

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

In re:) **Chapter 11**
)
Conseco Finance Corp.,) **Case No. 02-49675**
) **Honorable Carol A. Doyle**
Debtor.)
) **Hearing Date: March 18, 2010 at 10:00 a.m.**

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE THAT on March 18, 2010 at 10:00 a.m., the undersigned shall appear before the Honorable Carol A. Doyle, or any judge sitting in her stead, Courtroom 742, at the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, and then and there present the **Plan Administrator's Motion, on behalf of the CFC Post-Consummation Estate, for Entry of an Order (a) Pursuant to Bankruptcy Rules 2002(a)(3), 9019 and Section 105(a) of the Bankruptcy Code, Approving Compromise and Settlement With Respect to Claims Asserted Against CFC Post-Consummation Estate by Martha Bronson, and (b) Approving the Shortened and Limited Notice of the Motion,** a copy of which is hereby served upon you.

Dated: March 10, 2010

Respectfully submitted,

PLAN ADMINISTRATOR, ON BEHALF OF
THE POST-CONSUMMATION ESTATE

By: /s/ Nancy A. Peterman
One of Its Attorneys

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Counsel for the Plan Administrator and Post-Consummation Estate

CERTIFICATE OF SERVICE

I, Nancy A. Peterman, an attorney, hereby certify that on the 10th day of March, 2010, I caused to be served by ECF Notification and Federal Express overnight delivery, as indicated, a true and correct copy of the following **Plan Administrator's Motion, on behalf of the CFC Post-Consummation Estate, for Entry of an Order (a) Pursuant to Bankruptcy Rules 2002(a)(3), 9019 and Section 105(a) of the Bankruptcy Code, Approving Compromise and Settlement With Respect to Claims Asserted Against CFC Post-Consummation Estate by Martha Bronson, and (b) Approving the Shortened and Limited Notice of the Motion** upon each of the parties identified below.

/s/ Nancy A. Peterman

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

In re:)	Chapter 11
)	
Conseco Finance Corp., <i>et al.</i> , ¹)	Case No. 02-49675
)	(Jointly Administered)
Debtors.)	
)	The Honorable Carol A. Doyle
)	Hearing Date: March 18, 2010 at 10:00 a.m.

**PLAN ADMINISTRATOR’S MOTION, ON BEHALF OF THE
CFC POST-CONSUMMATION ESTATE, FOR ENTRY OF AN
ORDER (A) PURSUANT TO BANKRUPTCY RULES 2002(a)(3), 9019,
AND SECTION 105(a) OF THE BANKRUPTCY CODE, APPROVING
COMPROMISE AND SETTLEMENT WITH RESPECT TO CLAIMS ASSERTED
AGAINST CFC POST-CONSUMMATION ESTATE BY MARTHA BRONSON, AND
(B) APPROVING THE SHORTENED AND LIMITED NOTICE OF THE MOTION**

Bridge Associates, LLC, in its capacity as the plan administrator (the “**Plan Administrator**”) for the Post-Consummation Estate of the Finance Company Debtors (the “**CFC Post-Consummation Estate**”), hereby respectfully submits this motion (the “**Motion**”) requesting that this Court enter an Order, pursuant to Rules 2002(a)(3) and 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”),

¹ The CFC Post-Consummation Estate is the liquidating trust that stands as the successor-in-interest to the Finance Company Debtors, which are comprised of 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. 1, Conseco Finance Net Interest Margin Finance Corp. II, Green Tree Financial 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. (collectively with the CFC Debtors, the CFC Subsidiary Debtors and the New Debtors, the “**Finance Company Debtors**”).

approving the settlement (the “**Agreement**”)² described herein between the CFC Post-Consummation Estate, Green Tree Servicing LLC (“**Green Tree**”) and Martha Bronson (“**Bronson**”) and approving the limited and shortened notice of the Motion. In support of the Motion, the Plan Administrator respectfully represents as follows:

SUMMARY OF RELIEF REQUESTED

1. Although the Finance Company Debtors’ *Sixth Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* (the “**Plan**”) became effective nearly six and a half years ago, the Plan Administrator has been engaged in extensive litigation with Bronson over the past nine months with respect to claims she allegedly holds against the CFC Post-Consummation Estate. Five years after entry of an order disallowing the claims Bronson asserted against the CFC Post-Consummation Estate, Bronson sought to overturn the order confirming the Plan (the “**Confirmation Order**”) and to modify the injunctive protections contained therein. When this Court denied her motion seeking such relief, Bronson appealed this decision to the United States District Court for the Northern District of Illinois (the “**Appeal**”). In an effort to resolve the issues presented as part of the Appeal, the Plan Administrator, Green Tree and Bronson engaged in extensive negotiations, the result of which is the Agreement. The terms of the Agreement, among other things, provide for (a) the resolution of Bronson’s outstanding claims against the CFC Post-Consummation Estate, (b) the release of the CFC Post-Consummation Estate and the Plan Administrator from all liability relating to such claims and (c) the dismissal of the Appeal.

2. The Agreement represents a successful conclusion of negotiations among the Plan Administrator, Green Tree and Bronson, and resolves the sole outstanding

² The Agreement is attached as Exhibit A hereto.

appeal of the Plan and the Confirmation Order. The Plan Administrator has determined, in the exercise of its sound business judgment, that the Agreement is fair and reasonable and in the best interests of the CFC Post-Consummation Estate, as it will resolve only remaining contested matter in these cases in an economical and efficient manner and will not materially impact the rights of any creditors or create any undue prejudice toward third parties.

JURISDICTION

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief sought herein are Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code.

BACKGROUND

5. In 1994 and 1999, Bronson entered into two consumer loan transactions with Consec Financial Servicing Corporation (f/k/a Green Tree Financial Servicing Corporation), which were secured by residential real estate owned by Bronson (the “**1994 Transaction**” and the “**1999 Transaction**,” respectively and collectively, the “**Transactions**”).

6. On December 17, 2002, the Finance Company Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code.

7. On March 14, 2003, this Court entered an order approving the sale of certain assets of the Finance Company Debtors. (Case No. 02-049672; Docket No. 2066).

8. On April 14, 2003, this Court entered an order establishing the bar date for claims against the Finance Company Debtors as May 22, 2003 (the “**Bar Date Notice**”).

(Case No. 02-49672; Docket No. 2650). The Bar Date Notice was served on Bronson on May 28, 2003. (Case No. 02-49672; Docket No. 3857).

9. On June 18, 2003, Bronson filed a motion seeking relief from the automatic stay to pursue litigation in state court. (Case No. 02-49672; Docket No. 4644.) This Court entered an order granting relief from the automatic stay on July 23, 2003. (Case No. 02-49672; Docket No. 5037.)

10. This Court entered the Confirmation Order on September 9, 2003. The Plan became effective on September 15, 2003, and certain of the Finance Company Debtors' assets were transferred to the CFC Post-Consummation Estate, which is the liquidating trust that holds such assets in trust for distribution to creditors.

11. On October 10, 2003, Bronson filed two proofs of claim in the above-captioned cases (collectively, the "**Bronson Claim**"). The CFC Post-Consummation Estate objected to each Bronson Claim in the *CFC Post-Consummation Estate's Fifteenth Omnibus Objection to Claims Asserted Against the Finance Company Debtors* filed on December 16, 2003 (the "**Objection**"). (Case No. 02-49675; Docket No. 377.) On January 15, 2004, this Court entered an order disallowing the Bronson Claim. (Case No. 02-49675; Docket No. 469.) One Bronson Claim was disallowed as duplicative, and the other Bronson Claim was disallowed as untimely filed, since it was filed after the bar date of May 22, 2003.

12. On June 12, 2009, Bronson filed *the Motion For (1) Order Modifying the Plan and 9/09/03 Discharge/§105 Permanent Injunction; (2) an Order Setting Aside/Modifying January 14, 2004 Order Approving Objection to Movant's Two Claims; (3) Declaratory Relief; (4) Injunctive Relief Enjoining Foreclosure* (the "**Plan Modification Motion**") (Case No. 02-49675; Docket No. 3492). The CFC Post-Consummation Estate filed

its response to the Plan Modification Motion on June 18, 2009 (Case No. 02-49675; Docket No. 3504).

13. On July 23, 2009, the Plan Modification Motion was denied with the exception of Bronson's request to reconsider disallowance of the Bronson Claim. After an evidentiary hearing before Judge Hollis, held on July 28, 2009, this request was also denied.

14. On August 3, 2009, Bronson filed a *Notice of Appeal* of this Court's denial of the relief sought in the Plan Modification Motion (Case No. 02-49675; Docket No. 3529).

15. On August 25, 2009, the Plan Administrator filed its *Motion to Establish Disputed Claims Reserve With Respect to Claims Asserted by Martha Bronson* (Case No. 02-49675; Docket No. 3538). This Court granted the relief sought therein on September 8, 2009 (Case No. 02-49675; Docket No. 3541). In accordance with this Court's order, the Plan Administrator established a claims reserve of \$60,930, which equates to a distribution equal to 40.62% of the face amount of the Bronson Claim and which is the percentage distribution received by all general unsecured creditors holding allowed, timely filed claims in these Cases.

16. In the months following Bronson's commencement of the Appeal, the parties engaged in extensive negotiations in an effort to resolve the issues raised by Bronson as part of the Appeal. Although Bronson filed her brief in support of the Appeal on February 23, 2010, the parties subsequently reached a resolution of the Bronson Claim. The Agreement described herein represents the outcome of these negotiations.

RELIEF REQUESTED

17. By this Motion, the Plan Administrator is requesting approval of (i) the Agreement in all respects and (ii) the limited and shortened notice of this Motion.

18. Pursuant to the Agreement the CFC Estate has agreed to pay off the mortgage underlying the 1999 Transaction. In return, Bronson has agreed to, among other things, dismiss the Appeal and release the Plan Administrator, the CFC Estate and Green Tree from any liability arising out of the Transactions. These releases foreclose Bronson from filing a later suit relating to the Transactions. Importantly, the releases in this tripartite agreement also protect Green Tree, the current servicer of the loans underlying the Transactions, from suit by Bronson. This, in turn, establishes another layer of protection for the CFC Estate. Absent a release of all claims by Bronson against Green Tree relating to the Transactions, the CFC Estate could remain liable to Green Tree. The Agreement extinguishes such claims.

BASIS FOR RELIEF

19. Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Settlements and compromises are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 428 (1968), *reh’g denied*, 391 U.S. 909 (1968), *on remand TMT Trailer Ferry, Inc. v. Kirkland*, 471 F.2d 10 (5th Cir. 1972).

20. To approve a compromise or settlement under Rule 9019(a), a court should find that the compromise or settlement is fair and equitable, reasonable, and in the best interest of the debtor’s estate. *See, e.g., Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 585-86 (7th Cir. 1994); *In re Commercial Loan Corp.*, 316 B.R. 690, 697 (Bankr. N.D. Ill.

2004). In determining whether to approve a settlement, the court must make an independent determination that the settlement is fair and reasonable. *In re Del Grosso*, 106 B.R. 165, 168 (Bankr. N.D. Ill. 1989) (“The Court has the responsibility of making an informed, independent judgment apprising itself of ‘all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated.’” (quoting *TMT Trailer*, 390 U.S. at 424)). The court may consider the opinions of the trustee or debtor in possession that the settlement is fair and reasonable. *Commercial Loan Corp.*, 316 B.R. at 698 (“Only if the settlement ‘falls below the lowest point in the range of reasonableness’ should the trustee’s decision be disturbed”) (quoting *In re Energy Coop., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989)); *Del Grosso*, 106 B.R. at 168. In addition, the court may exercise its discretion “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *see also Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994); *In re Quay Corp.*, 372 B.R. 378, 382 (Bankr. N.D. Ill. 2007) (“Compromises . . . are favored in bankruptcy).

21. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact that may be raised by a settlement, but rather should “canvass the issues” in order to determine whether the proposed settlement offers a reasonable resolution of the dispute. *Commercial Loan Corp.*, 316 B.R. at 697-98. The reasonableness of a settlement depends upon a number of factors, including the probability of success, the length and cost of litigation, and the extent to which the settlement is truly the product of arm’s-length bargaining, and not fraud or collusion. *LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159,161 (7th Cir. 1987); *Quay Corp.*, 372 B.R. at 382.

22. There is no question that the Agreement is fair and reasonable and in the best interest of the CFC Post-Consummation Estate. The Agreement was bargained for and agreed upon in good faith during arm's-length negotiations, and is based on the respective independent assessments of the Plan Administrator, Green Tree and Bronson, with the assistance and advice of counsel. In fact, the Agreement explicitly acknowledges that:

The Parties . . . have consulted with their counsel as they deemed necessary in connection with the negotiation, execution and delivery of the Agreement. The Parties represent and warrant that, in entering into the Agreement, they have relied on their own investigation and on the investigation and advice of their respective attorneys and have not relied on any statement, representation or commitment of any kind made by any other Party, or by the other Parties' representatives, successors, assignees, heirs, officers, directors, shareholders, employees, agents, or attorneys.

Agreement, ¶ 10.

23. In consenting to the Agreement, the Plan Administrator considered the probability of success, the complexity, the delay in obtaining relief, and the expense of maintaining the Appeal. The Agreement constitutes a fair and reasonable resolution of Bronson's claims against the CFC Post-Consummation Estate and constitutes a full and final adjudication of all issues relating thereto.

24. Pursuant to the Agreement, Bronson has agreed to fully release the Plan Administrator, the Finance Company Debtors, the CFC Post-Consummation Estate and Green Tree, along with other parties defined as "**Released Parties**" in the Agreement, from any and all claims in existence as of the effective date of the Agreement, including, but not limited to, those claims based on or arising out of the Transactions. The tripartite nature of the Agreement gives these releases even greater force. Without the inclusion of Green Tree as a party to the Agreement, Bronson would retain the right to file suit against Green Tree for

claims arising out of the Transactions. To the extent Green Tree were held liable to Bronson, Green Tree may, under certain circumstances, have the ability to raise a claim against the CFC Estate. The Agreement prevents such a result by releasing all claims held by Bronson against both Green Tree and the CFC Estate.

25. Bronson has also agreed to dismiss the Appeal, which represents the sole, on-going contested matter in these Cases. Accordingly, the Agreement confers a substantial benefit to the CFC Post-Consummation Estate by providing for the resolution of the only currently outstanding contested matter in these Cases and allowing the Plan Administrator to close these Cases.

26. Moreover, the Agreement does not prejudice any creditor or third party. In exchange for Bronson's agreement to release the CFC Post-Consummation Estate, among others, and to dismiss the Appeal, the CFC Post-Consummation Estate has agreed to pay off all amounts due to Green Tree with respect to the 1999 Transaction, including the outstanding loan principal and attorneys' fees due to Green Tree. The total amount to be paid to Green Tree is \$51,006.31, which is approximately \$10,000 less than the amount currently held in the claims reserve discussed above. Thus, the funds being used to pay the settlement amount were already earmarked for this purpose and are not being diverted from other unsecured creditors holding allowed claims.

27. In addition, every party directly affected by the Agreement was either a party to the negotiation of the Agreement, or is receiving a full and complete release pursuant to the terms of the Agreement. Specifically, Bronson is fully releasing US Bank Trust National Association, which currently holds the mortgage underlying to the 1994 Transaction, from any and all claims she might hold arising out of such mortgage.

28. Pursuant to Bankruptcy Rule 9019, and in consideration of the terms, compromises and exchanges of consideration contained in the Agreement and all other facts and circumstances of these Cases, the Agreement is fair, equitable, reasonable and in the best interest of the CFC Post-Consummation Estate. For the reasons set forth above, the Plan Administrator believes that there is sufficient consideration to warrant the Plan Administrator's recommendation that the Court approve the Agreement and permit the Plan Administrator to resolve its disputes with Bronson on the terms set forth herein and in the Agreement.

LIMITED & SHORTENED NOTICE

29. Rule 2002(a)(3) requires twenty-one (21) days' notice of a motion to approve a compromise or settlement. Fed. R. Bankr. 2002(a)(3). Rule 2002(a) further requires that notice of such a motion be provided to all creditors.

30. The Plan Administrator requests that the Court approve a shortened notice period for the Motion. This Agreement resolves the last remaining issue in these Cases and all parties affected by the Agreement (i) have been involved in the negotiations of the Agreement or (ii) are not adversely affected by the terms thereof. Accordingly, the Plan Administrator submits that the scope and timing of notice of the Motion are sufficient.

31. Given the nature of the relief requested herein, the Plan Administrator requests that the Court approve its request to limit notice to: (a) the Office of the United States Trustee; (b) counsel to the Finance Company Debtors; (c) Bronson; (d) counsel to Green Tree; (e) counsel to US Bank Trust National Association; and (f) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

Providing notice of this Motion to all creditors, as required by Rule 2002, would be extremely expensive and many of these creditors will be in no way affected by the relief sought herein.

NO PRIOR REQUEST

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

WHEREFORE, the Plan Administrator respectfully requests that this Court enter an order, substantially in the form submitted herewith, approving the Agreement and granting such other and further relief as the Court may deem just and proper.

Dated: March 10, 2010

PLAN ADMINISTRATOR, ON BEHALF
OF THE CFC POST-CONSUMMATION
ESTATE

By: /s/ Nancy A. Peterman
Nancy A Peterman

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