IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
MAY 17 2004
KENNETH S. GARDNER, CLERK

In re:	)	Chapter 11
	)	
Conseco Finance Corp.,[1]	)	Case No. 02-49675
	)	
Debtor.	)	The Honorable Carol A. Doyle
	)	
	)	Hearing Date: June 18, 2004 at 10:30 a.m.
	)	Response Deadline: June 1, 2004 at 4:00 p.m.

THE PLAN ADMINISTRATOR OF THE CFC ESTATE'S OBJECTION TO CLAIM NO. 49675-003396 FILED BY DEVERA J. ALLEN

The Plan Administrator, on behalf of the Post-Consummation Estate of the Finance Company Debtors (the "CFC Estate") hereby files this objection (the "Objection") to Claim No. 49675-003396 filed by Devera J. Allen (the "Claim"). In opposition to the Claim, the CFC Estate respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Objection under 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Objection is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is § 502 of 11 U.S.C. § 101, et seq. (the "Bankruptcy Code").

BACKGROUND

3. On April 14, 2003, the Court set, among other things, May 22, 2003, as the bar date by which non-governmental entities wishing to assert prepetition claims against the Finance

[1] The post consummation estate for Conseco Finance Corp. (the "CFC Estate") is the liquidating trust that holds in trust for distribution to creditors certain of the assets of the entities referred to as the "Finance Company Debtors" in the Finance Company Debtors' Sixth Amended Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Plan").

Company Debtors must file proofs of claims (the "CFC Prepetition Claims Bar Date"). On September 9, 2003, the Court set November 9, 2003, as the bar date by which entities wishing to assert administrative expense claims against the Finance Company Debtors must file their requests for payment of administrative expenses (the "CFC Administrative Bar Date", and together with the CFC Prepetition Claims Bar Date, the "Claims Bar Dates").

4. On March 14, 2003, the Court entered an Order Approving and Authorizing (i) Asset Purchase Agreement with CFN Investment Holdings LLC (ii) Sale of Certain of the CFC Debtors' Assets Free and Clear of Liens, Claims and Encumbrances (iii) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (iv) Certain Related Relief (the "CFN Sale Order"). As part of the assets sold pursuant to the CFN Sale Order, CFC assigned its servicing obligations under various Pooling and Servicing Agreements to CFN. On June 23, 2003, the sale of assets to CFC closed.

5. On September 9, 2003, this Court entered an Order confirming the Plan[2] (the "Confirmation Order"). Pursuant to the Confirmation Order, the Finance Company Debtors' estate and all of the debts of the Finance Company Debtors were substantively consolidated as set forth in Article II.A of the Plan.

6. On September 15, 2003 (the "Effective Date"), the Plan became effective.

7. On September 15, 2003, pursuant to the First Amended Post-Consummation Estate Agreement (the "CFC Estate Agreement"), the CFC Estate was established for the primary purpose of liquidating the remaining assets of the Finance Company Debtors (the "CFC Estate Assets").

8. Pursuant to the Plan and the CFC Estate Agreement, Mr. Anthony Schnelling of Bridge Associates, LLC was appointed the initial administrator of the Finance Company Debtors'

[2] Terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Plan (the "Plan Administrator") for the purpose of overseeing the liquidation and administration of the CFC Estate Assets.

THE OBJECTION AND REQUESTED RELIEF

9. By this Objection, the CFC Estate seeks to disallow the Claim in its entirety. The Claim is a litigation-related claim for which the CFC Estate is not liable.

10. The CFC Estate objects to the Claim pursuant to § 502(b)(1) of the Bankruptcy Code because the Claim is not enforceable against the CFC Estate or its property under any agreement or applicable law. The Claim, as further detailed below, is based upon an alleged fact or theory of recovery for which the CFC Estate is not liable.

11. On May 23, 2004, Devera J. Allen ("Allen") filed the Claim in the general unsecured amount of $1,000,000. The basis for the Claim arises from a lawsuit filed by Allen against CFCS in the 68th Judicial District of Dallas County, Texas (the "Dallas Action"). On or about November 14, 2002, an order was entered in the Dallas Action setting aside a default judgment previously awarded in favor of CFSC against Allen. Upon petition, Allen was granted a new trial and case captioned *Conseco Finance Servicing Corp., f/k/a Green Tree Financial Servicing Corp. v. Devera J. Allen*, Cause No. 01-01795-C (the "Second Dallas Action"). In the Second Dallas Action, CFSC filed a Motion for Summary Judgment on or about September 3, 2003. The Court awarded summary judgment in favor of CFSC and against Allen on or about October 6, 2003. Allen failed to appeal the grant of Summary Judgment, or to request the reconsideration within the time prescribed by local rule. Therefore, the judgment is now final and unappealable.

12. Allen does not have additional complaints outstanding against CFSC. Therefore, the CFC Estate objects to this claim pursuant to § 502(b)(1) of the Bankruptcy Code because the

Claim is not enforceable against the CFC Estate, its property, or under any agreement or applicable law.

HEARING ON THE CLAIM OBJECTION AND RESPONSE TO THE OBJECTION

13. The CFC Estate has requested that a hearing on the Objection be held before the Honorable Carol A. Doyle, United States Bankruptcy Court, 219 South Dearborn, Courtroom 742, Chicago, Illinois on June 18, 2004 at 10:30 a.m. (the "Claim Hearing").

14. Any party wishing to oppose the relief requested in this Objection must file a written response with the Clerk of the United States Bankruptcy Court, 219 South Dearborn, Chicago, IL 60604, and serve a copy of the response upon Greenberg Traurig, LLP, Attn: Andre Zafrani, 77 West Wacker Drive, Suite 2500, Chicago, Illinois 60601 so as to be received on or before June 1, 2004 at 4:00 p.m., prevailing central time (the "Response Deadline"). Only those responses timely filed and received by counsel for the CFC Estate and the Court will be considered by the Court.

15. If no response is filed, served and received as required by the Response Deadline, the CFC Estate will request the Court to enter an order disallowing the Claim as requested in this Objection.

16. Any response should contain the following:

(a) a caption setting forth the name of the Court, the name of the CFC Estate, the case number and the title of this Objection to which the response is directed;

(b) the name and contact information (including daytime telephone number and facsimile) of the Claimant and a description of the basis for the amount of the Claim;

(c) the Claim number and the Claim objection to which the response is directed;

(d) the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection; and

(e) and any all supporting documentation, to the extent it is not included with the proof of claim previously filed with the Clerk or Claims agent, upon which the parties will rely to support the basis for and amounts asserted in the proof of claim.

17. The CFC Estate will endeavor to consensually resolve the CFC Estate's Objection to the Claim with any party filing a timely response. If no agreement is reached, the Court will resolve the dispute.

18. Any party that files a response to the Objection should be prepared to argue that response at the Claim Hearing unless such party reaches an agreement with the CFC Estate's counsel to settle or the CFC Estate elects to continue the relevant matter prior to the Claim Hearing.

19. No party need respond to the Objection or appear at the Claim Hearing if such party does not object to the relief requested in the Objection. If a party does not timely file a response and serve a response to the Objection, the relief requested in the Objection will be granted without further notice on such party. Failure to timely file a response to the Objection shall be deemed (i) a waiver of a party's right to respond to the Objection; and (ii) such party's consent to the relief requested herein.

RESERVATION

20. The CFC Estate hereby reserves the right to object in the future to the Claim listed in this Objection on any ground, and to amend, modify and/or supplement this Objection, including, without limitation, to object to amended, surviving, transferred, re-classified and newly-filed Claims. Separate notice and a hearing will be scheduled for any such objection

NOTICE

21. The CFC Estate's noticing agent and claims agent, Bankruptcy Management Corporation ("BMC"), will serve copies of this Objection on the U.S. Trustee, the Core Group and the 2002 List, as defined in the current Case Management Procedures. BMC will also serve a copy of the Objection upon the creditor whose claim is affected by the Objection. Any party may obtain a copy of the Objection by requesting the same from BMC at 888-909-0100 or by accessing the BMC website at http://www.bmccorp.net.

22. Based upon the foregoing, the CFC Estate submits that notice of this Objection is sufficient under Fed. R. Bankr. P. 3007 and that no other or further notice necessary.

NO PRIOR REQUEST

23. No previous request for the relief sought herein has been made to this or any other court.

ATTACHMENT OF PROOF OF CLAIM

24. A copy of the Claim affected by this Objection has been saved to compact disk, to be attached as Exhibit A, and will be provided to the Court as required by the Court's Standing Order No. 9. Any party may obtain a copy of the Claim by requesting the same from BMC at 888-909-0100 or be accessing the BMC Website at http://www.bmccorp.net.

WHEREFORE, the CFC Estate respectfully requests that the Court enter an Order, substantially in the form attached hereto as Exhibit B, disallowing and expunging the Claim described in this Objection.

Dated: May ___, 2004

THE PLAN ADMINISTRATOR
OF THE CFC ESTATE

By: _____
One of its Attorneys

Keith J. Shapiro (ARDC No. 6184374)
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***All responses to the objection contained herein should be served upon Greenberg Traurig, LLP, Attn: Andre Zafrani, 77 West Wacker Drive, Suite 2500, Chicago, Illinois 60601**

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