

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

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IN RE:	:	CHAPTER 11
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RC SOONER HOLDINGS, LLC, et al.,	:	CASE NO. 10-10528 (BLS)
	:	Re: Docket No. 146
	:	
Debtor .	:	<b>Hearing Date: May 25, 2010 @ 11:00 a.m.</b>
	:	<b>Objection Deadline: May 18, 2010 @ 4:00 p.m.</b>
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**MOTION OF THE REMY ENTITIES FOR  
RECONSIDERATION OF STIPULATION AND CONSENT ORDER  
GRANTING MOTION OF FANNIE MAE FOR RELIEF FROM THE  
AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(D) AND RULE 4001  
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

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 (together, “the Remy Entities”), through the undersigned counsel, hereby file this Motion of The Remy Entities for Reconsideration of the Stipulation and Consent Order (“Stipulation and Consent Order”) Granting Motion of Fannie Mae for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362(d) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Motion”), and in support thereof, state as follows:

**JURISDICTION, VENUE, AND STATUTORY BASIS**

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

3. The statutory predicates for relief are Rules 59 and 60 of the Federal Rules of Civil Procedure, made applicable hereto pursuant to Rules 9023 and 9024 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), respectively.

### **BACKGROUND**

#### **A. General Background of Chapter 11 Case**

4. On February 22, 2010 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). By order of this Court, the cases are being jointly administered for procedural purposes only.

5. The Debtors have been operating as a debtor-in-possession under §§ 1102 and 1103 of the Bankruptcy Code since that time.

6. An Official Committee of Unsecured Creditors has not been formed in these cases.

7. The Remy Entities are defendants in two adversary proceedings commenced by the Debtors and a related non-Debtor, and pending at Adversary Proceeding 10-50723 and Adversary Proceeding 10-50719.

#### **B. General Background to Stipulation and Consent Order**

8. A hearing on, among other things, the Motion of Fannie Mae for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362(d) (the “Lift Stay Motion”), was held on April 19, 2010.

9. During the hearing on the Lift Stay Motion, counsel for the Debtors submitted a form of order to the Court regarding the Lift Stay Motion. Counsel for The Remy Entities, requested an opportunity to review the proposed resolution and file objections, if she determined

that it adversely affected her clients' interests. (TR at p. 10).<sup>1</sup> A copy of the Transcript from the April 19, 2010 hearing is attached hereto as Exhibit A.

10. Citing principles of fairness, the Court agreed to allow all parties to review and comment on the proposed form of order before entering it. (TR at 11-12). The Court specifically stated that it was "not looking for filed objections" but instead wanted the parties to notify the Court of the need for a telephone conference if there were objections. (TR at 11).

11. Counsel for the Debtor requested that deadlines be set for submission of the proposed forms of order to the Court and suggested an April 20, 2010, 1:00 deadline, and requested comments by 12:00 that same day. (TR at 12-13). Counsel for the Remy Entities agreed that such timing would be sufficient. (TR at 13).

12. After reviewing the proposed form of Order, later that same day, counsel for the Remy Entities spoke with counsel for the Debtor, raising certain objections to the proposed order, and also notified counsel for Fannie Mae by email that the Remy Entities had objections to the proposed order.

13. Counsel for the Remy Entities spoke with counsel for Fannie Mae the next morning (on April 20) regarding the interest of the Remy Entities to engage in settlement negotiations.

14. Upon notification that Fannie Mae intended to press forward with the proposed resolution, counsel for the Remy Entities reiterated the Remy Entities' objection to the proposed form of order, and provided the parties via email with a summary of their objections to the proposed order. A copy of the summary list of objections is attached hereto as Exhibit B.

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<sup>1</sup> A true and correct copy of relevant pages of the transcript of the April 19, 2010 hearing is attached hereto as Exhibit B.

15. Among those objections was and is the proposed releases by the Debtor entities, which purport to release claims, defenses and/or rights against Fannie Mae by its “predecessors” and “successors,” which may include or be argued to include the Remy Entities.

16. The parties thereafter spoke by telephone in an effort to resolve the objections, but were not successful in reaching agreement.

17. Counsel for the Debtor submitted the proposed form of order to the Court under Certification of Counsel citing the objections raised by Ms. Ramsey and notifying the Court that the Remy Entities requested a hearing to resolve the objections. [Docket No. 142].

18. Thereafter, counsel for Fannie Mae contacted the Court’s Courtroom Deputy and requested that the form of order be entered by the Court. While counsel for Fannie Mae reiterated that the Remy Entities had raised objection to the proposed form of order that communication also stated that the Remy Entities had failed to file written objections, suggesting that the Remy Entities had failed to follow the proper procedure for raising such objections. Counsel for the Remy Entities was not copied on said communication. A redacted copy of a communication attaching the communication from counsel for Fannie Mae to the Court is attached hereto as Exhibit C.

19. When counsel for the Remy Entities became aware of that communication, counsel contacted the Courtroom Deputy by email, copying all parties, and requested a hearing on the proposed order in advance of entry by the Court. A copy of the communication from counsel for the Remy Entities to the Court is attached hereto as Exhibit D.

20. The Court entered the proposed form of order without conducting a telephone conference or otherwise having heard or considered the objections of the Remy Entities. A copy of the Stipulation and Order is docketed at 146 and attached hereto as Exhibit E.

21. The Remy Entities, therefore, are filing this instant Motion seeking reconsideration of the Stipulation and Consent Order.

### **REQUESTED RELIEF**

22. The Remy Entities hereby seek reconsideration of the Stipulation and Consent Order pursuant to Rules 9023 and 9024 to the extent it did not take into consideration the their objections as previously permitted by the Court at the hearing on April 19, 2010 regarding the stay relief.

### **LEGAL ARGUMENT**

#### **A. Reconsideration Under Rule 9023 is Necessary To Correct A Clear Error of Law and Prevent Manifest Injustice**

23. The Remy Entities seeks reconsideration of the Stipulation and Consent Order pursuant to Rule 9023. Motions for reconsideration, if filed within 14 days of a judgment or order, are generally construed as motions to alter or amend a judgment under Rule 59(e) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 59(e) (incorporated herein pursuant to Fed. R. Bankr. P. 9023); *see also United States v. McGlory*, 202 F.3d 664, 668 (3d Cir. 2000); *In re Sharon Steel Corp.*, 918 F.2d 434, 436-37 (3d Cir. 1990).

24. As the Third Circuit has explained, “[a] proper motion to alter or amend judgment “must rely on one of three major grounds: (1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice.” *See North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995). Whether to grant a motion to reconsider is within the discretion of the court. *See Koshatka v. Philadelphia Newspapers, Inc.*, 762 F.2d 329, 333 (3d Cir. 1985).

25. Here, reconsideration of the Stipulation and Consent Order is necessary to correct a clear error of law and to prevent manifest injustice. The language contained in Consent Order adversely affect the Remy Entities' rights and was entered before the Court entertained a hearing on the objections raised by the Remy Entities as expressly permitted by the Court at the April 19, 2010 hearing.

26. Moreover, the Certification of Counsel submitted by counsel for the Debtor expressly requested a hearing to resolve the Remy Entities' objections.

27. The Remy Entities also requested an opportunity to be heard in writing in a communication directed to the Court before entry of the Order.

28. Accordingly, The Remy Entities request that the Court reconsider the Stipulation and Consent Order under the standards set forth in Rule 9023.

**B. Reconsideration Under Rule 9024 is Also Appropriate to Correct a Mistake or Inadvertence by The Court**

29. Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, made applicable hereto pursuant to Rule 9024:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed.R.Civ.P. 60(b); *see also In re Carlisle*, 320 B.R. 796, 799 (M.D. Pa. 2004)(citing Rule 60 and indicating its applicability to bankruptcy proceedings pursuant to Rule 9024).

30. As with a motion pursuant to Rule 59(e), the decision whether to grant a motion under Rule 60(b) is within the Court's discretion. *See, e.g., Brown v. Phila. Housing Authority*, 350 F.3d 338, 342 (3d Cir. 2003).

31. The Court may reconsider the entry of the Stipulation and Consent Order on the grounds of mistake, inadvertence, and/or surprise. As the Court did not have the opportunity to hear or consider the Remy Entities' objections to the Stipulation and Consent Order prior to its entry, the Court may not have fully understood or appreciated the ramifications or potential ramifications of the entry of the some of the language contained in the Stipulation and Consent Order as proposed by counsel for the Debtor and Fannie Mae.

32. Accordingly, for the reasons stated above, the Remy Entities believe reconsideration of the Stipulation and Consent Order is appropriate under Rule 9024 as well.

#### **NOTICE**

33. Notice of this Motion has been given via the ECF system and by regular mail to (a) counsel for Debtor, (b) counsel for Fannie Mae, (c) the United States Trustee, and (d) all parties who requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, the Remy Entities submit that such notice will be adequate and sufficient and that no other or further notice is required.

#### **NO PRIOR REQUEST**

34. No prior application for the relief requested herein has been made, except as set forth herein.

**CONCLUSION**

WHEREFORE, The Remy Entities respectfully request that the Court enter the attached Order granting his motion and such other relief as is just and appropriate.

Dated: May 6, 2010

**MONTGOMERY, MCCRACKEN, WALKER &  
RHOADS, LLP**

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