

STATE OF NORTH CAROLINA  
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 6263

NERKO, L.L.C.,

Plaintiff,

v.

BLUE BRIDGE BENEFITS LLC and  
HAGGERSON ENTERPRISES LLC,

Defendant(s).

**ORDER ON OBJECTION TO  
PROPOSED PAYMENT OF CLAIM**

1. THIS MATTER is before the Court on Nerko, L.L.C.'s ("Nerko") Objection to Receiver's Proposed Payment of Claim (the "Objection") which was filed on 28 October 2022 in response to notice from Brian R. Anderson ("Receiver"), the duly-appointed receiver in this action, of his intent to pay the claim of Commonwealth Avenue Partners ("Claimant" or "Commonwealth") in the amount of \$69,000. (ECF No. 89.) After considering the Objection and all documents filed in support of and in opposition thereto, as well as the arguments of counsel for the parties, the Receiver, and counsel for interested third parties at a 22 November 2022 hearing on the Objection, the Court finds as follows:

2. The Receiver was appointed by Order of this Court dated 30 December 2021 ("Appointment Order") as receiver for Blue Bridge Benefits LLC ("BBB"). BBB is a closely held family limited liability company, whose current members are Haggerson Enterprises, LLC, Nerko, and Osborn Group, LLC. Each of the three member LLCs has one member who is an adult child of Brett Nelson, the owner of Claimant. BBB is in the business of selling health insurance policies to individuals and employers.

3. On 21 February 2022, pursuant to the provisions of N.C.G.S. § 1-507.49(b)–(c), the Court entered the Order Establishing Claims Process, (ECF No. 49), requiring, *inter alia*, creditors asserting claims against BBB to submit a proof of claim form to the Receiver on or before 31 May 2022.

4. The Receiver has investigated timely claims against BBB, including a claim for \$69,000 asserted by Claimant for the sale of the book of health insurance clients maintained by Claimant’s owner Brett Nelson to BBB (the “Claim”). Prior to receipt of the claim, pursuant to the authority provided to the Receiver in the Appointment Order, the Receiver determined that a valid contract was formed between BBB and Brett Nelson for the sale of the book of business in question to BBB for \$216,000 to be paid in monthly installments of \$3,000 for 72 months. The Receiver elected not to assume the contract for purchase of Brett Nelson’s book of business and intends to pay the Claim in full.

5. The Receiver provided the parties with an opportunity to object to the proposed payment by filing such objection with the Court on or before 28 October 2022. Nerko timely filed the Objection on 28 October 2022, and the Receiver filed his response on 3 November 2022. (Receiver’s Resp. to Obj., ECF No. 91 [“Resp.”].) Responses from Claimant, Haggerson Enterprises, and Jill Nelson (daughter of Brett Nelson and one of two members of Osborn Group, LLC) were filed on 16 November 2022. (ECF Nos. 94–96.) No other person or entity filed an objection or other response to the Receiver’s proposed payment of the Claim.

6. The Court held a hearing on the Objection on 22 November 2022 at which the Receiver, counsel for all parties, and counsel for interested non-parties including Claimant and Brett Nelson, were present. (See ECF No. 92.) The record is undisputed that BBB is an entity that principally acts as an authorized agent of health insurance companies selling health insurance policies and plans to its customers. At the hearing, the Receiver reaffirmed his representation to this Court that approximately four years prior to the inception of the Receivership, the members of BBB entered into a binding agreement with Claimant to purchase Brett Nelson's "book of business" for the total sum of \$216,000, payable in monthly installments of \$3,000 per month for 72 months from 1 November 2017 to 1 December 2023 (the "Agreement"), and that BBB received ample consideration for the agreed-to purchase price. (Resp. ¶ 7.) The Receiver further argued that both BBB and Claimant performed under this agreement until the Receivership commenced, and that, as a result of the Receiver's rejection of the Agreement,<sup>1</sup> Claimant is entitled to accelerated rejection damages in the full amount remaining owed under the Agreement, totaling \$69,000.

7. Counsel for Nerko stipulates that BBB and Commonwealth entered into an enforceable agreement. Notwithstanding this concession, Nerko contends in its Objection that the claim should be rejected on the grounds that Brett Nelson, owner

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<sup>1</sup> Pursuant to N.C.G.S. § 1-507.45, to the extent the agreement at issue constituted an executory contract, it was deemed rejected by the Receiver if not adopted by the Receiver within ninety days of the Receiver's appointment. The record discloses that the Receiver was appointed effective 30 December 2021 and that the agreement at issue was not adopted by the Receiver. As a result, it is deemed to have been rejected by the Receiver as of 31 March 2022.

of Claimant, when referring clients to BBB, often excluded Nerko-owner Nick Nelson to the advantage of the other BBB agents.

8. The North Carolina Commercial Receivership Act established the process for objections and allowances of claims in a Receivership but, importantly, 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. N.C.G.S. § 1-507.50.

9. As applicable to this proceeding, section 1-507.50(a) provides:

Objections and Allowance. – The receiver or any party in interest may file an objection to a claim stating the grounds for the objection. The court may order that a copy of the objection be served on the persons on the master service list at least 14 days prior to the hearing. Claims allowed by court order, and claims properly submitted or scheduled and not disallowed by the court, shall be allowed claims and shall be entitled to share in distributions of receivership property in accordance with the priorities provided by this Article or otherwise by law.

10. In creating the Receivership Act, North Carolina took its cues from the Bankruptcy Code, and accordingly, the Bankruptcy Code's framework in this area is instructive. The Bankruptcy Code provides in relevant part that “[a] claim or interest, proof of which is filed . . . is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). The burden then shifts to the objector. 11 U.S.C. § 502(b); *Canal Corp. v. Finnman*, F.2d 396, 404 (4th Cir. 1992). The debtor must introduce evidence to rebut the claim's presumptive validity. Fed. R. Bankr. P. 9017 [\*\*7]; Fed. R. Evid. 301. If the objector carries its burden, the creditor has the ultimate burden of proving the amount and validity of the claim by a preponderance of the evidence. *Id.* The Court concludes that the burden-shifting framework set

forth in the Bankruptcy Code is consistent with the principles underlying the Receivership Act and, accordingly, adopts and applies that framework here.

11. The Court has independently reviewed the Objection, the briefs and exhibits submitted in support and opposition thereto, and considered the arguments of counsel at the hearing on the Objection. In ruling on the Objection, the Court exercises its own independent business judgment in determining whether payment of the Claim is in the best interests of BBB and is fair and reasonable to BBB, its creditors, and all other parties with interests in BBB. *See In re Southeastern Eye Center-Pending Matters*, No. 15 CVS 1648, Order on the Receiver's Motion to Approve and Confirm Settlement with the Patricia B. Fetter Revocable Trust (All Matters) ¶ 8 (N.C. Super. Ct. Aug. 15, 2017) (unpublished).

12. Recognizing that the properly filed Claim is entitled to an initial presumption of validity, the Court finds and concludes that Nerko's Objection fails to rebut that presumption. As an initial matter, Nerko has not established that the Agreement was not a valid contract supported by consideration for the purchase of Claimant's book of business. In fact, at the hearing, Nerko's counsel conceded that the agreement, when formed, was valid and enforceable. Rather, Nerko contends that the payment demanded by Commonwealth should be denied because Commonwealth breached the contract after the Receivership began.

13. Nerko bases its Objection on the proposition that, following the beginning of significant disputes between several of the family members involved in BBB, on and after 29 October 2021, Brett Nelson, as owner of Commonwealth, began to favor

certain family members over others when referring current or potential customers. Specifically, Nick Nelson, owner of Nerko, claims his father failed to refer business to Nick and his siblings and their spouses simultaneously. Nerko contends that such conduct was a breach of the agreement's provision that Brett Nelson would refer business to BBB's three members.

14. The Court does not believe that the terms of the agreement in question required Brett Nelson to provide notice to all three members of BBB simultaneously. But that determination is not the only reason to overrule Nerko's objection.

15. Pursuant to N.C.G.S. § 1-507.45, to the extent the agreement in question required Brett Nelson to continue performance, it was an executory contract, and it was rejected by the Receiver when the Receiver failed to adopt the contract on or before 30 March 2022. *See Whitt v. Whitt*, 32 N.C. App. 125, 129–30 (1977) (explaining that an executory contract is one in which “a party binds himself to do or not to do a particular thing in the future.”) Therefore, any alleged breaches occurring after that date could not have constituted a breach of the agreement.<sup>2</sup>

16. With respect to the two email strings occurring prior to March 2022, the Court concludes that the communications in question do not constitute a breach of any term in the Agreement.

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<sup>2</sup> Nerko submitted three email strings allegedly evidencing breaches by Brett Nelson of the agreement (the Summit Eye email, the Fannie Fleming email, and the Gilliland email). (*See* ECF Nos. 89.6, 89.7, and 89.8.) The Summit Eye email string is dated in October 2021, the Fannie Fleming email string is dated in November 2021, and the Gilliland email string is dated in October 2022.

17. Nerko has not established, as a threshold matter, how these communications differ from Claimant's ordinary course when referring clients to BBB agents between November 2017, when the agreement was entered, and late 2021, when the alleged misconduct is claimed to have begun.

18. Further, having carefully reviewed the remaining two email strings in question, the Court concludes they do not evidence Brett Nelson's favoritism of one member of BBB over another. Additionally, Nerko has failed to explain or demonstrate how Brett Nelson's communications contained in the emails harmed Nerko. As a result, the Court concludes that Nerko has failed to satisfy its burden of proof necessary to overcome the presumption of validity where, as here, the Claim was properly filed and found to be valid upon review by the Receiver.

19. THEREFORE, the Court, in the exercise of its discretion, hereby ORDERS that the Objection is hereby OVERRULED and DENIED. The Receiver is directed to pay the Claim in the full amount of \$69,000 no sooner than thirty (30) days following the issuance of this Order.

**SO ORDERED**, this the 28th day of November, 2022.

/s/ Michael L. Robinson

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Michael L. Robinson  
Special Superior Court Judge  
for Complex Business Cases