UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

PANTHERA ENTERPRISES, LLC
Debtor.

Case No. 19-00787
Chapter 7

OBJECTION OF TRUSTEE TO PROOF OF CLAIM No. 5 FILED BY THE SHERIFF OF HARDY COUNTY

Now comes, Aaron C. Amore, Chapter 7 Trustee, for the Estate of Panthera Enterprises, LLC ("Debtor") and files his Objection to the proof of claim of Sheriff Of Hardy County No. 5, pursuant to Bankruptcy 11 U.S.C §§501 & 507 and Bankruptcy Rule 3001.

The Trustee objects as the claim is not a priority claim pursuant to 11 U.S.C. §507(a)(8). Further, it appears that the claim asserted is an ad valorem tax claim as it relates to personal property that was not owned and/or possessed by the Debtor. The Trustee asserts that the Debtor is not liable for the payment of this claim and that the Debtor did not possess, control and/or sell any personal property that would form the basis of the debt asserted in claim no. 5.

The Sheriff of Hardy County, West Virginia (hereafter "Sheriff") filed a timely proof of claim, no. 5 claiming against Panthera Enterprises, LLC f/k/a TenX Group, LLC for the total amount of $45,656.32. The Sheriff asserted said debt(s) are entitled priority pursuant to 11 U.S.C. §507(a)(8). The basis of the claim appears to be the ad valorem assessment of personal property taxes for certain vehicles, inventory and equipment and not an unsecured priority claim. Attached to the proof of claim are personal property detail screen shots for the tax years 2016, 2017, 2018 and 2019. The attachments show the name of the taxpayer as Panther Training Center c/o Rob Duncan for years 2016 & 2017. For years 2018 it lists the taxpayer as Panthera Training Center. For tax year 2019 it lists the taxpayer as Panthera Training Center c/o James Punelli.

West Virginia Code §11-3-1 (c) provides that; "[t]he taxes upon all property shall be paid by those who are the owners thereof on the assessment date whether it be assessed to them or others." Further, "(f) (4) 'Taxpayer' means the owner and any other person in whose name the taxes on the subject property are lawfully assessed." West Virginia Code §11-3-8 provides that; "[p]ersonal property mortgaged or pledged shall, for the purpose of taxation, be deemed the property of the party who has the possession…" Further, West Virginia Code §11A-1-2 provides;

> "[t]here shall be a lien on all real property for the taxes assessed thereon, and for the interest and other charges upon such taxes, at the rate and for the period provided by law, which lien shall attach on July 1, 1961, and each July 1 thereafter for the taxes payable for the ensuing fiscal year."

Ad valorem taxes are secured by a lien on the property taxed. By definition, they are secured claims and not priority claims under 11 U.S.C. §507(a)(8), which only deals with unsecured claims. Interests in property are created and defined under state law, and tax liens, like other liens, should generally pass through a bankruptcy unaffected. *Butner v. U.S.*, 440 U.S. 48, 55 (1979); *Dewsnup v. Timm*, 502 U.S. 410, 418. The Sheriff possesses a lien pursuant to State law as against the personal property identified on the returns filed for each respective year. As a secured creditor, the Sheriff may pursue remedies available under law to liquidate said property.

The Trustee asserts that Panthera Training Center, LLC (hereafter "PTC") is the entity that possessed the personal property during tax years 2016 and 2017. In June of 2018, prior to the assessment deadline of July 1, 2018, PTC conveyed all personal property it owned to SMI, LLC and transferred possession of all such personal property to Panthera Training, LLC pursuant to its lease agreement executed June 1, 2018. For the tax years 2016 & 2017 the taxpayer would have been PTC and/or Rob Duncan as provided by law. For 2017 it was PTC and 2018 it was PTC and/or James Punelli. For 2019 Panthera Training appears to have possessed the personal property to the extent that it still existed and was transferred to it.

The Debtor has never owned or possessed the personal property identified in claim no. 5. It was not an asset of the estate nor subject to the sale of assets approved by this Court.

Wherefore, the Trustee prays this Court grant his objection to the proof of claim of Sheriff of Hardy County No. 5 and grant any further relief this Court deems just and necessary.

Aaron C. Amore, Trustee
Panthera Enterprises, LLC

/s/ Aaron C. Amore

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OBJECTION OF TRUSTEE TO PROOF OF CLAIM No. 5 FILED BY THE SHERIFF OF HARDY COUNTY**, was served upon the following individuals at the addresses listed below, via CM/ECF and/or email on this 25th August 2021 to the following:

Via Email:
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Manual Notice List

Notice was not mailed to the parties below as no addresses were provided. To the extent the Trustee has email addresses the below notice parties, they were emailed.

Rob Duncan
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Rob Duncan
Manager/TR&L, LLC,
a Virginia Limited Liability Company
Successor to SMI, LLC,
a Virginia Limited Liability Company

Bruce Hardy
Stacie Hardy
Anthony McIntyre
Timothy Miller

Via U.S. Mail

Sheriff of Hardy County, West Virginia
204 Washington St
Moorefield, WV 26836

/s/ Aaron C. Amore
Aaron C. Amore, Esq.