

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11
: :
RC SOONER HOLDINGS, LLC, *et al.*,¹ : Case No. 10-10528 (BLS)
: :
Debtors. : (Jointly Administered)
: :

: :
RC SOONER HOLDINGS, LLC, *et al.* and :
OLD SOUTH APARTMENTS, LLC, :
: :
Plaintiffs, :
: :
v. : Adv. Pro. No. 10-50723 (BLS)
: :
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; SPERRY VAN :
NESS/WILLIAM T. STRANGE & :
ASSOCIATES, INC. and MONA REMY :
BERKE, :
: :
Defendants. :

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.

AMENDED COMPLAINT

RC Sooner Holdings, LLC (“Sooner Holdings”) and certain direct and indirect subsidiaries of Sooner Holdings as debtors and debtors in possession (collectively, “Debtors”) in these chapter 11 cases and Old South Apartments, LLC (together with the Debtors, “Plaintiffs”) bring this Amended Complaint against the above-captioned Defendants and allege the following:

Jurisdiction and Venue

1. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334 and Federal Rule of Bankruptcy Procedure 7001 because this is a civil proceeding arising in or related to the Debtors’ case under 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) & (O) because it attempts to determine the validity or extent of a mortgage lien and the adjustment of the debtor-creditor relationship.

2. Venue of this adversary proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409 because this action arises under and is related to the underlying bankruptcy proceeding.

Parties

3. The Debtors are each debtors and debtors in possession in the above-captioned bankruptcy by virtue of having filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on February 22, 2010.

4. Plaintiff Old South Apartments, LLC is an Oklahoma limited liability company with its principal place of business in Oklahoma. Old South Apartments, LLC – a non-debtor entity – is joined to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7020 because it has a right to the requested relief (jointly, severally or in the alternative) with the Debtors and common questions of law and fact will arise in this proceeding.

5. Defendant RemyCo., Inc. (“RemyCo.”) is an Oklahoma corporation with its principal place of business in Tulsa County, Oklahoma.

6. Defendant The Remy Companies, Inc. (“Remy Cos.”) is an Oklahoma corporation with its principal place of business in Tulsa County, Oklahoma.

7. Defendant Home Realty Ventures, Inc. (“Home Realty Ventures”) is an Oklahoma corporation with its principal place of business in Tulsa County, Oklahoma.

8. Defendant Bradford Creek Properties, LLC (“Bradford Creek Properties”) is an Oklahoma limited liability company with its principal place of business in Tulsa County, Oklahoma.

9. Defendant Landrun Design and Development Co., Inc. (“Landrun Design”) is an Oklahoma corporation with its principal place of business in Tulsa County, Oklahoma.

10. Defendant Diamond Pointe, LLC (“Diamond Point”) is an Oklahoma limited liability company with its principal place of business in Tulsa County, Oklahoma.

11. Defendant Bluechip Holdings, LP (“Bluechip Holdings”), is an Oklahoma limited partnership with its principal place of business in Tulsa County, Oklahoma. (Home Realty Ventures, Bradford Creek Properties, Landrun Design and Bluechip Holdings are sometimes collectively referred to herein as the “**Selling Defendants**”).

12. Defendant Tim L. Remy (“Tim” or “Tim Remy”) is an individual who is a citizen of Tulsa County, Oklahoma.

13. Defendant Tim J. Remy (“TJ” or “TJ Remy”) is an individual who is a citizen of Tulsa County, Oklahoma.

14. Defendant Sherry E. Remy (“Sherry” or “Sherry Remy”) is an individual who is a citizen of Tulsa County, Oklahoma.

15. Defendant L. Leon Remy (“Leon” or “Leon Remy”) is an individual who, upon information and belief, is a citizen of Tulsa County, Oklahoma.

16. Defendant Robin E. Remy (“Robin” or “Robin Remy”) is an individual who, upon information and belief, is a citizen of Tulsa County, Oklahoma.

17. Defendant Sherry E. Remy Revocable Trust DTD July 14, 1997 (the “Sherry Remy Trust”) is, upon information and belief, an Oklahoma revocable trust formed by Sherry E. Remy – a citizen of Tulsa County, Oklahoma.

18. Defendant L. Leon Remy Revocable Trust DTD July 14, 1997 (the “Leon Remy Trust”) is, upon information and belief, an Oklahoma revocable trust formed by L. Leon Remy – a citizen of Tulsa County, Oklahoma.

19. Defendant Mona Remy Berke (“Mona” or “Mona Berke”) is an individual who, upon information and belief, is a citizen of Tulsa County, Oklahoma. (Defendants RemyCo., Remy Cos., Tim, TJ, Sherry, Leon, Robin, Mona, the Sherry Remy Trust and the Leon Remy Trust are sometimes collectively, all, or a combination of more than one, jointly and severally, referred to herein as the “**Remys**,” and in the actions or omissions alleged herein, were the duly authorized agents and representatives of one another in the course of the planning and execution of the common plan, scheme or design alleged herein).

20. Defendant Sperry Van Ness/William T. Strange Associates, Inc. (“SVN”) is an Oklahoma corporation based in Oklahoma City, Oklahoma, by and through broker/advisor William T. Strange (“Strange”) and who acted at all times alleged herein as the disclosed, general agent and representative of the Remys.

Factual Allegations

The Apartment Complexes

21. CC Apartments, LLC, Brixton Square Apartments, LLC, Magnolia Manor Apartments, LLC, Fulton Plaza Apartments, LLC, Salida Apartments, LLC, Old South Apartments, LLC, Pomeroy Park Apartments, LLC, Southern Hills Villa Apartments, LLC and Savannah South Apartments, LLC (collectively, “**Apartment LLCs**”) collectively hold, operate and maintain nine separate apartment complexes comprising approximately 850 multi-family residential units for lease in Tulsa, Oklahoma (the “**Apartment**s”).

22. Prior to October 29, 2009, Home Realty Ventures, an entity owned and controlled by the Remys, owned 100% of the membership units of CC Apartments, LLC, which owned, operated and maintained real property and improvements known as the Cedar Crest Apartments located at 401 South Cedar Street in Owasso, Oklahoma (hereinafter, said real property and improvements are referred to as the “Cedar Crest Apartments”). The Cedar Crest Apartments were subject to and encumbered by a real estate mortgage (the “Cedar Crest Mortgage”), made, executed and delivered, along with a promissory note, by Home Realty Ventures to Royal Bank of Canada in the total principal sum of \$1,600,000.00 plus interest (the “Cedar Crest Loan”). The Cedar Crest Loan and Cedar Crest Mortgage were later assigned to Federal National Mortgage Association (Fannie Mae) (“Fannie Mae”).

23. Prior to October 29, 2009, Bradford Creek Properties, an entity owned and controlled by the Remys, owned 100% of the membership units of Brixton Square Apartments LLC, which owned, operated and maintained real property and improvements known as the Brixton Square Apartments located at 4655 South Darlington Avenue in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Brixton Square

Apartments”). The Brixton Square Apartments were subject to and encumbered by a real estate mortgage (the “Brixton Square Mortgage”), made, executed and delivered, along with a promissory note, by Bradford Creek Properties to Royal Bank of Canada in the total principal sum of \$3,040,000.00 plus interest (the “Brixton Square Loan”). The Brixton Square Loan and Brixton Square Mortgage were later assigned to Fannie Mae.

24. Prior to October 29, 2009, Landrun Design, an entity owned and controlled by the Remys, owned 100% of the membership units of Magnolia Manor Apartments LLC, which owned, operated and maintained real property and improvements known as the Magnolia Manor Apartments located at 4747 South Darlington Avenue in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Magnolia Manor Apartments”). The Magnolia Manor Apartments were subject to and encumbered by a real estate mortgage (the “Magnolia Manor Mortgage”), made, executed and delivered, along with a promissory note, on June 26, 2008 by Landrun Design to Royal Bank of Canada in the total principal sum of \$3,040,000.00 plus interest (the “Magnolia Manor Loan”). The Magnolia Manor Loan and Magnolia Manor Mortgage were later assigned to Fannie Mae.

25. Prior to October 29, 2009, Bradford Creek Properties also owned 100% of the membership units of Fulton Plaza Apartments LLC, which owned, operated and maintained real property and improvements known as the Fulton Plaza Apartments located at 4646 South Fulton Avenue in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Fulton Plaza Apartments”). The Fulton Plaza Apartments were subject to and encumbered by a real estate mortgage (the “Fulton Plaza Mortgage”), made, executed and delivered, along with a promissory note, on June 26, 2008 by Bradford Creek Properties to Royal Bank of Canada in the total principal sum of \$2,240,000.00 plus interest (the “Fulton Plaza Loan”). The Fulton

Plaza Loan and Fulton Plaza Mortgage were later assigned to Fannie Mae.

26. Prior to October 29, 2009, Diamond Pointe, an entity owned and controlled by the Remys, owned 100% of the membership units of Salida Apartments LLC, which owned, operated and maintained real property and improvements known as the Salida Creek Apartments located at 10129-10151 East 32nd Street in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Salida Creek Apartments”). The Salida Creek Apartments were subject to and encumbered by a real estate mortgage (the “Salida Creek Mortgage”), made, executed and delivered, along with a promissory note, by Diamond Pointe to Royal Bank of Canada in the total principal sum of \$3,700,000.00 plus interest (the “Salida Creek Loan”). The Salida Creek Loan and Salida Creek Mortgage were later assigned to Fannie Mae.

27. Prior to October 29, 2009, Bluechip Holdings, an entity owned and controlled by the Remys, owned 100% of the membership units of Old South Apartments LLC, which owned, operated and maintained real property and improvements known as the Old South Apartments located at 5115-5137 East 47th Street in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Old South Apartments”). The Old South Apartments were subject to and encumbered by a real estate mortgage (the “Old South Mortgage”), made, executed and delivered, along with a promissory note, by Bluechip Holdings to Citibank, N.A. in the total principal sum of \$1,640,000.00 plus interest (the “Old South Loan”).

28. Prior to October 29, 2009, Bradford Creek Properties also owned 100% of the membership units of Pomeroy Park Apartments LLC, which owned, operated and maintained real property and improvements known as the Pomeroy Park Apartments located at 6805 South Lewis Avenue in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Pomeroy Park Apartments”). The Pomeroy Park Apartments were subject to and

encumbered by a real estate mortgage (the “Pomeroy Park Mortgage”), made, executed and delivered, along with a promissory note, by Bradford Creek Properties to Keycorp Real Estate Capital Markets in the total principal sum of \$8,000,000.00 plus interest (the “Pomeroy Park Loan”). The Pomeroy Park Loan and Pomeroy Park Mortgage were later assigned to Fannie Mae.

29. Prior to October 29, 2009, Bradford Creek Properties also owned 100% of the membership units of Southern Hills Villa Apartments LLC, which owned, operated and maintained real property and improvements known as the Southern Hills Villa Apartments located at 6609 South Lewis Avenue in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Southern Hills Villa Apartments”). The Southern Hills Villa Apartments were subject to and encumbered by a real estate mortgage (the “Southern Hills Villa Mortgage”), made, executed and delivered, along with a promissory note, dated January 9, 2009 by Bradford Creek Properties to Keycorp Real Estate Capital Markets in the total principal sum of \$3,320,000.00 plus interest (the “Southern Hills Villa Loan”). The Southern Hills Villa Loan and Southern Hills Villa Mortgage were later assigned to Fannie Mae.

30. Prior to October 29, 2009, Bluechip Holdings also owned 100% of the membership units of Savannah South Apartments LLC, which owned, operated and maintained real property and improvements known as the Savannah South Apartments located at 4631 South Braden in Tulsa, Oklahoma (hereinafter, said real property and improvements are referred to as the “Savannah South Apartments”). The Savannah South Apartments were subject to and encumbered by a real estate mortgage (the “Savannah South Mortgage”), made, executed and delivered, along with a promissory note, on June 24, 2008 by Bluechip Holdings to Royal Bank of Canada in the total principal sum of \$2,187,000.00 plus interest (the “Savannah South Loan”).

The Savannah South Loan and Savannah South Mortgage were later assigned to Fannie Mae.²

Marketing and Sale of the Apartments

31. In or around early October 2009, the Remys, through their general agent and real estate broker, SVN (through its agent Strange), commenced marketing the Apartments for sale. At the same time, the Remys and SVN started negotiations with Daniel Gordon (“Gordon”), who would later become manager of Sooner Holdings, the sole member of the RC LLCs.

32. Negotiations between the Remys, SVN and Sooner Holdings continued throughout the month of October 2009, and the Remys and Sooner Holdings resolved to complete the purchase of the Apartments by having Sooner Holdings form the RC LLCs and acquire all of the membership interests in the Apartment LLCs from the Selling Defendants.

33. The Remys and SVN knew and understood that the information and documentation they were providing to Gordon and Sooner Holdings and later, RC LLCs, was for the purpose of enabling Sooner Holdings and later RC LLCs to evaluate the Apartments, the Loans and the Mortgages to determine whether to proceed with the transaction. Throughout the negotiations between the parties, it was never disclosed by the Selling Defendants, the Remys or SVN that any one or more of the Loans or Mortgages were in default or that there was any threat of litigation.

34. After a thorough review of the documents and information provided by the Remys and SVN, each of the RC LLCs were formed. As the parties contemplated during the

² The Cedar Crest Apartments, Brixton Square Apartments, Magnolia Manor Apartments, Fulton Plaza Apartments, Salida Creek Apartments, Old South Apartments, Pomeroy Park Apartments, Southern Hills Villa Apartments and Savannah South Apartments are sometimes collectively referred to herein as the “**Apartments.**” Similarly, the Cedar Crest Loan, Brixton Square Loan, Magnolia Manor Loan, Fulton Plaza Loan, Salida Creek Loan, Old South Loan, Pomeroy Park Loan, Southern Hills Villa Loan and Savannah South Loan are sometimes collectively referred to herein as the “**Loans,**” and the Cedar Crest Mortgage, Brixton Square Mortgage, Magnolia Manor Mortgage, Fulton Plaza Mortgage, Salida Creek Mortgage, Old South Mortgage, Pomeroy Park Mortgage, Southern Hills Villa Mortgage and Savannah South Mortgage are sometimes collectively referred to herein as the “**Mortgages.**”

negotiations concerning the Apartments, Gordon was at that time, and remains, the sole manager of Sooner Holdings and all of the RC LLCs, and the formation of all of these limited liability companies was necessarily performed to enable the acquisition of the Apartment LLCs and thereby transfer ownership of the Apartments to the RC LLCs.

35. On or about October 29, 2009 each of the RC LLCs closed their purchases of 100% of the membership units of the Apartment LLCs from the Selling Defendants (the “Closing”), as follows:

a. By Limited Liability Purchase Agreement made and executed by RC Cedar Crest and Home Realty Ventures, RC Cedar Crest purchased 100% of the membership units in CC Apartments, LLC, from Home Realty Ventures for the sum of \$1,649,842.00, less the total debt liability associated with CC Apartments, LLC under the Cedar Crest Loan and Cedar Crest Mortgage, represented to be \$1,589,142.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Cedar Crest Purchase”);

b. By Limited Liability Purchase Agreement made and executed by RC Brixton Square and Bradford Creek Properties, RC Brixton Square purchased 100% of the membership units in Brixton Square Apartments, LLC, from Bradford Creek Properties for the sum of \$3,171,370.00, less the total debt liability associated with Brixton Square Apartments, LLC under the Brixton Square Loan and Brixton Square Mortgage, represented to be \$3,019,370.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Brixton Square Purchase”);

c. By Limited Liability Purchase Agreement made and executed by RC Magnolia Manor and Landrun Design, RC Magnolia Manor purchased 100% of the

membership units in Magnolia Manor Apartments, LLC, from Landrun Design for the sum of \$3,179,129.00, less the total debt liability associated with Magnolia Manor Apartments, LLC under the Magnolia Manor Loan and Magnolia Manor Mortgage, represented to be \$3,012,129.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Magnolia Manor Purchase”);

d. By Limited Liability Purchase Agreement made and executed by RC Fulton Plaza and Bradford Creek Properties, RC Fulton Plaza purchased 100% of the membership units in Fulton Plaza Apartments, LLC, from Bradford Creek Properties for the sum of \$2,294,038.00, less the total debt liability associated with Fulton Plaza Apartments, LLC under the Fulton Plaza Loan and Fulton Plaza Mortgage, represented to be \$2,218,938.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Fulton Plaza Purchase”);

e. By Limited Liability Purchase Agreement made and executed by RC Salida and Diamond Pointe, RC Salida purchased 100% of the membership units in Salida Apartments, LLC, from Diamond Pointe for the sum of \$3,818,227.00, less the total debt liability associated with Salida Apartments, LLC under the Salida Creek Loan and Salida Creek Mortgage, represented to be \$3,682,477.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Salida Purchase”);

f. By Limited Liability Purchase Agreement made and executed by RC Old South and Bluechip Holdings, RC Old South purchased 100% of the membership units in Old South Apartments, LLC, from Bluechip Holdings for the sum of \$1,704,688.00, less the total debt liability associated with Old South Apartments, LLC under the Old South Loan and Old South Mortgage, represented to be \$1,622,688.00 as of closing, and less all

accrued employee compensation, expenses and liabilities (the “Old South Purchase”);

g. By Limited Liability Purchase Agreement made and executed by RC Pomeroy Park and Bradford Creek Properties, RC Pomeroy Park purchased 100% of the membership units in Pomeroy Park Apartments, LLC, from Bradford Creek Properties for the sum of \$8,241,700.00, less the total debt liability associated with Pomeroy Park Apartments, LLC under the Pomeroy Park Loan and Pomeroy Park Mortgage, represented to be \$7,962,940.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Pomeroy Park Purchase”);

h. By Limited Liability Purchase Agreement made and executed by RC Southern Hills Villa and Bradford Creek Properties, RC Southern Hills Villa purchased 100% of the membership units in Southern Hills Villa Apartments, LLC, from Bradford Creek Properties for the sum of \$3,435,634.00, less the total debt liability associated with Southern Hills Villa Apartments, LLC under the Southern Hills Villa Loan and Southern Hills Villa Mortgage, represented to be \$3,305,944.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Southern Hills Villa Purchase”); and

i. By Limited Liability Purchase Agreement made and executed by RC Savannah South and Bluechip Holdings, RC Savannah South purchased 100% of the membership units in Savannah South Apartments, LLC, from Bluechip Holdings for the sum of \$2,278,033.00, less the total debt liability associated with Savannah South Apartments, LLC under the Savannah South Loan and Savannah South Mortgage, represented to be \$2,168,033.00 as of closing, and less all accrued employee compensation, expenses and liabilities (the “Savannah South Purchase”). (All of the

Limited Liability Purchase Agreements entered into as referenced in the foregoing subparagraphs, which are nearly identical in nature, are sometimes collectively referred to as the “**Agreements**”).

36. Under the Agreements, the RC LLCs were obligated to pay – by assumption of approximately \$28,581,661.00 in Loans and Mortgages on the Apartments and cash payout to the Selling Defendants, SVN and the closing agent of approximately \$1,196,000.00 – total consideration of \$29,772,661.00 for the purchase of the interests in the Apartment LLCs.

37. Sooner Holdings caused the cash payout of approximately \$1,196,000.00 to be delivered to the Selling Defendants, SVN and the closing agent on or about November 6, 2009 (also included within the defined term, “**Closing**”).

38. The Agreements contained express representations and warranties from the Selling Defendants, including *inter alia*, the following:

a. the sellers possessed all requisite power and authority to enter into, execute and deliver the Agreements and perform their obligations thereunder;

b. execution, delivery and performance of the Agreements and any other agreement, document or instrument in connection with consummation of the transactions contemplated by the Agreements by the Selling Defendants have been duly authorized by all corporate and third parties’ actions;

c. all documents including, *inter alia*, financial statements and other materials provided by Selling Defendants to RC LLCs are true, correct and accurate as of Closing and do not contain any inaccuracies or misstatements;

d. no claims, suits, actions or proceedings were pending or to Selling Defendants’ knowledge threatened against or affecting the Apartment LLCs or the

Apartments;

e. execution and delivery of the Agreements by Selling Defendants, performance thereunder and consummation of the transactions contemplated thereby would not conflict with, contravene or result in a breach or violation of or constitute a default under or give rise to a right of termination, cancellation, acceleration or modification of any right or obligation under or require any consent, waiver or approval under any note, bond, debt instrument, indenture, mortgage, lease, loan agreement or the like to which Selling Defendants or the Apartment LLCs are parties or by which Selling Defendants or the Apartments are bound, including the Loans and Mortgages;

f. Selling Defendants have as of Closing operated their businesses in the ordinary course and in a manner consistent with past practice;

g. there has been no change in the business, operations, assets, liabilities or financial condition of Selling Defendants that has had or reasonably could be expected to have a material adverse effect upon the business, operations, assets, liabilities or financial condition of Selling Defendants and no material change outside the ordinary course of business;

h. there has been no adverse change in the working capital position of Selling Defendants;

i. there has been no receipt of notice of termination of any material contract and no indication of any intention by any party to terminate or not renew a material contract; and

j. no obligation or liability incurred by Selling Defendants for money borrowed as a result of guarantee of obligations of another or otherwise is in default or

arrears in payment.

(Collectively, the “**Representations and Warranties**”).

39. Sooner Holdings and the RC LLCs negotiated with the Remys and the Selling Defendants and reasonably relied upon the Representations and Warranties they provided and Selling Defendants ultimately made in the Agreements in considering whether to proceed with the transactions and, thereby, take over ownership and responsibility for the Apartments and the Loans and Mortgages.

40. During the negotiations the parties conducted concerning the proposed transactions and at Closing, the Selling Defendants and the Remys knew the Representations and Warranties were false or materially deficient. In making and providing the Representations and Warranties, the Remys did not act in good faith in conducting the business or affairs of Selling Defendants, committed acts involving intentional misconduct or a knowing violation of law, and breached their duties of good faith, fair dealing and loyalty to Selling Defendants.

41. The Remys also failed to notify Fannie Mae, the holder and mortgagee under eight of the nine Loans and Mortgages (*i.e.*, all Loans and Mortgages, except for the Old South Loan and the Old South Mortgages, are collectively referred to herein as the “**Fannie Mae Loans**” and the “**Fannie Mae Mortgages**”), that the ownership of its debtor Apartment LLCs had changed or obtain approval from them for such change and authority to enter into the Agreements.

42. At or shortly following the Closing, Gordon was elected sole Manager of each individual Apartment LLC.

Defaults and the Secret Forbearance Agreements

43. While the parties were negotiating the sale and purchase of the Apartments and the Apartment LLCs, unbeknownst to Gordon, Sooner Holdings or the RC LLCs, the Loans and

Mortgages were in default and, upon information and belief, had been in default since approximately September 2, 2009 and remained in default as of the Closing.

44. During the time since that default, however, Selling Defendants and, specifically TJ Remy, Sherry Remy and SVN, represented and, later in the Representations and Warranties given at Closing (excluding SVN) reaffirmed, that none of the Loans, Mortgages, Apartments or Apartment LLCs were in default.

45. On or about November 19, 2009 (twenty-one days after the Closing and when the RC LLCs owned 100% of the Apartment LLCs as wholly-owned subsidiaries and had assumed and begun to perform all obligations under the Loans and Mortgages, and with neither the knowledge nor the consent or authority of Sooner Holdings, the RC LLCs or the Apartment LLCs), the Remys negotiated with Fannie Mae and then made, executed and delivered – by wrongfully and through unauthorized signing for most of the Apartment LLCs – forbearance agreements pursuant to which the Remys: (i) acknowledged default under the Fannie Mae Loans and Fannie Mae Mortgages; (ii) acknowledged receipt of a “Demand Letter and Acceleration Letter;” and (iii) entered into an agreement obligating the affected Apartment LLCs to pay forbearance payments as follows:

a. Leon Remy executed a forbearance agreement letter purportedly on behalf of CC Apartments, LLC, as its “managing member,” which purported to obligate CC Apartments, LLC, to pay Fannie Mae forbearance payments of \$21,176.74 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$39,741.48 due November 19, 2009;

b. Tim Remy executed a forbearance agreement letter purportedly on behalf of Brixton Square Apartments, LLC, as its “managing member,” which purported to

obligate Brixton Square Apartments, LLC, to pay Fannie Mae forbearance payments of \$34,065.71 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$63,820.33 due November 19, 2009;

c. Tim Remy executed a forbearance agreement letter purportedly on behalf of Magnolia Manor Apartments, LLC, as its “managing member,” which purported to obligate Magnolia Manor Apartments, LLC, to pay Fannie Mae forbearance payments of \$38,329.84 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$71,335.36 due November 19, 2009;

d. Tim Remy executed a forbearance agreement letter purportedly on behalf of Fulton Plaza Apartments, LLC, as its “managing member,” which purported to obligate Fulton Plaza Apartments, LLC, to pay Fannie Mae forbearance payments of \$25,752.94 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$48,444.76 due November 19, 2009;

e. Tim Remy executed a forbearance agreement letter purportedly on behalf of Magnolia Manor Apartments, LLC, as its “managing member,” which purported to obligate Magnolia Manor Apartments, LLC, to pay Fannie Mae forbearance payments of \$38,329.84 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$71,335.36 due November 19, 2009;

f. Tim Remy executed a forbearance agreement letter purportedly on behalf of Salida Apartments, LLC, as its “managing member,” which purported to obligate Salida Apartments, LLC, to pay Fannie Mae forbearance payments of \$44,367.78 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$82,500.00 due November 19, 2009;

g. Tim Remy executed a forbearance agreement letter purportedly on behalf of Pomeroy Park Apartments, LLC, as its “managing member,” which purported to obligate Pomeroy Park Apartments, LLC, to pay Fannie Mae forbearance payments of \$122,222.85 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$261,316.15 due November 19, 2009; and

h. Tim Remy executed a forbearance agreement letter purportedly on behalf of Southern Hills Villa Apartments, LLC, as its “managing member,” which purported to obligate Southern Hills Villa Apartments, LLC, to pay Fannie Mae forbearance payments of \$47,775.78 monthly, beginning December 10, 2009 through March 10, 2010 plus an increased monthly payment of \$102,505.09 due November 19, 2009.

(Collectively, the “**Forbearance Agreements**”).

46. Tim Remy, TJ Remy, Robin Remy, Leon Remy, Sherry Remy, the Leon Remy Trust and the Sherry Remy Trust signed the various Forbearance Agreements in both individual and personal capacities and as “Key Principals” – which, upon information and belief, was at Fannie Mae’s request.

47. The Remys’ unlawful and unauthorized execution of the Forbearance Agreements purport to obligate the affected Apartment LLCs to pay approximately \$1,809,411.80 in forbearance and principal payments as a result of the alleged defaults under the Fannie Mae Loans and Fannie Mae Mortgages. In addition, other terms of the Forbearance Agreements purport to bind or obligate the Apartment LLCs and provide releases and waiver of certain rights and defenses in favor of Fannie Mae.

48. The Remys having actively concealed these material facts from Fannie Mae, Sooner Holdings, the RC LLCs, and the Apartment LLCs operated under a cloak of actual

authority. Fannie Mae was not informed of the RC LLCs' purchase of the Apartment LLCs until late January 2010. Sooner Holdings, the RC LLCs and the Apartment LLCs were not made aware of the existence of the defaults under the Fannie Mae Loans and Fannie Mae Mortgages and the Forbearance Agreements purportedly executed on behalf of the affected Apartment LLCs until approximately that same time.

49. Upon learning of the change in ownership of the Apartment LLCs, Fannie Mae declared non-financial defaults under the Fannie Mae Loans and Fannie Mae Mortgages and notified the Remys and Apartment LLCs, by and through their new owners, the RC LLCs, of the default.

Causes of Action

Count One – Breach of Contract **(Against the Selling Defendants)**

Plaintiffs reallege and restate each and every allegation set forth above as if the same were fully set forth verbatim herein and incorporate the same herein by reference.

50. The RC LLCs entered into the Agreements which contained Selling Defendants' express Representations and Warranties to the RC LLCs and Sooner Holdings. The Representations and Warranties were material to the Agreements.

51. The Representations and Warranties contained in the Agreements, relative to the purchase of Apartment LLCs whose mortgages were Fannie Mae Mortgages, were false, and as a result the Selling Defendants have breached those Agreements and the RC LLCs have been damaged as a result thereof.

52. The RC LLCs are entitled to rescission of the Agreements, together with restitution or rescissionary damages. In the alternative, the RC LLCs are entitled to judgment against the Selling Defendants for their breach of the respective Agreements and for all damages sustained by

the RC LLCs in an amount to be determined at trial, including indemnification damages, all of Plaintiffs' actual, consequential and incidental damages, all of Plaintiffs' lost profits, attorneys' fees and costs incurred by Plaintiffs herein, together with pre- and post-judgment interest.

Count Two – Fraud/Misrepresentation
(Against the Selling Defendants, the Remys and SVN)

Plaintiffs reallege and restate each and every allegation set forth above as if the same were fully set forth verbatim herein and incorporate the same herein by reference.

53. The Selling Defendants, the Remys and SVN made misrepresentations of material fact to Sooner Holdings and RC LLCs prior to and during execution of the Agreements with the intent to induce Sooner Holdings and the RC LLCs to execute the Agreements.

54. The Selling Defendants and the Remys made express Representations and Warranties in the Agreements to Sooner Holdings and RC LLCs: (i) knowing that the same were untrue and/or they omitted material facts such that the Representations and Warranties were substantially misleading to Sooner Holdings and RC LLCs and (ii) knowing that Sooner Holdings and RC LLCs would rely upon the Representations and Warranties in deciding whether to purchase the Apartment LLCs and assume the nearly \$30,000,000 in cash payments and debt obligations for the Apartments under the existing Loans and Mortgages.

55. The Selling Defendants and the Remys further represented by and through their general agent SVN that none of the Loans or Mortgages were in default, knowing that those representations were material to the proposed transaction and that Sooner Holdings and RC LLCs would rely upon them.

56. The Selling Defendants, the Remys and SVN intended Sooner Holdings and the RC LLCs to rely on their misrepresentation or, alternatively, the misrepresentations and omissions

stood uncorrected by the Selling Defendants, the Remys or SVN in reckless disregard for the truth.

57. In making the misrepresentations and/or omissions, Selling Defendants, the Remys and SVN failed to exercise reasonable care required of competent persons, brokers, realtors, commercial sellers and/or commercial entities and their owners standing in their positions with respect to the transactions contemplated by the Agreements and under consideration by Sooner Holdings and RC LLCs.

58. Sooner Holdings and RC LLCs reasonably relied upon the Representations and Warranties provided by the Selling Defendants and the Remys in the Agreements and at Closing, and they did so to their detriment and have suffered damages as a result of the misrepresentations or omissions.

59. The Representations and Warranties, and the representation that the Fannie Mae Loans and Fannie Mae Mortgages were not in default, were in fact untrue and/or were material omissions.

60. Sooner Holdings and the RC LLCs have each been damaged as a result of the misrepresentations (fraudulent or negligent), such damages taking to form of: (i) their consent to enter into the Agreements purchasing the Apartment LLCs along with the assumption of obligations under the Loans and Mortgages totaling approximately \$28,581,661.00 and payment of cash to Selling Defendants, SVN and the closing agent totaling approximately \$1,196,000.00; (ii) the purported assumption of approximately \$1,809,411.80 in “forbearance payments” after the Closing; and (iii) other indemnification, consequential and incidental damages and attorneys’ fees.

61. The RC LLCs are entitled to rescission of the Agreements, together with restitution or rescissionary damages. In addition or in the alternative, the Selling Defendants, the Remys and

SVN are jointly and severally liable to Sooner Holdings and the RC LLCs for their misrepresentations and material omissions in an amount to be determined at trial.

62. Because the Selling Defendants, the Remys and SVN's acts and omissions were willful and/or undertaken in reckless disregard for the truth, Sooner Holdings and the RC LLCs are also entitled to an award of punitive damages to punish and deter similar conduct in the future.

Count Three – Civil Conspiracy
(Against the Selling Defendants and the Remys and SVN)

Plaintiffs reallege and restate each and every allegation set forth above as if the same were fully set forth verbatim herein and incorporate the same herein by reference.

63. The Selling Defendants, the Remys and SVN combined to do unlawful acts and to do lawful acts by unlawful means, as alleged herein.

64. The Selling Defendants, the Remys and SVN, one or more, pursued an independently unlawful purpose in selling the Apartment LLCs to the RC LLCs by means of fraud, misrepresentation or racketeering.

65. Sooner Holdings and the RC LLCs were damaged as a result of the civil conspiracy alleged herein and are entitled to judgment against Selling Defendants and the Remys, one or more, jointly and severally, for all damages occasioned as a result of such conspiracy as determined at trial.

66. The Selling Defendants, the Remys and SVN's acts and omissions, one or more, in furtherance of their conspiracy were willful and/or undertaken in reckless disregard of Sooner Holdings, the Apartment LLCs and the RC LLCs' rights. As a result, Sooner Holdings, the Apartment LLCs and the RC LLCs are also entitled to punitive damages in an amount sufficient to punish and deter similar conduct in the future.

Count Four – Racketeering Influenced Corrupt Organization [RICO] Liability
(Against the Selling Defendants and the Remys)

Plaintiffs reallege and restate each and every allegation set forth above as if the same were fully set forth verbatim herein and incorporate the same herein by reference.

67. The Selling Defendants, RemyCo., Tim Remy, TJ Remy, Sherry Remy, Robin Remy, Leon Remy, the Sherry Remy Trust, the Leon Remy Trust, Mona Berke (who was employed by the Remys) (collectively, the “RICO Defendants”) committed and/or aided and abetted the commission of at least two or more of the following indictable offenses: (i) mail fraud, as that charge is defined by 18 U.S.C. § 1341; (ii) wire fraud, as that charge is defined by 18 U.S.C. § 1343; (iii) financial institution fraud, as that charge is defined by 18 U.S.C. § 1344; and (iv) interstate transportation of stolen property, including property whose transfer was fraudulently obtained or induced, as that charge is defined by 18 U.S.C. § 2314.

68. The RICO Defendants acted as a union or group of individuals and entities they owned and controlled were an “enterprise,” as that term is defined by 18 U.S.C. § 1961.

69. The RICO Defendants’ enterprise affected interstate commerce because its activities planned, concocted and perpetrated a scheme or artifice, across state lines and in interstate commerce, to defraud and mislead Sooner Holdings and RC LLCs and obtain money or property from them by means of false or fraudulent pretenses, representations or promises, including without limitation providing the Representations and Warranties, inducing them to purchase the Apartment LLCs and assume the obligations under the Loans and Mortgages (hereinafter, the “Fraudulent Scheme”).

70. In the course of planning and perpetrating the Fraudulent Scheme and in execution of such scheme, the RICO Defendants themselves and through their disclosed, general agent, SVN

or others acting on their behalf and at their direction, deposited documents and information, or caused to be deposited documents and information, and to be sent or delivered by private or commercial interstate carrier and took or received therefrom, documents and information and knowingly caused to be delivered by such carrier according to direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, such documents and information relative to the Apartments, the Loans, the Mortgages, Apartment LLCs and the financial condition of those entities and negotiable instruments. In doing so, the RICO Defendants committed mail fraud, in violation of 18 U.S.C. § 1341, in furtherance and execution of their Fraudulent Scheme.

71. Also in the course of planning and perpetrating the Fraudulent Scheme and in execution of such scheme, the RICO Defendants, themselves and through their disclosed, general agent, SVN or others acting on their behalf and at their direction, transmitted or caused to be transmitted by means of wire, namely telephone, facsimile and/or electronic mail communications, and communications in interstate commerce, writings, documents, data and information relative to the Apartments, the Loans, the Mortgages, Apartment LLCs and the financial condition of those entities and negotiable instruments. In doing so, the RICO Defendants committed wire fraud, in violation of 18 U.S.C. § 1343, in furtherance and execution of their Fraudulent Scheme.

72. Also in the course of perpetrating the Fraudulent Scheme and in execution and furtherance of such scheme, the RICO Defendants knowingly executed a scheme or artifice to defraud Fannie Mae, a federally chartered and/or federally insured financial institution, and/or obtained benefits and forbearance agreements from Fannie Mae by means of false and fraudulent pretenses, representations and promises, namely the RICO Defendants' wrongful and unauthorized

execution of the Forbearance Agreements. In doing so, the RICO Defendants committed bank fraud, in violation of 18 U.S.C. § 1344, in furtherance and execution of their Fraudulent Scheme.

73. Also in the course of perpetrating the Fraudulent Scheme and in execution and furtherance of the scheme, the RICO Defendants intentionally and knowingly transported, or caused to be transported by their agents or others acting on their behalf or at their direction, in interstate commerce, money or property of Sooner Holdings and RC LLCs in excess of \$5,000, with knowledge that the money had been paid by Sooner Holdings and RC LLCs, and taken and received by RICO Defendants by virtue of their Fraudulent Scheme and RICO Defendants' intent to defraud Sooner Holdings and RC LLCs. In doing so, the RICO Defendants unlawfully transported ill-gotten goods, namely, the monies paid by Sooner Holdings and the RC LLCs that were obtained by fraudulent means, across state lines, in violation of 18 U.S.C. § 2314, in furtherance and execution of their Fraudulent Scheme.

74. The RICO Defendants' conduct alleged herein constitutes "racketeering activity" and a pattern of racketeering activity as defined by 18 U.S.C. §§ 1961, 1962(c) and 1964(c).

75. The RICO Defendants committed the alleged racketeering activities and the acts alleged to be in violation of Title 18 against the United States and each of the RICO Defendants aided, abetted, counseled, commanded, induced or procured commission of such acts and are punishable as a "principal" as defined by 18 U.S.C. § 2.

76. The RICO Defendants committed acts in violation of the Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.* ("RICO"), and they conspired to violate RICO by their words or actions, manifesting agreement to participate directly or indirectly in the affairs of their enterprise through a pattern of racketeering activity.

77. Sooner Holdings and the RC LLCs were damaged as a direct and proximate result

of the RICO Defendants' violation of RICO and conspiracy to violate RICO (18 U.S.C. § 1962(c) & (d)), by: (i) entering into and consummating the Agreements; (ii) purchasing the Apartment LLCs and assuming and commencing payments on the Apartment LLCs' obligations under the Loans and Mortgages in an aggregate amount of approximately \$29,772,661.00, plus the purported assumption by the Apartment LLCs of approximately \$1,809,411.80 in "forbearance payments" under Fannie Mae Loans and Fannie Mae Mortgages after the Closing; and (iii) other consequential and incidental damages.

78. Sooner Holdings and the RC LLCs are entitled to judgment against the RICO Defendants, jointly and severally, for their violations of RICO in an amount to be determined at trial, including treble damages, attorneys' fees, the costs of this action and pre- and post-judgment interest at the legal rate.

Count Five – Fraudulent Transfer and Recovery Pursuant to 11 U.S.C. §§ 548 and 550
(Against All Defendants)

Plaintiffs reallege and restate each and every allegation set forth above as if the same were fully set forth verbatim herein and incorporate the same herein by reference.

79. On or about October 29, 2009, the Debtors (RC Sooner and the RC LLCs) transferred cash and incurred mortgage debt obligations in the amount of \$29,772,661.00 less amounts attributable to the Old South Purchase (such aggregate amount, the "Transfers") to and for the benefit of one or more of the Defendants for which the Debtors received the membership interests of all of the Apartment LLCs, excluding the membership interests of Old South Apartments, LLC.

80. The Transfers constitute transfers of an interest of the transferring Debtors in property.

81. The transferring Debtors received less than a reasonably equivalent value in exchange for the Transfers.

82. The transferring Debtors (i) were insolvent on the date that the Transfers were made, or became insolvent as a result of such Transfers; (ii) were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with the transferring Debtors was an unreasonably small capital, or (iii) intended to incur, or believed that they would incur, debts that would be beyond the transferring Debtors' ability to pay as such debts matured.

83. The Transfers constituted fraudulent transfers that should be avoided pursuant to Bankruptcy Code section 548 and are recoverable from one or more of the Defendants pursuant to Bankruptcy Code section 550.

Relief Requested

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendants as follows:

A. On Count One, rescission of the Agreements, together with restitution or rescissionary damages or, in the alternative, an award of compensatory damages in an amount to be determined at trial, including indemnification damages, Plaintiffs' lost profits, consequential and incidental damages, attorneys' fees and costs.

B. On Count Two, rescission of the Agreements, together with restitution or rescissionary damages, in addition or in the alternative, an award of compensatory damages in an amount to be determined at trial, including Plaintiffs' lost profits, consequential and incidental damages, attorneys' fees and costs, plus an award of punitive damages in an amount sufficient to punish and deter similar conduct in the future.

C. On Count Three, recovery of the damages alleged herein against any one or more of the conspiring defendants, jointly and severally.

D. On Count Four, an award of compensatory damages, trebled, in an amount to be determined at trial, including Plaintiffs' lost profits, consequential and incidental damages, attorneys' fees and costs.

E. On Count Five, fraudulent transfer and recovery of avoided transfers.

G. Pre- and post-judgment interest on all amounts recovered, at the legal rate.

H. All other relief that the Court deems just and proper.

Dated: March 17, 2010
Wilmington, Delaware

Respectfully Submitted,

Ballard Spahr LLP

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