

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

In re:)	Chapter 11
)	
Conseco Finance Corp., ¹)	Case No. 02-49675
)	
Debtor.)	The Honorable Carol A. Doyle
)	
)	Hearing Date: December 8, 2004, 2004 at 11:00 a.m. (Central)
)	Response Deadline: November 30, 2004 at 4:30 p.m. (Central)
)	

NOTICE OF AMENDED OBJECTION

PLEASE TAKE NOTICE that on **December 8, 2004 at 11:00 a.m. (Central)**, or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable Carol A. Doyle, or any Judge sitting in her stead, in Courtroom 742, of the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604, and present the **PLAN ADMINISTRATOR OF THE CFC ESTATE'S AMENDED OBJECTION TO CLAIM NOS. 49676-002156 AND 49675-004233 FILED BY LEWANDA P. EPES** (the "Amended Objection"), a copy of which is attached hereto and hereby served upon you.

PLEASE ALSO TAKE NOTICE that responses to the Amended Objection must be filed with the Court no later than **November 30, 2004 at 4:30 p.m. (Central)**, and a copy of any response served on co-counsel for the Plan Administrator of the CFC Estate, Greenberg Traurig, LLP, Attn: Andre Zafrani, 77 West Wacker Drive, Suite 2500, Chicago, IL 60601.

Dated: November 8, 2004
Chicago, Illinois

THE PLAN ADMINISTRATOR
OF THE CFC ESTATE

By: /s/ André L. Zafrani
One of its Attorneys

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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").

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**THE PLAN ADMINISTRATOR OF THE CFC ESTATE'S AMENDED OBJECTION
TO CLAIM NOS. 49676-002156 AND 49675-004233 FILED BY LEWANDA P. EPES**

The Plan Administrator, on behalf of the Post-Consummation Estate of the Finance Company Debtors (the "**CFC Estate**") hereby files this Amended Objection (the "**Amended Objection**") to Claim Nos. 49676-002156 and 49675-0004233 (individually hereafter, the "**Original Claim**" and the "**Amended Claim**", respectively and together, the "**Claims**") filed by LeWanda P. Epes (the "**Claimant**"). This Amended Objection replaces and supersedes the *The Plan Administrator of the CFC Estate's Objection to Claims Nos. 49676-002156 and 49675-0004233* filed with this Court on August 16, 2004. In opposition to the Claim, the CFC Estate respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Amended 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 lies properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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").

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 prepetition claims bar date (the "**CFC Prepetition Claims Bar Date**"). On September 9, 2003, the Court set November 9, 2003, as the administrative claims bar date. (the "**CFC Administrative Bar Date**").

4. On or about July 14, 2003, Claimant late filed the Original Claim, as a secured claim, in the amount of \$65,000.00. She based this procedurally improper claim on fraud stating that the foreclosure sale of 300 Irvin Street, Blackstone, Virginia (the "**Property**") did not take place. The supporting documentation attached to the Original Claim was as follows: (1) Claimant's transmittal letter, dated July 10, 2003 (wherein she states the reason for the filing of the Original Claim beyond the CFC Prepetition Claims Bar Date); (2) a copy of an unexecuted mortgage promissory note dated April 20, 2000, in the principal amount of \$58,338.87; and (3) an unexecuted Credit Line Deed of Trust, also dated April 20, 2000. The Credit Line Deed was given by grantor Lewanda Epes and Kimmora T. Douthit to trustee Orlando Turner of Fredericksburg, Virginia and lender Conseco Finance Servicing Corp ("**CFSC**").

5. Thereafter, on April 23, 2004, Claimant late filed the Amended Claim in the amount of \$84,959.48. The Amended Claim failed to state whether it was a secured or an unsecured claim. The supporting documentation for the Amended Claim was a narrative by the Claimant. In addition, the Claimant included documents which allegedly substantiated the narrative. The Amended Claim also appeared as an Affidavit, filed with this Court as Docket No. 558.

6. Based upon the Original Claim, the Amended Claim and the Statement of Facts of Mr. Kenneth Booker², the Claimant alleged that Specialized Inc.'s (the "**Substitute Trustee**") deed, dated November 14, 2002, conveying title to the Property to CFSC, was fraudulently obtained. The Claimant asserted that the Substitute Trustee, appointed by CFSC, publicly advertised a November 14, 2002 foreclosure sale of the Property. The Claimant then claimed that the underlying November 14, 2002 foreclosure sale never occurred, causing a fraudulent conveyance of title to CFSC, thereby causing her damages. As discussed below, these issues were appropriately litigated in Virginia state court and adjudged in favor of CFSC.

THE AMENDED OBJECTION AND REQUESTED RELIEF

7. By this Amended Objection, the CFC Estate seeks to disallow the Claims in their entirety due to non-liability.

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

9. Notwithstanding the Claimant's allegations, the CFC Estate learned of wrongful detainer litigation commenced against the Claimant in the Circuit Court of Nottoway County, Virginia (the "**Virginia Litigation**"). The Virginia courts, including the Virginia Supreme Court (collectively the "**Virginia Courts**"), ultimately ruled in the Virginia Litigation that Conseco Finance Corp., and now its successor Green Tree Servicing, LLC, were entitled to possession of the Property. The Virginia Courts denied Claimant's appeals, thereby rejecting all bases of the

² On February 4, 2004, Mr. Kenneth Booker, of 13835 Little Patrick Road, Amelia, Virginia, an acquaintance of the Claimant, filed with this Court a "Statement of Facts", dated January 28, 2003. In this statement of facts, Mr. Booker detailed for this Court his account of the auction scheduled for November 14, 2002 of the Property. Mr. Booker's Statement of Facts was filed with this Court as Docket No. 540.

Claims as moot. Copies of the relevant series of orders of the Virginia Courts are attached hereto as **Exhibits A** and **B**, respectively.

10. If the Claimant now seeks a ruling reversing the Virginia Courts' judgments, the *Rooker-Feldman* doctrine ("***Rooker-Feldman***") precludes this Court from having jurisdiction. Under *Rooker-Feldman*, a federal district court may not review a state court determination. *Rooker v. Fidelity Trust*, 263 U.S. 413, 415 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). See also, *Epps v. Creditnet, Inc.*, 320 F.3d 756, 759 (7th Cir. 2003). Furthermore, a federal court action that is "inextricably intertwined" with a state court decision, such that success in the federal court would require overturning the state court decision, is barred by the *Rooker-Feldman* doctrine. *Epps*, at 759.

11. Claimant had sufficient opportunity to raise her own claims in the Virginia Litigation. However, the Virginia Supreme Court denied Claimant's petition for appeal, finding no reversible error in the lower court's judgment. This denial is proof that the Claimant's claims were unfounded and unpersuasive. Her injuries and the Claims are "inextricably intertwined" with the Virginia Litigation and the rulings of the Virginia Courts. Any allowance of the Claims is, in effect, requesting this Court to overturn the rulings of the Virginia Courts. Therefore, under *Rooker-Feldman*, this Court should deny the Claims.

12. The Virginia Courts granted Conseco Finance Servicing Corp. its requested relief, in the form of an Order and Writ of Possession. This Order and Writ of Possession denied relief to Claimant based on her allegations. The Virginia Supreme Court refused Claimant's petition for appeal in the matter. For the foregoing reasons, and pursuant to the *Rooker-Feldman* doctrine, the Claimant's Claims should be disallowed.

**HEARING ON THE CLAIM AMENDED OBJECTION
AND RESPONSE TO THE AMENDED OBJECTION**

13. The CFC Estate has requested that a hearing on the Amended Objection be held before the Honorable Carol A. Doyle, United States Bankruptcy Court, 219 South Dearborn, Courtroom 742, Chicago, Illinois on December 8, 2004 at 11:00 a.m. (Central) (the "**Claim Hearing**").

14. Any party wishing to oppose the relief requested in this Amended 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 November 30, 2004 at 4:30 p.m. (Central), 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 Amended 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 Amended 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(s) of the Claim(s);
- (c) the Claim number(s) and the Claim(s) 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 Amended 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 Amended Objection to the Claims 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 Amended 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 Amended Objection or appear at the Claim Hearing if such party does not object to the relief requested in the Amended Objection. If a party does not timely file a response and serve a response to the Amended Objection, the relief requested in the Amended Objection will be granted without further notice on such party. Failure to timely file a response to the Amended Objection shall be deemed (i) a waiver of a party's right to respond to the Amended 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 Claims listed in this Amended Objection on any ground, and to amend, modify and/or supplement this Amended 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 Amended Objection on the amended 2002 List and Counsel to the CFC Estate will serve a copy of the Amended Objection upon the creditor whose claim is affected by the Amended Objection. Any party may obtain a copy of the Amended 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 Amended Objection is sufficient under Fed. R. Bankr. P. 3007 and that no other or further notice necessary.

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

Dated: November 8, 2004

THE PLAN ADMINISTRATOR
OF THE CFC ESTATE

By: By: /s/ André L. Zafrani
One of its Attorneys

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