FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
SEP 07 2004
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: Finance	)	**Chapter 11** Tdi
CONSECO, INC., et al.,	)	**Case No. 02-B49672**
	)	
Debtors.	)	**(Jointly Administered)**
	)	**Hon. Carol A, Doyle**
	)	
	)	**Hearing Date: September 15, 2004**
	)	**Hearing Time:11:00 a.m.**
	)	**Objection Deadline: September 7, 2004**

ANSWER OF WELLINGTON ESTATES
OPPOSING CFC ESTATE'S FORTY-SEVENTH OMNIBUS OBJECTION
TO CLAIMS ASSERTED AGAINST THE FINANCE COMPANY DEBTORS
(NO LIABILITY - TURST COLLATERAL- LOT RENT CLAIMS)

Wellington Estates, (hereinafter, "Respondent"),by and through their undersigned counsel, hereby oppose CFC Estate's (hereinafter, "Movant") Forty-Seventh Omnibus Objection to Claims Asserted Against the Finance Company Debtors (the "Forty-Seventh Omnibus Objection") as follows:

1. Respondent denies the allegations in paragraph 1 of the 47th Omnibus Objection, in the form stated, for the reason same are untrue. While Respondent admits that its Claim is for unpaid lot rent and other charges that accrued prior to the Petition Date, Respondent denies that its Claim is an *in rem* demand against any manufactured home or against the any loan secured by a manufactured home.

2. Respondent neither admits nor denies the allegations in paragraph 2 of the 47th Omnibus objection because it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged. In further answer, Respondent states that, **until Movant's 22nd Omnibus Objection was filed and served on Respondent, approximately 15 months after the Petition Date, *Respondent had never been made aware of the existence of any "Securitization Trust" or that the loan and the manufactured home in which the finance company debtor maintained a security interest pursuant to the installment loan had purportedly been transferred by Movant to certain "Securitization Trusts."*** While Respondent has requested that Movant furnish it with the identity of the specific "Securitization Trust" which Movant claims would have been liable to Respondent, Movant has refused to do so. Respondent additionally avers that the cases and the factual situations cited by Movant are inapplicable to Respondent's Claim because they deal with tax claims, which are clearly *in rem* demands against the property. Conversely, Respondent's Claim for unpaid lot rent and other charges which accrued prior to the Petition date are not *in rem* demands against the property.

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3. Respondent denies the allegations in paragraph 3 of the 47th Omnibus Objection for the reason same are untrue. Respondent denies that its Claim is an *in rem* claim that must be satisfied against the mobile home or the owners of the loan and security interest in the manufactured home, nor does Michigan law permit such a remedy.

4. Respondent does not contest the allegations in paragraph 4 of the 47th Omnibus Objection.

5. Respondent does not contest that Movant is requesting relief pursuant to §502 of the United States Bankruptcy Code; however, Respondent denies that Movant is entitled to the relief requested.

6. Respondent avers that no answer is required to paragraph 6 of the 47th Omnibus Objection.

7. Respondent does not contest the allegations in paragraph 7 of the 47th Omnibus Objection.

8. Respondent neither admits nor denies the allegations in paragraph 8 of the 47th Omnibus objection because it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged. In further answer, Respondent states that, **until Movant's 22nd Omnibus Objection was filed and served on Respondent, approximately 15 months after the Petition Date, *Respondent had never been made aware of the existence of any "Securitization Trust" or that the loan and the manufactured home in which the finance company debtor maintained a security interest pursuant to the installment loan had purportedly been transferred by Movant to certain "Securitization Trusts."*** While Respondent has requested that Movant furnish it with the identity of the specific "Securitization Trust" which Movant claims would have been liable to Respondent, Movant has refused to do so.

9. Respondent neither admits nor denies the allegations in paragraph 9 of the 47th Omnibus objection because it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged. In further answer, Respondent asserts that even assuming, arguendo, that the Finance Company Debtors were acting as "servicers", the Finance Company Debtors, in furtherance of their obligation to "maximize the receipt of principal and interest on the Loans" prior to the Petition Date, used and possessed the manufactured home lots on which the repossessed manufactured homes were located, which use conferred a benefit to the Finance Company Debtors by allowing them to perform their obligations in servicing the loans.

10. Respondent do not contest that the "relevant mobile home park would typically charge rent and make other assessments (the "Lot Rent Claims") for any periods of time that such a mobile home occupied a lot without the MH park having been paid," or that "Typically, an Obligor would fail to pay Lot Rent or other assessments to the relevant MH Park in which the Obligor's mobile home was located after having defaulted on his or her Loan." However, Respondents further state that they have no knowledge regarding the Loan Servicer's discretionary rights under the purported PSAs to either pay the rent or abandon the Collateral for the reason that **Respondents were not parties to the PSAs *and were never made aware***

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of their existence. However, Respondents acknowledge that prior to the Petition Date, Conseco Finance Corporation would, on occasion, notify the management staff at a manufactured home community that it had decided not to exercise its lienhold rights in a manufactured home and that it would neither take possession of a manufactured home and sell the home in an attempt to maximize the receipt of principal and interest on the loan nor pay rent/use and occupancy to the manufactured home community. Respondent further states that, prior to the Petition Date, Conseco Finance Corporation would, on occasion, sell a repossessed manufactured home to Claimant at a reduced purchase price to offset the rent and other charges that were owed by Conseco Finance Company

11. Respondent does not contest that on February 13, 2004, the CFC filed its Movant's 22nd Omnibus Objection, which Respondent has opposed. Respondent denies the balance of the allegations that pertains to the Court reclassifying the Claims subject to that objection because this Court has not heard, nor has it ruled on, Respondent's Answer to Movant's 22nd Omnibus Objection.

12. Respondent neither admits nor denies the total number of Lot Rent claims filed in this proceeding, as asserted in paragraph 12 of the 47th Omibus objection.. Respondent denies that the Lot Rent Claims are not claims against the Finance Company Debtors and are instead *in rem* claims against non-estate property. Respondent additionally denies that it is permitted to assert a lien against each affected manufactured home for the reason that Michigan law does not provide such a remedy. Finally, Respondent denies that Respondent's claims should be disallowed for all purposes.

13. Respondent neither admits nor denies the allegations in paragraph 13 of the 47th Omnibus objection because it is without knowledge or information sufficient to form a belief as to the truth of the matters alleged. In further answer, Respondent states that, **until Movant's 22nd Omnibus Objection was filed and served on Respondent, approximately 15 months after the Petition Date, *Respondent had never been made aware of the existence of any "Securitization Trust" or that the loan and the manufactured home in which the finance company debtor maintained a security interest pursuant to the installment loan had purportedly been transferred by Movant to certain "Securitization Trusts."*** While Respondent has requested that Movant furnish it with the identity of the specific "Securitization Trust" which Movant claims would have been liable to Respondent, Movant has refused to do so. Respondent denies that this Court has determined that the CFC Estate has no liability for Respondent's claim, as this Court has yet to hold a hearing on Respondent's response to the Estate's 22nd Omnibus objection. Respondent affirmatively avers that Movant is incorrectly classifying Respondent's claims as *in rem* demands against the manufactured homes, for the reason that Michigan law does not provide a means by which landlords may assert a possessory lien in a manufactured home and/or take possession of a manufactured home.

14. Respondent denies the allegations contained in paragraph 14 of the 47th Omnibus objection,

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in the form stated. Respondent affirmatively avers that its Claim is not an *in rem* claim against non-estate property for the reason that Michigan law does not provide a means by which landlords may assert a possessory lien in a manufactured home and/or take possession of a manufactured home. In further answer Respondent states that it Claim has never been based on the Finance Company Debtor's title to or legal interest in the manufactured homes. With respect to the purported "sale and transfer of the Loans to the Securitization Trusts", Respondent was not a party to any such transaction, and Respondent submits that it would not be bound by such transaction, even as a Judgment of Divorce will not release a homeowner from liability under a lease with Respondent because Respondent was not a party in said proceeding.

15. Respondent denies the allegations in paragraph 15 of the 47th Omnibus Objection for the reason same are untrue. In further answer, Respondent states that Movant is incorrectly classifying Respondent's claims as *in rem* demands against the manufactured homes for the reason that Michigan law does not provide a means by which landlords may assert a possessory lien in a manufactured home and/or take possession of a manufactured home. Respondent denies that this Court has determined that the CFC Estate has no liability for Respondent's claim, as this Court has yet to hold a hearing on Respondent's response to the Estate's 22nd Omnibus objection. Finally, Respondent denies that the subject manufactured homes which occupied home sites at Respondent's community constituted "Trust Collateral", for the reasons set forth above.

16. Respondent denies the allegations in paragraph 16 of the 47th Omnibus Objection for the reason same are untrue. In further answer, Respondent states that it only dealt with the Finance Company Debtors with regard to the manufactured homes, that there is no privity of contract between Respondent and any Securitization Trust (which was not disclosed to Respondent until the CFC Estate's 22nd Omnibus objection was filed), and that Repondent is seeking only an unsecured claim against the Finance Company Debtors.

17. Respondent states that no answer is required; however, Respondent notes that the hearing date set forth in said paragraph (September 14, 2004) is inconsistent with the hearing date set forth on the first page of the 47th Omnibus objection (September 15, 2004).

18. Respondent states that no answer is required.

19. Respondent states that no answer is required.

20. Respondent states that no answer is required.

21. Respondent denies, upon information and belief, that the CFC Estate will make any effort whatsoever to resolve its 47th Omnibus objection with this Respondent. In further answer, Respondent notes that the Estate has settled numerous Pre-Petition and Post-Petition lot rent claims with other creditors, while blatantly ignoring Respondent and other manufactured home communities represented by the undersigned

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lawfirm.

22. Respondent states that no answer is required.

23. Respondent states that no answer is required.

24. Respondent states that no answer is required.

25. Respondent states that no answer is required.

26. Respondent states that no answer is required.

27. Respondent states that no answer is required.

28. Respondent states that no answer is required.

29. Respondent states that no answer is required.

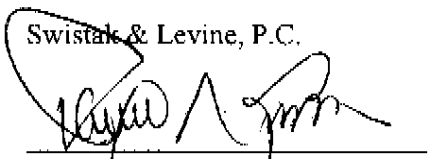
30. Respondent states that no answer is required.

31. This response pertains solely to the Estate's 47th Omnibus Objection to Claims. The claim number to which this response is directed is s80883.

WHEREFORE, Respondent respectfully requests that this Court deny the CFC Estate's 47th Omnibus Objection, with prejudice, and that Respondent's pre-petition lot rent claim be allowed as a general unsecured claims. Respondent additionally requests such other and further relief as this Honorable Court may deem appropriate.

Respectfully submitted,

Swistak & Levine, P.C.



Dated: September 3, 2004

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