

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

RC Sooner Holdings, LLC, et al.

Chapter 11

Case No. 10-10528 (BLS)

(Jointly Administered)

In Re: RC SOONER HOLDINGS, LLC, et al.

Plaintiffs

v.

REMYCO, INC., et al.

Defendants

ADV. PRO. NO. 10:50723

**CERTIFICATION OF COUNSEL IN SUPPORT OF POSTPONING DEPOSITIONS IN
ADVERSARY PROCEEDING**

The undersigned co-counsel for Sperry Van Ness / William T. Strange Associates, Inc. (hereinafter, "SVN"), a defendant in the above captioned adversary proceeding, hereby certifies as follows:

1. Plaintiffs/ Debtors in the above captioned adversary proceedings seek to commence with deposing parties and witnesses to this matter on June 3, 2010.
2. Defendant Sperry Van Ness / William T. Strange Associates, Inc., however, has filed a Motion to Dismiss, which demonstrates that they should be dismissed from this adversary proceeding.
3. Specifically, Plaintiffs, in their Amended Complaint, allege that SVN committed fraud by representing to Plaintiffs that the mortgages/loans Plaintiffs assumed when they purchased a number of corporate entities from Codefendants, the Remy's, were in default.
4. SVN is alleged to have brokered the sale of the entities on behalf of the Remy's.
5. Plaintiffs further allege that that SVN and the Remy's conspired to commit fraud as related to the same alleged misrepresentation.

6. Plaintiffs' Amended Complaint, however, fails to identify any instance in which SVN made the alleged misrepresentation to them. In sum, Plaintiffs' Amended Complaint does not "set forth the time, place and contents of the false representation, the identity of the party making the false statements and the consequences thereof," as required under Fed. R. Civ. P. 9(b). *Tal v. Hogan*, 453 F.3d 1244, 1263 (10th Cir. Okla. 2006).

7. Additionally, Plaintiffs' claim that SVN is liable to them under a fraudulent transfer theory pursuant to 11 U.S.C. §§ 548, 550.

8. Defendants fraudulent transfer claim is likewise subject to dismissal by way of SVN's Motion to Dismiss.

9. Although not alleged in their Complaint, presumably, Plaintiffs contend that the commissions that SVN received from the sellers as compensation for the brokerage services it provided constitute an inequitable transfer because, according to them, the businesses they acquired were worth less than they paid the sellers.

10. SVN's receipt of such commissions, however, even if received under the circumstances alleged in Plaintiffs' complaint, are not recoverable under 11 U.S.C. §548 because SVN was not the initial transferee of the funds that are the subject of the alleged fraudulent transfer, and because SVN merely received from its client, fair value for the services it provided. 11 U.S.C. § 548

11. As SVN is likely to be dismissed from this matter, it should not be compelled to participate in numerous, costly depositions of witnesses and parties, all of whom reside in Oklahoma.

12. The taking of numerous depositions in Oklahoma as related to this adversary proceeding venued in the United States Bankruptcy Court for the District of Delaware, prior to this Court's ruling on SVN's Motion to Dismiss, is likely to cause SVN to needlessly incur thousands of dollars in travel and lodging costs as well as legal fees.

13. Additionally, depositions should be postponed in this matter because Plaintiffs have not produced their Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1), and they propose that they

should not be required to produce their Initial Disclosures until fourteen days after the discovery planning conference has been held.

14. Obviously SVN can more adequately represent the interests of their client during depositions for this matter once they have received Plaintiffs' Initial Disclosures and documents referenced therein.

15. Plaintiffs' responses to SVN's First Request for Production of Documents will also assist SVN's counsel in the taking of depositions as related to this matter; however, such responses are not due until June 28, 2010.

16. Finally, Defendants' Answers to Plaintiffs' Complaint with Affirmative Defenses will narrow the scope of the depositions which need to be taken in this matter.

17. Plaintiffs will not be prejudiced if depositions are postponed until Answers to Plaintiffs' Complaint are filed.

18. Accordingly, the taking of depositions in the above captioned adversary proceeding should not commence until Answers to Plaintiff's Amended Complaint have been filed.

Respectfully Submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN AND GOGGIN**

Date: 5/27/2010

BY: /s/ Aaron Moore
Arthur W. Lefco, Esquire
Gary Kaplan, Esquire
Aaron Moore, Esquire
Attorneys for Sperry Van Ness/William T. Strange
Associates, Inc.

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CERTIFICATE OF SERVICE

I Gary Kaplan do hereby certify that a true and correct copy of Defendant, Sperry Van Ness / William T. Strange Associates, Inc. Certification of Counsel in Support of Postponing Depositions was served on all parties via ECF or regular mail on the below date.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN AND GOGGIN**

Date: 5/27/2010

BY: /s/ Gary Kaplan
Gary Kaplan