

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF OKLAHOMA

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| In re: |) | |
| |) | Case No. 10-12185-R |
| RC SOONER HOLDINGS, LLC, <i>et al.</i> , ¹ |) | Chapter 11 |
| |) | |
| Debtors. |) | (Jointly Administered) |
| _____ |) | |
| |) | |
| RC SOONER HOLDINGS, LLC, <i>et al.</i> |) | |
| and OLD SOUTH APARTMENTS, LLC, |) | |
| |) | |
| Plaintiffs, |) | |
| vs. |) | Adv. Pro. No. 10-01070-R |
| |) | |
| BANK OF THE WEST, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |
| |) | |
| RC SOONER HOLDINGS, LLC, <i>et al.</i> |) | |
| and OLD SOUTH APARTMENTS, LLC, |) | |
| |) | |
| Plaintiffs, |) | |
| vs. |) | Adv. Pro. No. 10-01071-R |
| |) | |
| REMYCO., INC., <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

DECLARATION OF DAVID H. HERROLD
IN SUPPORT OF APPLICATION FOR ORDER
AUTHORIZING DEBTORS TO EMPLOY COUNSEL

I, David H. Herrold, of lawful age and being first duly sworn upon oath and upon the best of my knowledge, information and belief hereby declare and state as follows:

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.



1. I am an attorney at law duly licensed to practice law in the State of Oklahoma and authorized to practice before the United States District and Bankruptcy Courts for Northern District of Oklahoma. I am a shareholder in the law firm of Sneed Lang Herrold PC (“SLH”), proposed counsel for the Debtors and Debtors-In-Possession (collectively, the “Debtors”) in the above-captioned jointly administered Chapter 11 cases and associated adversary proceedings.

2. I make this Declaration in support of the Debtors’ application for an order approving the retention and employment of SLH as Debtors’ general bankruptcy counsel, and ultimately local counsel to Debtors’ lead bankruptcy counsel from Delaware, Ballard Spahr LLP (the “Application”), pursuant to 11 U.S.C. §§ 330 and 1103, Fed.R.Bankr.P. 2014 and Bankr.N.D.Okla. LR 2014–1.

3. The facts set forth in this Declaration are personally known to me and, if called as a witness, I could and would testify to them. Unless otherwise defined, all capitalized terms used herein have the meanings ascribed thereto in the *Application*.

SLH’S QUALIFICATIONS

3. SLH is well-suited for the type of representation required by the Debtors. It is a mid-sized law firm located across the street from the Bankruptcy Court and within this judicial district, and experienced in most, if not all, aspects of law that may arise in these bankruptcy cases and related adversary proceedings. SLH is proficient and has experience in creditors’ rights and/or bankruptcy-related matters. In particular, SLH attorneys presently represent as general bankruptcy counsel fifteen debtors and debtors-in-possession in the jointly-administered cases styled *In re Roma Foods of Oklahoma*, Case Nos. 09–12488 *et seq.* (post-confirmation), now pending before the Hon. Niles Jackson in the United States Bankruptcy Court for the Western District of Oklahoma.² Additionally, SLH lawyers also

² Those 15 cases are: *In re Roma Foods of Oklahoma, Inc.*, No. 09–12488; *In re Hestia Holdings, LLC*, No. 09–12497; *In re Eateries, Inc.*, No. 09–12499; *In re Best Restaurants, LLC*, No. 09–12501; *In re Best*

presently serve as counsel for the Unsecured Creditors Committee in the jointly administered Chapter 11 cases styled *In re Ramsey Holdings, Inc.*, Case Nos. 09-13998 *et seq.* (post-confirmation), now pending before the Hon. Terrence Michael in this Court.³ Various attorneys at SLH have also served as counsel to trustees in cases under Chapters 11 and 7 of the Bankruptcy Code, including the Chapter 7 case of Arrow Trucking Company (Bankr.N.D.Okla. 10-10041-R; present counsel for Trustee), the Chapter 11 case of Nucorp Energy, Inc. (Bankr.S.D.Cal. 82-03106), the Chapter 7 case of William R. Bartmann *et al.* (Bankr.N.D.Okla. 03-04975), the Chapter 7 case of Erhan Ozey (Bankr.N.D.Okla. 93-04157), the Chapter 7 case of 4 Front Petroleum, Inc. (Bankr.N.D.Okla. 04-10797), the Chapter 7 case of O.K. Bingo Supply, Inc. (Bankr.N.D.Okla. 95-01704), and the Chapter 7 case of Craig A. Coulter (Bankr.N.D.Okla. 94-02644). Attorneys at SLH have also served as counsel to professional person Alvarez & Marsal in the Chapter 11 case of Git-n-Go, Inc. (Bankr.N.D.Okla. 04-10509). In addition, SLH lawyers have represented and do still represent numerous secured and unsecured creditors in bankruptcy cases filed under Chapters 7, 11, 12 and 13 of the Bankruptcy Code.

SERVICES TO BE PROVIDED BY SLH

4. Subject to the direction of the Debtors and their lead counsel, and subject to further order of this Court, the professional services to be rendered by SLH to the Debtors in connection with bankruptcy cases and adversary proceedings may include, but is not limited to, the following:

Restaurants II, LLC, No. 09-12502; *In re* Fiesta Holdings, Inc., No. 09-12503; *In re* Fiesta Holdings, LLC, No. 09-12505; *In re* Fiesta Fulton Ranch, LLC, No. 09-12506; *In re* Garcia's -Mills, LLC, No. 09-12507; *In re* GRP of Fayetteville, LLC, No. 09-12510; *In re* GRP of Ft. Smith, LLC, No. 09-12511; *In re* GRP of Harrisburg, LLC, No. 09-12512; *In re* GRP of Muskogee, LLC, No. 09-12513; *In re* Eateries of MD, LLC, No. 09-12514; and *In re* Eateries, Inc. of West Virginia, No. 09-12516.

³ These jointly administered cases are: *In re* Ramsey Industries, Inc., No. 09-13999; *In re* Ramsey Winch Company, No. 09-14000; *In re* Eskridge, Inc., No. 09-14001; and *In re* Auto Crane Company, No. 09-14002.

(a) Providing assistance to Debtors and their anticipated lead bankruptcy counsel, Ballard Spahr LLP, with respect to Debtors' powers and duties as debtors-in-possession in the continued operation of their business and management of their property, including negotiations with creditors and parties in interest;

(b) Assisting Debtors and said counsel in the negotiation and preparation of, all necessary applications, motions, answers, orders, reports, plan documents, and other legal papers;

(c) Appearing in Court to protect the interests of Debtors and their estates, including, when necessary, representing Debtors in litigation, contested matters and adversary proceedings;

(d) Advising Debtors and said counsel on local practices and procedures and determinative case law within the jurisdiction; and

(e) Performing all other legal services for Debtors and said counsel that may be necessary or appropriate in the administration of these cases.

PROFESSIONAL COMPENSATION

5. SLH requests that all legal fees and related costs and expenses incurred by the Debtors on account of the services rendered by SLH in the case be paid pursuant to, *inter alia*, 11 U.S.C. §§ 330-31, the Federal Rules of Bankruptcy Procedure, this Court's Local Rules, applicable orders entered by the Delaware Bankruptcy Court, if any, the applicable orders of this Court and the United States Trustee's Guidelines.

6. I believe Debtors have been previously advised by their lead bankruptcy counsel from Delaware that, subject to Court approval and the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the

orders of this Court, and the Guidelines, compensation will be payable to SLH on an hourly basis, plus reimbursement of actual, necessary expenses incurred by SLH during its representation of the Committee in the Cases. Hourly rates vary with the experience and seniority of the individuals assigned and may be adjusted by SLH from time to time.

7. SLH's practice is to charge its clients in all areas of practice for all expenses incurred in connection with a client's matter. SLH will charge the Debtors for such expenses in a manner and at rates consistent with standard charges generally made to its other clients in and outside of bankruptcy proceedings. Because the fees: (a) are based on hourly rates and will correspond to the degree of effort expended on the Debtors' behalf; and (b) are SLH's usual and customary rates for services of this nature, I believe the terms and conditions of SLH's employment are reasonable.

8. The principal SLH attorneys I expect may be called upon to represent the Debtors in these matters, in varying capacities, and their current hourly rates are: (i) myself, a shareholder of the firm whose current hourly rate for bankruptcy matters is \$250.00, (ii) Emily M. Jones, an associate of the firm whose current hourly rate for bankruptcy matters is \$200.00, and (iii) G. Steven Stidham, a shareholder of the firm whose current hourly rate for matters involving issues that are the subject of the pending RemyCo. adversary proceeding (Adv. Pro. No. 10-01071-R) is \$300.00. In addition, other attorneys and paraprofessionals may from time to time provide services to the Debtors in connection with the bankruptcy cases and adversary proceedings, and the range of SLH's hourly rates for its attorneys and paraprofessionals is, to the best of my knowledge, as follows:

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| Attorneys (associates, of counsel or shareholders): | \$130 - \$300 |
| Paralegals: | \$85 - \$100 |

SLH's hourly billing rates are subject to periodic adjustments to reflect economic and other conditions.

9. SLH's practice regarding reimbursement of actual and necessary expenses incurred in connection with providing legal services to its clients is to charge clients for all out-of-pocket expenses. It is SLH's policy to charge its clients in all areas of practice for all other expenses incurred in connection with each client's case. The expenses charged to clients include, without limitation, long-distance telephone charges, telecopier and other charges, mailing postage, messenger and express mail charges, special or hand delivery charges, document processing, photocopying charges, filing fees, travel expenses, expenses for "working meals," the catering of meetings and business meetings, computerized research, transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime and late night transportation, where necessary to meet deadlines or client expectations. SLH will charge the Debtors' estates for these expenses in a manner and at rates consistent with charges made generally to SLH's bankruptcy and non-bankruptcy clients, and subject to applicable rules and Guidelines of the Court and the U.S. Trustee.

10. SLH will maintain detailed records of attorneys' fees and expenses incurred in connection with the rendition of legal services for the Debtors in the bankruptcy cases and adversary proceedings, in accordance with applicable law, rules and the Guidelines. SLH will seek compensation for its services and reimbursement for its expenses in accordance with 11 U.S.C. §§ 330-31 and Bankr. Rule 2016, upon submission of appropriate applications seeking the same, in compliance with all applicable orders, rules and guidelines, subject to the review and approval of this Court.

DISINTERESTEDNESS OF SLH

9. To the best of my knowledge, information and belief, and after conducting an investigation of potential conflicts of interest arising from SLH's proposed representation of the Committee herein:

(a) SLH has no material connections with Debtors' creditors or any other party in interest or their respective attorneys and accountants, any bankruptcy judge of the Northern District of Oklahoma, the United States Trustee, including any person employed in the office of the United States Trustee for Region 20, that would render the appointment of SLH as Committee counsel inappropriate under Fed.R.Bankr.P. 5002(b) or 11 U.S.C. § 1103(b). SLH does have connections with certain entities that may be listed as creditors of the Debtors, as further discussed below, but I do not believe those connections are material or adverse in any way to Debtors or their estates.

(b) SLH does have both prepetition and postpetition connections with Debtors and certain "Related Non-Debtors" and others that are described below.

(i) Prepetition, Debtors and certain other related but non-debtor entities, namely: RC Old South Owner LLC, Old South Apartments, LLC, RC Realty Management, Inc. (collectively, the "Related Non-Debtors") and Rosedale Cooley & Co., LP ("RC&C"),⁴ collectively retained SLH to (a) defend against certain potential litigation brought or to be brought by Fannie Mae against Apartment LLCs as described in the *Application* and to (b) prosecute civil

⁴ Non-debtor RC Old South Owner LLC sits in the same position as the debtor RC LLCs described in the *Application* but has not sought relief under the Bankruptcy Code. Non-debtor Old South Apartments LLC sits in the same position as the debtor Apartment LLCs described in the *Application* but has not sought relief under the Bankruptcy Code. Non-debtor RC Realty Management, Inc. was the management entity established with respect to management and oversight of the Apartments, and non-debtor RC&C is, upon information and belief, an investment firm that was involved in the Apartments acquisition transaction referred to in the *Application*. Neither of the latter non-debtors sought relief under the Bankruptcy Code.

litigation against certain if not all of defendants named in the present adversary proceedings now before this Court. SLH has never and does not currently represent the Related Non-Debtors or RC&C in respect to, in any manner adverse to or as creditors, if they are so, of any of the Debtors or their respective estates; SLH does presently represent non-debtor Old South Apartments LLC in defense of a foreclosure action pending in the District Court of Tulsa County, Oklahoma, Case No. CJ 2010-3832; however, I do not see that representation as adverse in any way to Debtors.

(ii) At the Petition Date, Debtors, Related Non-Debtors and RC&C collectively owed SLH the sum of \$285.98 in respect to services rendered prepetition. As a result, SLH was listed on Debtors' List of 20 Largest Creditors filed in the bankruptcy cases. That sum was subsequently paid in full by Related Non-Debtors and/or RC&C, and not Debtors, on or about March 18, 2010, and SLH was, thereafter, no longer a creditor of Debtors and remains not a creditor of Debtors or their estates.

(iii) Postpetition, and after March 18, 2010, SLH was retained by Debtors to serve as 'ordinary course professionals' in the Delaware bankruptcy cases in respect to the local actions or requirements left pending in Oklahoma. SLH served in that capacity until July 12, 2010 when SLH gave notice of its resignation as ordinary course professionals in light of its impending service as counsel for Debtors herein. As ordinary course professionals, Debtors paid SLH in full, approximately \$3,498.62 for attorneys' fees expended in such role and reimbursed expenses totaling \$418.95.

(c) SLH neither holds nor represents any interest adverse to Debtors' estates;
and

(d) I believe SLH to be a 'disinterested party' within the meaning of 11 U.S.C. § 101(14), in the Debtors' bankruptcy cases and related adversary proceedings.

10. Based upon the results of reviewing any and all inquiries and conflict checks, SLH does not, to the best of my knowledge, information and belief, hold or represent any interest adverse to the Debtors' estates, and I believe SLH to be a 'disinterested person' as that term is defined by 11 U.S.C. § 101(14) and used in § 328(c). SLH will continue its inquiry and conflict checks to ensure that this Court and all parties in interest are apprised of any and all connections that SLH may have, and if at any time SLH becomes aware of any additional connections, I will promptly supplement this Declaration.

11. Neither SLH nor any of its shareholders have divided, paid over or shared, or agreed to divide, pay over or share: (a) any compensation it or they has or have received or may receive for services rendered or expenses incurred in connection with this case with another party or person (except as among the shareholders and employees of SLH), or (b) any compensation another party or person has received or may receive for services rendered or expenses incurred in connection with this case.

Signed under penalty of perjury this 13th day of July, 2010 at Tulsa, Oklahoma.



David H. Herrold
SNEED LANG HERROLD PC