. EGFA’s objection arrived on 28 August 2023, four days after the deadline to submit claims. (*See* Ex. R.I(5).) Its claim is thus untimely, and the Court disallows it.

18. **Conclusion.** For these reasons, the Court **SUSTAINS** the Receiver's objections and **ORDERS** as follows:

- a. The claims of AFC, Ruiz, JEC Group, Sherbrooke, and EGFA are **DISALLOWED** in their entirety;
- b. CP Metal Crafters is **ALLOWED** an unsecured claim in the amount of \$31,297.50 only;
- c. Metallix Refining is **ALLOWED** an unsecured claim in the amount of \$1,400.00 only;
- d. Pitney Bowes is **ALLOWED** an unsecured claim in the amount of \$195.25 only; and
- e. R+L Carriers is **ALLOWED** an unsecured claim in the amount of \$2,200.05 only.

SO ORDERED, this the 3rd day of January, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases