

**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)
	:	Docket No. 134

**MOTION OF MONTGOMERY, McCracken, Walker & Rhoads, LLP
FOR LEAVE TO WITHDRAW AS COUNSEL FOR
THE REMY ENTITIES PURSUANT TO DEL. BANKR. L.R. 9010-2(B)**

Montgomery, McCracken, Walker & Rhoads, LLP (“MMWR”), counsel for the Defendant Remy Entities², hereby moves for leave to withdraw as counsel for the Remy Entities in the above-referenced Adversary Proceeding (the “Adversary Proceeding”) pursuant to Del. Bankr. L.R. 9010-2(b) and Rule 1.16 of the Delaware Rules of Professional Conduct, and in support thereof, states as follows:

BACKGROUND

1. In or about November, 2009, certain of the Remy Entities sold their membership interests in nine (9) separate LLCs, which in turn owned operating apartment buildings, to certain of the Debtors.

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.

² The Remy Entities are: RemyCo, Inc., The Remy Companies, Inc., Home Realty Ventures, Inc., Bradford Creek Properties, LLC, Landrun Design and Development Co., Inc., Diamond Point, LLC, Bluechip Holdings, LP, Time 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.

2. On February 22, 2010, the Debtors filed voluntary Chapter 11 Petitions in this Court. The cases have been consolidated for administration only at Case Number 10-10528-BLS (the "Bankruptcy Case"). The Debtors remain in possession. No committee has been appointed.

3. On February 23, 2010, the Debtors commenced Adversary Proceeding No. 10-50723-BLS (the "Breach of Contract Adversary") against the Remy Entities and others, and subsequently filed an Amended Complaint on March 17, 2010. In the Breach of Contract Adversary, the Debtors seek, among other things, rescission and/or damages based on claims of breach of contract, RICO and fraudulent transfer.

4. Also on February 23, 2010, the Debtors commenced Adversary Proceeding No. 10-50719-BLS (the "Bank of the West Adversary") against the Remy Entities and others. In the Bank of the West Adversary, the Debtors seek, among other things, repayment of an alleged loan to certain of the Remy Entities.

ARGUMENT

5. By letter dated March 31, 2010, the Remy Entities retained MMWR. Pursuant to the signed Retention Letter, the Remy Entities agreed to pay an initial retainer to MMWR covering the pre-litigation period. The letter further required the Remy Entities provide an additional retainer to prepare a response to the Adversary Proceeding. The Remy Entities agreed that the retainers would be held on account and applied against MMWR's final bill unless otherwise mutually agreed.

6. Consistent with Rule 1.16 of the Delaware Rules of Professional Conduct., the Retention Letter informed the Remy Entities that MMWR had the right to withdraw from representation if good cause exists, and, as examples of good cause, listed "failure to pay our

statements in a timely manner, failure to cooperate reasonably with us, and failure to follow our advice on a material matter.”

7. In reliance on the terms of the executed Retention Letter, and receipt of a check provided for payment of the first retainer, MMWR entered its appearance in the Bankruptcy Case and all related Adversary Proceedings on April 15, 2010.

8. Among other things, MMWR has represented the Remy Entities in connection with a Motion to Dismiss in the Breach of Contract Adversary Proceeding, negotiations for settlement of all issues arising in connection with the Adversary Proceedings, a Motion for Reconsideration regarding an Order granting Fannie Mae relief from the automatic stay in the Bankruptcy Case, and preliminary preparation of responses to the Debtors’ First Request for Production of Documents served in connection with the Breach of Contract Adversary Proceeding.

9. The second retainer was originally to have been provided on April 19, 2010. Despite repeated extensions of the due date, and repeated commitments by the Remy Entities that the second retainer would be forthcoming, the Remy Entities have failed to pay the second retainer to MMWR.

10. As of this date, MMWR’s incurred fees and expenses substantially exceed the amount of the initial retainer, and indeed would exceed the total amount of the requested retainers.

11. In addition to their failure to timely pay sums owed, the Remy Entities have failed to reasonably cooperate with MMWR in, among other things, providing MMWR with the information necessary to fully and completely respond to the First Request for Production of Documents served in the Adversary Proceeding, and with full and complete information

necessary to advise the Remy Entities on whether or not to take a position on various pleadings filed in the Bankruptcy Case.

12. In both their failure to pay the retainer and in their failure to provide MMWR with the information and documents necessary to a competent representation, the Remy Entities have failed substantially to fulfill their obligations to MMWR regarding its services in the Bankruptcy Case, the Breach of Contract Adversary Proceeding and the Bank of the West Adversary Proceeding.

13. MMWR has provided the Remy Entities with continual reminders, both written and oral, regarding their financial obligations and need to provide MMWR with information and documents necessary to their representation, as well as regarding upcoming deadlines and time-sensitive decisions. As part of those communications, MMWR has provided the Remy Entities with reasonable warning that MMWR's would withdraw as counsel for the Remy Entities unless these issues were addressed in a satisfactory manner.

14. MMWR's continued representation of the Remy Entities will cause unreasonable financial burden on MMWR.

15. MMWR's representation of the Remy Entities has been rendered unreasonably difficult by the lack of information and responsiveness of the Remy Entities.

16. Under Del. Bankr. L.R. 9010-2(b), an attorney's appearance may not be withdrawn except by leave of court, unless another attorney of the Court enters an appearance on behalf of the same party at the same time. *See* LR 9010-2(b). Here, leave of court is required.

17. Under Rule 1.16(b) of the Delaware Rules of Professional Conduct, a lawyer may withdraw from representing a client if "the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer

will withdraw unless the obligation is fulfilled,” where “the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client,” or where “other good cause for withdrawal exists.” *See* Del. R. Prof'l Conduct 1.16(b)(5), 1.16(b)(6), 1.16(b)(7).

18. The Declaration of Mark B. Sheppard, a partner of MMWR, is attached in support of this Motion.

19. For all the reasons set forth above, MMWR believes ample cause exists under the applicable rules to warrant withdrawal of MMWR as counsel for the Remy Entities, and that such withdrawal is permitted by and consistent with MMWR's ethical obligations.

NOTICE

20. Notice of this Motion has been given to the Remy Entities, the Office of the United States Trustee, counsel for the Debtors, counsel for Fannie Mae, and counsel for the other defendants in the Breach of Contract Adversary Proceeding and the Bank of the West Adversary. As set forth in the Certificate of Service for the Motion, the Remy Entities have been served by federal express and certified mail as required by Del. Bank. L.R. 9010-2(b). MMWR submits that no further notice need be given under the circumstances.

NO PRIOR REQUEST

21. No previous motion for the relief requested has been made to this or any other Court.

CONCLUSION

WHEREFORE, Montgomery, McCracken, Walker & Rhoads, LLP respectfully requests entry of an order granting it permission to withdraw as counsel to the Remy Entities Pursuant to LR 9010-2(b), and such other and further relief as this Court deems just and appropriate.

Dated: May 18, 2010
Wilmington, Delaware

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