

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

<b>In re:</b>  <b>RC SOONER HOLDINGS, LLC, <i>et al.</i><sup>1</sup>,</b>  <b>Debtors.</b>	<b>Chapter 11</b>  <b>Case No. 10-10528 (BLS)</b> <b>Jointly Administered</b>  <b>Objection Deadline as extended: 5/20/10</b> <b>Hearing Date: 5/25/10 @ 11:00 a.m.</b>
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**OBJECTION OF FANNIE MAE TO 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 (RELATED TO DOCKET NOS. 105, 142, 146, AND 157)**

Fannie Mae, as lender to the debtor and debtors-in-possession (the “Lender”), hereby files this Objection to the 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 (the “Objection”). In support of this Objection, the Lender states as follows:

1. The above jointly administered bankruptcy cases were filed on February 22, 2010 (the “Petition Date”).
2. The Debtors include eight (8) Oklahoma limited liability companies (the “Apartment Debtors”),<sup>2</sup> each of which owns a residential apartment complex (the “Apartments”)

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<sup>1</sup>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, 11<sup>th</sup> Floor, New York, New York 10036-8901.

<sup>2</sup> The Apartment Debtors consist of: Brixton Square Apartments, LLC; CC Apartments LLC; Fulton Plaza Apartments, LLC; Magnolia Manor Apartments, LLC; Pomeroy Park Apartments, LLC; Salida Apartments, LLC; Savannah South Apartments, LLC and Southern Hills Villa Apartments

located in Tulsa County, Oklahoma. The Apartments owned by the respective Apartment Debtors are essentially the sole assets of each respective Apartment Debtor.

3. Each of the Apartment Debtors is indebted severally (the “Debt”) to Fannie Mae pursuant to notes (the “Notes”) held by Fannie Mae. The Debt is secured by valid and perfected first mortgage and lien interests (the “Mortgages”) against all assets (the “Collateral”) of each of the respective Debtors. There is no cross-collateralization of the Debt owed by the respective Apartment Debtors. The Collateral includes, but is not limited to, all rents, cash, negotiable instruments, deposit accounts and other cash equivalents of the respective Apartment Debtors, all of which constitutes Cash Collateral as defined by 11 U.S.C. § 363(a). The Collateral extends to post-Petition rents and proceeds. 11 U.S.C. § 552(b)(2).

4. Prior to the Petition Date, the Apartment Debtors each failed to make the monthly payments due under the Notes by August 1, 2009, and September 1, 2009, thereby constituting defaults under the Notes and Mortgages and other loan documents pertaining thereto.

5. By letters to the Apartment Debtors dated September 29, 2009, Fannie Mae gave notice of Apartment Debtors’ monetary default and notified Apartment Debtors that failure to cure the conditions of default by October 9, 2009, would cause the entire unpaid balance of the Notes and all other amounts owed by Apartment Debtors under the Notes, Mortgages and other loan documents to become immediately due and payable without further demand.

6. The Apartment Debtors failed to cure any of the conditions of default by October 9, 2009, and by letters to Apartment Debtors dated October 16, 2009, Fannie Mae accelerated the debt due under the Notes and declared the entire unpaid balances of the Notes and all other amounts owed by Apartment Debtors under the Notes, Mortgages and other loan documents to be immediately due and payable.

7. In early October 2009, principals and representatives of the Apartment Debtors began negotiating with RC Sooner Holdings, LLC, (“RC Sooner”), lead Debtor in these jointly administered bankruptcy cases, or with persons who would shortly thereafter form RC Sooner, for the sale of the Apartments. To that end, RC Sooner was formed and it, in turn, formed eight (8) separate Oklahoma limited liability companies (the “RC LLCs”)<sup>3</sup> to serve as vehicles for the acquisition of the Apartment Debtors.

8. On October 29, 2009, each of the RC Sooner LLCs closed their purchases of 100% of the interests in the Apartment Debtors. At the time the transaction closed, the loans were already in default status for failure to make the August-October 2009 payments.

9. Pursuant to the respective Mortgages, a transfer of more than fifty percent (50%) ownership interest in the Apartment Debtors without the consent of Fannie Mae is an event of default constituting a breach of the respective Notes, Mortgages and other loan documents. The Mortgages are a public record, being recorded in the land records of Tulsa County, Oklahoma. RC Sooner acknowledged at the 341 Meeting that it had actual notice of the terms of the Mortgages including the restriction on transfer of ownership.<sup>4</sup> Nonetheless, the RC LLCs and RC Sooner made no effort to notify Fannie Mae of the acquisitions (either before or after closing) nor did they make any effort to qualify as borrowers under Fannie Mae guidelines and, apart from acquiring ownership of the Apartment Debtors, have no lender/borrower relationship with Fannie Mae.

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<sup>3</sup> The RC LLCs are RC Brixton Square Owner, LLC; RC Cedar Crest Owner, LLC; RC Fulton Plaza Owner, LLC; RC Magnolia Owner, LLC; RC Pomeroy Park Owner, LLC; RC Salida Owner, LLC; RC Savannah South Owner, LLC; and RC Southern Hills Owner, LLC.

<sup>4</sup> Prior to the sale, RC Sooner thoroughly reviewed documents and information furnished by the manager of the Apartment Debtors (“Remys”) and the Remys’ agent and broker (SVN). Affidavit of Daniel Gordon in Support of Chapter 11 Petition And First Day Orders, filed February 22, 2010 [Docket No. 3].

10. On February 2 and February 8, 2010, Fannie Mae filed foreclosure actions (the “Foreclosure Actions”) against each of the Apartment Debtors and other non-debtor persons and entities that are also liable on the Debt, in State Court in Tulsa County, Oklahoma

11. A hearing for the Appointment for a Receiver respecting each of the Apartments was set in each Foreclosure Action for February 23, 2010. The filing of the bankruptcy cases of the Apartment Debtors on February 22, 2010, stayed the Foreclosure Actions, and the receivership hearings respecting the Apartment Debtors were stricken.

12. The Debt respecting each of the Apartment Debtors exceeds the value of the Collateral respecting each of the Apartment Debtors, the cash collateral is insufficient to pay the operating expenses and service the loans. In addition, there is a non-monetary default for the transfer of more than fifty percent (50%) ownership interest in the Apartment Debtors without the consent of Fannie Mae which constitutes a breach of the respective Notes, Mortgages and other loan documents and Fannie Mae will not waive this default.

13. On February 24, 2010, this Court entered an Interim Agreed Order (A) Authorizing Debtors In Possession To Use Cash Collateral; (B) Granting Replacement Liens To Lender; (C) Granting Adequate Protection; And (D) Scheduling A Final Hearing Thereon [Docket No. 20] (the “First Interim Order”) whereby, *inter alia*, this Court authorized the limited use of Fannie Mae’s Cash Collateral through and including March 11, 2010, set a deadline to object to the Motion of March 8, 2010, and set a final hearing on the Motion for March 11, 2010.

14. On March 11, 2010, the Court entered a Second Interim Agreed Order (A) Authorizing Debtors In Possession To Use Cash Collateral, (B) Granting Replacement Liens To Lender, (C) Granting Adequate Protection, and (D) Scheduling a Final Hearing Thereon [Docket

No. 55] (the “Second Interim Order”), essentially extending the First Interim Order and setting hearing for the entry of a final Order on March 18, 2010.

15. On March 19, 2010, the Court entered a Third Interim Agreed Order (A) Authorizing Debtors In Possession To Use Cash Collateral, (B) Granting Replacement Liens To Lender, (C) Granting Adequate Protection, and (D) Scheduling a Final Hearing Thereon [Docket No. 75] (the “Third Interim Order”), essentially extending the Second Interim Order, limiting the manner in which the Cash Collateral may be used, and setting hearing for the entry of a final Order on March 30, 2010.

16. On March 30, 2010 the Lender filed a Motion for Relief from Stay seeking relief to appoint a Receiver and proceed with foreclosure proceedings in Oklahoma (the “Motion”) [Docket No. 105]. All parties on the Rule 2004 list were served with the Motion including counsel of record for the Remy Entities, Noel Burnham. In addition, Oklahoma counsel for the Remy Entities, Michael T. Keester was served with the Motion. The Lender included valuation affidavits in Support of its Motion for Relief from Stay which supported the Lender’s claims that the Debtors did not have any equity in the properties.

17. No party filed an Objection to the Motion for Relief from Stay and the Debtors and the Lender negotiated a Stipulation and Consent Order Granting the Relief From Stay which was announced to the Court on April 19, 2010 at the time reserved for the hearing on the Motion.

18. At the hearing on April 19, newly acquired counsel for the Remy entities, Natalie D. Ramsey, as well as additional counsel for the Remy Entities, Noel Burnham both appeared. Natalie Ramsey, on behalf of the Remy Entities sought the opportunity to review the Stipulation and Consent Order Granting the Relief From Stay. This Honorable Court gave newly acquired Remy counsel the opportunity to expeditiously review the Stipulation and Consent Order.

19. Counsel for the Lender and counsel for the Debtors received comments from counsel for the Remy Entities and agreed in principal to a provision that the Remy's and their Entities would not be releasing anyone nor would they be released by anyone. This was offered as a global resolution to enable the Stipulation for Relief from Stay to be entered without opposition, however, this offer was rejected.

20. The Stipulation and Consent Order Granting Relief From Stay was submitted under Certification of Counsel with the representation that, "Although the Remy parties did not file a formal objection to the Lift Stay Motion, counsel for the Remy parties has interposed a general objection to the entry of the proposed Lift Stay Order and requests a telephonic hearing before this Court."

21. The Stipulation and Consent Order was signed by the Court on April 27, 2010 without a telephonic hearing and immediately thereafter the Lender moved in Oklahoma for the Appointment of a Receiver.

22. On April 29, 2010 an Orders Appointing a Receiver for each of the Apartment Complexes was entered in the District Court in and for Tulsa County, State of Oklahoma by the Honorable Rebecca Brett Nightingale. Oklahoma counsel for the individual Remy Parties signed the Order as approved as to form.

23. The Remy Entities failed to file an Objection to the Motion for Relief from Stay despite receiving service of the Motion, have no substantive interest in the Motion for Relief from Stay and have stated no sustainable factual or legal basis for their Motion for Reconsideration. Furthermore, the Motion for Reconsideration is now moot by the Appointment of the Receiver.

**WHEREFORE**, the Lender respectfully requests that this Honorable Court deny the Motion of the Remy Entities For Reconsideration of Stipulation and Consent Order Granting Motion of Fannie Mae for Relief from Stay and for such other and further relief as is just and equitable.

Dated: May 20, 2010

**MONZACK MERSKY MCLAUGHLIN  
AND BROWDER, P.A.**

*/s/ Rachel B. Mersky*

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