

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
RC SOONER HOLDINGS, LLC, <i>et al.</i> , ¹	:	Case No. 10-10528 (BLS)
	:	
Debtors.	:	(Jointly Administered)
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	:	
RC SOONER HOLDINGS, LLC, <i>et al.</i> and	:	
OLD SOUTH APARTMENTS, LLC,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Adv. Pro. No. 10-50723 (BLS)
	:	
REMYCO., INC., <i>et al.</i>	:	
	:	
Defendants.	:	

**PLAINTIFFS’ CERTIFICATION OF COUNSEL IN SUPPORT
OF SCHEDULED DEPOSITIONS GOING FORWARD**

The undersigned hereby certifies that:

1. Plaintiffs seek to begin deposing witnesses in the instant adversary proceeding (the “Adversary Proceeding”) on June 2, 2010.

2. The above-captioned Debtors previously sought documents from certain of the Defendants related to the Debtors’ schedules and statements pursuant to Bankruptcy Rule 2004 of the Federal Bankruptcy Rules of Procedure (the “Bankruptcy Rules”). To this end, on

¹ The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

March 8, 2010, the Debtors filed their Motion for an Order Authorizing Production of Documents and Examination of a Representative Pursuant to Bankruptcy Rule 2004 [Docket No. 44] (the “Rule 2004 Motion”) in the jointly administered cases (Case No. 10-10528).

3. As explained in greater detail in the Debtors’ Response To Montgomery McCracken Walker & Rhoads LLP’s Motion For Leave To Withdraw As Counsel For The Remy Entities Pursuant To Del. Bankr. L.R. 9010-2(B) And Plaintiffs’ Motion A) To Compel Discovery Responses; B) For A Finding Of Contempt; And C) For Entry Of A Scheduling Order [Docket No. 178] (the “Motion to Compel”), the Debtors’ efforts to obtain documentation pursuant to Bankruptcy Rule 2004 were ultimately unsuccessful due to obstruction on the part of certain of the Defendants.

4. At the hearing held on April 19, 2010 (the “April 19, 2010 Hearing”), this Court directed that discovery would proceed in accordance with the Bankruptcy Rules’ specific discovery provisions (i.e., Bankruptcy Rules 7000, *et seq.*). The Court specifically held that the thirty (30) days for the Defendants to respond would begin as of April 19, 2010, making responses due by May 19, 2010. See April 19, 2010 Hearing Transcript, pg. 45, ln. 23-24; pg. 47, ln. 3-4 (“Today is the 19th. The clock starts today on your discovery requests. Thirty days from today is the 19th of May. And that will be their response date.”).

5. Although motion practice has proceeded with respect to certain pending motions to dismiss,² the Plaintiffs have attempted to proceed with discovery as specifically

² On April 15, 2010, Defendants RemyCo, Inc., The Remy Companies, Inc., Home Realty Ventures, Inc., Bradford Creek Properties, LLC, Landrun Design and Development Co., Inc., Diamond Pointe, LLC, Bluechip Holdings, LP, Tim L. Remy, Tim J. Remy, Sherry E. Remy, L. Leon Remy, Robin E. Remy, Sherry E. Remy Revocable Trust DTD July 14, 1997, L. Leon Remy Revocable Trust DTD July 14, 1997, and Mona Remy Berke (the “Remy Entities”) filed their Motion to Dismiss Adversary Proceeding Complaint [Docket No. 15] and their Brief in Support of Motion to Dismiss Amended Complaint [Docket No. 16] (collectively, the “Remy Motion to Dismiss”). On April 23, 2010, Defendant Sperry Van Ness/William T. Strange (“SVN”) filed its Motion to Dismiss Adversary Proceeding [Docket No. 19] and
(continued...)

allowed and directed by the Court. Such process has been repeatedly frustrated by the by the Defendants continuing attempts to delay permitted discovery.

6. As explained in greater detail in the Motion to Compel, efforts to obtain documentation pursuant to Bankruptcy Rules 7000, *et seq.* have also been unsuccessful thus far due to continued delays on the part of Remy Entities (as defined in the Motion to Compel), with the Remy Entities having produced no written response to the Plaintiffs' First Set of Requests for Production on the Defendants, served on April 26, 2010. The Remy Entities have made only a token production of certain documents, the review of which is ongoing. The Remy Entities have admitted that they have not produced all responsive documents, yet have given no explanation for this failure or for the accompanying failure to formally respond to Plaintiffs' First Set of Requests for Production.

7. In connection with their discovery efforts, the Plaintiffs also noticed depositions for Tim, Leon and Sherry Remy and the Remy corporate defendants, to begin on June 3, 2010.

8. Pursuant to this Court's direction at the omnibus hearing held on May 25, 2010, on May 27, 2010, SVN filed its Certification of Counsel in Support of Postponing Depositions [Docket No. 41] (the "SVN Certification of Counsel").

9. On May 28, 2010, the Remy Entities filed their Certification of Counsel in Opposition to Permitting Deposition Discovery in Advance of Ruling on Dispositive Motions

(...continued)

its Brief in Support of Motion to Dismiss (collectively, the "SVN Motion to Dismiss" and, together with the Remy Motion to Dismiss, the "Motions to Dismiss"). On May 20, 2010, Plaintiffs filed their Brief in Opposition to Motions to Dismiss [Docket No. 27] refuting the arguments put forward in the Motions to Dismiss.

[Docket No. 42] (the “Remy Entities’ Certification of Counsel” and, collectively with the SVN Certification of Counsel, the “Certifications of Counsel”).

10. In the SVN Certification of Counsel, SVN reiterates the argument made in the SVN Motion to Dismiss and asserts that the depositions should be postponed pending a decision on its Motion to Dismiss. The Court already entertained this argument at the April 19, 2010 hearing and ordered that discovery should commence. See April 19, 2010 Hearing Transcript, pg. 36-37, ln. 21-25; 1-15.

11. The Remy Entities likewise argue that depositions should be postponed pending decisions on the Motions to Dismiss.

12. At the April 19, 2010 Hearing, the Court specifically stated that the discovery process in this Adversary Proceeding should proceed despite the pending Motion to Dismiss. To this end, the Court stated:

But frankly, I think that proceeding with discovery under the 7000 series rules, understanding that a motion to dismiss has been filed, nevertheless is appropriate. And I understand and frankly respect counsel’s observation that as a general proposition we proceed with dispositive motion practice and then turn to discovery to deal with whatever’s left. But the fact of the matter is that I’ve had a chance to review the complaint. There is the breach of contract. I make no comment about the sufficiency of the motion to dismiss. I haven’t seen that yet. I have a pretty good guess on what’s in there. But the fact of the matter is that I believe that this matter should proceed forward. And if you think about it, you can consider it almost proceeding on a dual track. They’ve asked for discovery, and I believe that the discovery is appropriate to start the process.

See April 19, 2010 Hearing Transcript, pg. 36-37, ln. 21-25; 1-15. The Court also stated that “discovery itself should go forward and should be tailored to the provisions of the complaint, not simply Count I, but to the various counts.” See April 19, 2010 Hearing Transcript, pg. 37, ln.

20-22. In response to questions from Defendants' counsel regarding the Plaintiffs' being permitted to move forward with discovery, the Court stated that it was:

[E]ntirely aware from the debtors of the urgency of the situation. But the fact of the matter is that this is a lawsuit, it's not motion practice. And it's going forward as a lawsuit. But I'll be candid. You know, as a general proposition, you know as well as I do, that they would have to wait sixty or ninety days before they could really get that process geared up, because of the dealing with the motion to dismiss, assuming that I turned it around in real time. And what I'm doing is I'm acknowledging their need or their request for urgency by allowing them the process -- to begin the process of propounding discovery promptly.

See April 19, 2010 Hearing Transcript, pg. 41-42, ln. 21-25; 1-6.

13. The Certifications of Counsel filed by the Remy Entities and SVN are in substance nothing more than yet another to delay discover, this time by attempting to reargue the decision already made by this Court at the April 19, 2010 Hearing to proceed with discovery concurrently with motion practice, including the Motions to Dismiss. The merits of the Motions to Dismiss will be heard in due course; this Court has made it abundantly clear that it does not want to delay discovery by another sixty to ninety days while the Motions to Dismiss are argued.

14. The Remy Entities' conduct, namely their refusal to turn over documents pursuant to Bankruptcy Rule 2004 despite an agreement to do so, their non-cooperation with its own counsel, the Remy Entities Motion to Dismiss, and the Remy Entities' Certification of Counsel appears designed solely to obstruct and thwart Plaintiffs' discovery efforts in an attempt to prejudice the Plaintiffs' chance of success in the underlying litigation and to hinder the efficient management of the case.

15. Plaintiffs have suffered harm due to the previous discovery delays, and will suffer additional harm if depositions are further delayed pending a decision on the Motions to Dismiss.

16. As this Court has already decided that discovery should proceed concurrently with the discovery process, the depositions should be allowed to take place as currently scheduled.

17. With regard to the Motions to Dismiss, Plaintiffs adequately alleged actionable fraud against the Defendants under both Oklahoma law and Federal Rule of Civil Procedure 9(b).

18. Furthermore, SVN's response concerning the alleged inapplicability of 11 U.S.C. § 548 is inapposite. The Plaintiffs have asserted fraudulent transfer and recovery actions under both 11 U.S.C. § 548 and § 550. To the extent that an initial transfer to one or more of the Defendants is ultimately recovered as a fraudulent transfer under 11 U.S.C. § 548, such transfer is also subject to recovery from any immediate or mediate transferee of the initial transferee under 11 U.S.C. § 550. Moreover, the extent to which SVN may be entitled to the "safe harbor" exclusions from 11 U.S.C. § 550 is a fact to be developed in discovery and proven at trial.

19. In addition, in response to the Motions to Dismiss, Plaintiffs withdrew the RICO count of the Adversary Complaint, further narrowing the issues to be addressed at the depositions. Plaintiffs' voluntary withdrawal of one of the five counts allows the Defendants more time to prepare for the scheduled depositions due to the reduced scope of the Adversary Complaint. Plaintiffs seek to streamline the discovery and deposition process as much as possible while taking into account the numerous prior delays caused by the Defendants' continued obstructionism.

20. Plaintiffs are prepared to produce any documents requested by the Defendants on an expedited basis. Had the Defendants agreed to the proposed scheduling order

described more fully in the Motion to Compel, the Plaintiffs would be in a position to voluntarily and quickly turn over any and all documents requested by the Defendants.

21. The Remy Entities have not requested any documents.

22. SVN notably delayed serving its First Request for Production of Documents Addressed to Plaintiffs (the “SVN Request for Production”) until May 27, 2010, in conjunction with the SVN Certification of Counsel which argues that the already scheduled depositions should be delayed pending Plaintiff’s response to the just-served SVN Request for Production.

23. SVN now seeks to further delay Plaintiffs’ discovery process by relying upon its delayed service of discovery requests as justification to delay depositions already noticed and scheduled by the Plaintiffs.

24. The Plaintiffs will respond to the SVN Request for Production on an expedited basis and before critical depositions.

25. As this Court has already decided to allow discovery to go forward despite the pending Motions to Dismiss, because the Motions to Dismiss are meritless, and because the Plaintiffs will respond to any Defendants' request for documentation on an expedited basis, the depositions should be allowed to take place as scheduled.

Dated: May 28, 2010
Wilmington, Delaware

Respectfully Submitted,

Ballard Spahr LLP

By: /s/ Sean J. Bellew

Tobey M. Daluz, Esquire (No. 3939)

Sean J. Bellew, Esquire (No. 4072)

Christopher S. Chow, Esquire (No. 4172)

David A. Felice, Esquire (No. 4090)

919 N. Market Street, 12th Floor

Wilmington, DE 19801

Telephone: (302) 252-4465

Facsimile: (302) 252-4466

Email: daluzt@ballardspahr.com

bellews@ballardspahr.com

chowc@ballardspahr.com

Counsel for Plaintiffs