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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
JUL 0 1 2004
KENNETH S. GARDNER, CLERK
PS REF. - AI

In re:	)	**Chapter 11**
	)	
Conseco Finance Corp., et al.,[1]	)	
	)	**Case No. 02 B49675**
Debtors.	)	**Honorable Carol A. Doyle**
	)	**(Jointly Administered)**
	)	
	)	**Hearing Date: July 16, 2004 at 10:30 a.m.**
	)	**Response Deadline: July 2, 2004 at 4:30 p.m.**

U.S. PROPERTY & APPRAISAL SERVICE CORP.'S
RESPONSE TO THE CFC ESTATE'S FORTY-FIRST OMNIBUS OBJECTION
TO CLAIMS PURSUANT TO SECTION 502(d) OF THE BANKRUPTCY CODE

U.S. Property & Appraisal Service Corp. ("U.S. Property), by and through undersigned counsel, files its Response to the CFC Estate's Forty-First Omnibus Objection to Claims Pursuant to section 502(d) of the Bankruptcy Code (the "Response"). In support of this Response, U.S. Property states as follows:

BACKGROUND

1. During the pendency of the Chapter 11 proceedings, U.S. Property filed Claim No. 49675-004066 in the amount of $181,856.03 ("Claim No. 4066").

2. On June 16, 2004, the CFC Estate filed the Forty-First Omnibus Objection (the "Objection") to Claims Pursuant to section 502(d) of title 11 of the United States Code (the "Bankruptcy Code").

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1. The Finance Company Debtors comprise the following entities: (i) Conseco Finance Corp. and Conseco Finance Servicing Corp. (collectively, the "CFC Debtors"), (ii) Conseco Finance Corp. - Alabama, Conseco Finance Credit Corp., Conseco Finance Consumer Discount Company, Conseco Finance Canada Holding Company, Conseco Finance Canada Company, Conseco Finance Loan Company, Rice Park Properties Corporation, Landmark Manufactured Housing, Inc., Conseco Finance Net Interest Margin Finance Corp. I, Conseco Finance Net Interest Margin Finance Corp. II, Green Tree Finance Corp. - Two, Conseco Agency of Nevada, Inc., Conseco Agency of New York, Inc., Green Tree Floorplan Funding Corp., Conseco Agency, Inc., Conseco Agency of Alabama, Inc., Conseco Agency of Kentucky, Inc., and Crum-Reed General Agency, Inc. (collectively, the "CFC Subsidiary Debtors"), (iii) Green Tree Finance Corp. - Five and Green Tree Residual Finance Corp. I (collectively, the "New Debtors"), and (iv) Conseco Finance Credit Card Funding Corp.

3. Pursuant to the Objection, the CFC Estate seeks disallowance of Claim No. 4066 pursuant to section 502(d) of the Bankruptcy Code on the basis that U.S. Property is the recipient of transfers which are allegedly avoidable pursuant to sections 547 and 550 of the Bankruptcy Code.

4. As of this Response, the CFC Estate has not filed an adversary complaint against U.S. Property seeking to avoid and recover any alleged preferential transfers. Instead, the CFC Estate has made written demand that U.S. Property turnover certain alleged preferential transfers.

RESPONSE

5. Pursuant to section 502(d) of the Bankruptcy Code, the Court shall disallow any claim of an entity from which property is recoverable pursuant to section 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 547 of the Bankruptcy Code, ***unless such entity or transferee has paid the amount for which such entity or transferee is liable***.

6. Therefore, within the meaning of section 502(d) of the Bankruptcy Code, the disallowance of any such claim is only temporary pending satisfaction of any liability determined pursuant to sections 547 and 550 of the Bankruptcy Code.

7. In fact, case law relied on by the CFC Estate in its Objection supports this proposition. "[Section] 502(d) operates not as a forfeiture but rather as a *temporary* disability." *In re Allegheny Health, Education and Research Foundation*, 292 B.R. 68, 94 (Bankr. W.D. Pa. 2003) (emphasis added).

8. Additional case law cited by the CFC Estate in its Objection provides, "the purpose of § 502(d) was to 'coerce creditors to comply with judicial orders.'" *In re TWA Inc. Post Confirmation Estate*, 305 B.R. 221, 226 (Bankr. D. Del. 2004) (citing, *Rhythms*

NetConnections, Inc. v. Cisco Sys., Inc. (*In re Rhythms NetConnections*), 300 B.R. 404, 409 (Bankr. S.D.N.Y. 2003)).

9. There has been no determination of liability and, therefore, U.S. Property has not been ordered to turnover funds to the CFC Estate pursuant to sections 547 and 550 of the Bankruptcy Code. The CFC Estate has merely demanded that U.S. Property turnover certain alleged preferential transfers; no adversary complaint has been filed and U.S. Property believes it possesses valid and sustainable defenses to any alleged preferential transfer which would bar any recovery whatsoever.

10. U.S. Property has filed this Response since, in the Objection and proposed order attached thereto, the CFC Estate seemingly seeks contradictory relief.

11. Specifically, in paragraph 15 of the Objection, the CFC Estate maintains that Claim No. 4066 should be "disallowed unless the Transferee [U.S. Property] pays the amount for which that particular Preferential Transferee [U.S. Property] is liable under sections 547 and 550 of the Bankruptcy Code." Thus, the CFC Estate, arguably, seeks a temporary disallowance of Claim No. 4066.

12. On the other hand, paragraph 19 of the Objection provides that, "the CFC Estate requests that any and all Claims of the Transferees be disallowed in their entirety . . . ." Finally, the first "ORDERED" paragraph of the proposed order granting the Objection provides that Claim No. 4066 will be "expunged and disallowed in full . . . ."

13. Again, however, there is no legal or equitable basis for a permanent disallowance of Claim No. 4066. Rather, section 502(d) only mandates a temporary disallowance pending satisfaction of any liability pursuant to sections 547 and 550 of the Bankruptcy Code.

14. In light of the foregoing, U.S. Property files this Response seeking, among other things, to preserve its rights including, without limitation, a right of distribution on account of Claim No. 4066, pending a resolution or adjudication of any avoidance action which may be filed in order to avoid any preferential transfer alleged to have been received by U.S. Property.

WHEREFORE, U.S. Property respectfully requests that this Court (i) sustain the Response, and (ii) enter an Order overruling the Objection to the extent that the CFC estate seeks permanent disallowance of Claim No. 4066, as well as granting such other and further relief as this Court deems just and proper.

Dated: July 1, 2004

Respectfully Submitted,

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