

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

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| In re: RC SOONER HOLDINGS, LLC, <i>et al.</i>¹, Debtors. | Chapter 11 Case No. 10-10528 (BLS) Jointly Administered Objections Due: March 15, 2010 at 4:30 p.m. Hearing Date: March 18, 2010 at 10:30 a.m. |
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**LIMITED OBJECTION OF FANNIE MAE TO
DEBTORS' MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (A) AUTHORIZING DEBTORS IN
POSSESSION TO USE CASH COLLATERAL, (B) GRANTING
REPLACEMENT LIENS TO FANNIE MAE, AND (C) GRANTING
ADEQUATE PROTECTION [RELATED TO DOCKET NOS. 7, 20 AND 55]**

Comes now Fannie Mae, an entity organized under the laws of the United States, and hereby objects, in part, to Debtors' Motion For Entry Of Interim And Final Orders (A) Authorizing Debtors In Possession To Use Cash Collateral, (B) Granting Replacement Liens To Fannie Mae, And (C) Granting Adequate Protection filed February 22, 2010 [Docket No. 7] (öCash Collateral Motionö). As grounds therefore, Fannie Mae would show the Court as follows:

Background:

1. The above jointly administered bankruptcy cases were filed on February 22, 2010 (the öPetition Dateö).

¹The 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 Debtors include eight (8) Oklahoma limited liability companies (the "Apartment Debtors"),² each of which owns a residential apartment complex (the "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

² 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

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, (õ RC Soonerö), 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 õRC LLCsö)³ 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.

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 presumably had actual notice of the terms of the Mortgages (and certainly had constructive notice) including the restriction on transfer of ownership.⁴ 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. Had any of the RC LLCs on RC Sooner contacted Fannie Mae

³ 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.

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

prior to the closings, they would have learned that the Debt was in default and they would have learned of the process required to obtain Fannie Mae's consent to the transfers of ownership and the requirements to be approved as a successor borrower. They chose not to do so and now seek to use the Bankruptcy Code to nullify those requirements. Debtors should not be permitted to utilize the Bankruptcy Code to avoid the consequences of their own willful and negligent conduct.

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 who are also liable on the Debt, in State Court in Tulsa County, Oklahoma. The Foreclosure Actions are listed on Exhibit "A" hereto.

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 Orders:

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.

Limited Objection:

15. Debtor has no objection to the Apartment Debtors' continued use of Cash Collateral for ordinary and necessary operations of the Apartments, provided the protections for such limited usage of Cash Collateral as provided for the Second Interim Order are extended to apply to any further or final Cash Collateral Order.

16. Fannie Mae does object to, and does not consent to the use of Fannie Mae's Cash Collateral for payment of administrative expenses of the bankruptcy cases, including, without limitation, payment of Debtors' counsel's fees and expenses, provided however, Fannie Mae does not object to use of its Cash Collateral to pay allowed fees or expenses of the claims agent.

17. The Bankruptcy Code prohibits the Debtors' use of the cash collateral without the secured party's consent or unless the Debtors provide adequate protection for such usage. 11 U.S.C. § 363(c)(2) and (e). The replacement lien provided to Fannie Mae to secure the limited use of Fannie Mae's Cash Collateral for operational expenses (and the cost of the claims agent) provided in the First and Second Interim Orders, in reality does nothing more than provide for the continuance of the liens granted in favor of Fannie Mae by the Mortgages, which, by virtue of 11 U.S.C. § 554 are continued post-Petition in any event. To the extent that Cash Collateral is used to meet operating expenses and direct overhead incurred by the Apartment Debtors in operating the Apartments, such usage is arguably protected by preserving the value of the Collateral. However, such expenditures for any administrative expenses such as Debtors'

counsel's fees do not, in any way, preserve the going concern value of the Collateral. The "replacement" collateral does not provide adequate protection for the use of Fannie Mae's Cash Collateral for the payment of the Debtor's counsel's fees, which are projected in the budget appended to the First Interim Order to be \$20,000 per week (with a 10% variance).

18. There is absolutely no doubt that Fannie Mae is under-secured. There are no assets in any of these cases which could provide replacement liens for adequate protection for use of Fannie Mae's Collateral.

19. There is no viable prospect for a reorganization in these jointly administered cases and there is no prospect of adding value for the creditors, particularly Fannie Mae, in these bankruptcy cases. The use of Fannie Mae's Cash Collateral for administrative expenses, particularly in amounts approximating \$20,000 per week, will inevitably erode the value of Fannie Mae's Collateral with no prospect of restoration.

20. The bankruptcy cases were filed for only one purpose, to stop the foreclosures and the appointment of receivers. There are relatively few non-insider unsecured creditors in these cases. There is no unsecured creditors' committee, further indicating the lack of any stake or interest in these cases by the few unsecured creditors. There is nothing here to reorganize and no bankruptcy purpose is met by injecting the bankruptcy system into this two-party dispute nor by shifting the obligation to pay Debtors' counsel's fees to Fannie Mae.

21. The Court should not approve the use of Fannie Mae's Cash Collateral for any other purposes other than for normal direct operating expenses of the Apartment Debtors incurred in operating the Apartments.

WHEREFORE, Fannie Mae requests the Court deny Debtors' request for use of Fannie Mae's Cash Collateral for any purpose other than for direct and necessary operating expenses of the Apartments and that the adequate protection provided for such limited usage provided by the

First and Second Interim Orders be extended to cover the limited use of Cash Collateral provided in any further or final cash collateral order.

Dated: March 15, 2010

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

/s/ Rachel B. Mersky

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