

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

In re:)	
)	Case No. 10-12185-R
RC SOONER HOLDINGS, LLC, <i>et al.</i> , ¹)	Chapter 11
)	(Jointly Administered)
Debtors.)	
<hr style="width: 45%; margin-left: 0;"/>		
)	
RC SOONER HOLDINGS, LLC, <i>et al.</i> and)	
OLD SOUTH APARTMENTS, LLC,)	
)	
Plaintiffs,)	
)	
v.)	Adv. Pro. No. 10-01070-R
)	
BANK OF THE WEST, <i>et al.</i> ,)	
)	
Defendants.)	
<hr style="width: 45%; margin-left: 0;"/>		
)	
RC SOONER HOLDINGS, LLC, <i>et al.</i> and)	
OLD SOUTH APARTMENTS, LLC,)	
)	
Plaintiffs,)	
)	
v.)	Adv. Pro. No. 10-01071-R
)	
REMYCO., INC., <i>et al.</i> ,)	
)	
Defendants.)	

DEBTORS’ STATUS CONFERENCE MEMORANDUM

RC Sooner Holdings, LLC (“RC Sooner” or the “Company”) and its affiliated entities (collectively with RC Sooner, the “Debtors”), debtors and debtors in possession in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby submit this memorandum to the

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.

Court in contemplation of the status conference scheduled for July 14, 2010 at 10:00 a.m. (the “Status Conference”). The purpose of this memorandum is to: (i) provide the Court with some background concerning significant events that have occurred during the Chapter 11 Cases up to and including the decision by the Delaware Bankruptcy Court (as defined below) to transfer venue to this Court; (ii) briefly summarize the proceedings that remain pending; and (iii) notify the Court of certain relief the Debtors intend to seek at the Status Conference.

PRELIMINARY STATEMENT

The Debtors in these Chapter 11 Cases own, and until relatively recently, operated, certain residential apartment buildings in Tulsa, Oklahoma. However, following the entry of a stipulated order lifting the automatic stay to allow Fannie Mae (as defined below) to pursue pending receivership and foreclosure actions against the Apartments (as defined below) in state court, the Debtors no longer have any significant business operations, liabilities or assets to administer, with the exception of two Adversary Proceedings that have been filed against certain third parties based on alleged misconduct arising out of the Debtors’ original Acquisition (as defined below) of the Apartments and the initial operation of the Apartments by third parties in the months subsequent to the Acquisition. The Delaware Bankruptcy Court recently determined on its own motion *sua sponte* that a transfer of venue to this Court was appropriate based in part upon the lack of any significant proceedings remaining in the Chapter 11 Cases other than the Adversary Proceedings.

The Debtors intend to continue to seek relief on their pending motion to dismiss the Chapter 11 Cases of the Debtors’ former operating subsidiaries, and also to seek the speedy and efficient litigation of the Adversary Proceedings for the purpose of maximizing any proceeds realized thereby for the benefit of the remaining Debtors’ stakeholders.

BACKGROUND

1. On February 22, 2010 (the “Petition Date”), each of the Debtors filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”). The Debtors thereafter have continued to manage their business and properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

2. On February 24, 2010, the Delaware Bankruptcy Court entered an order directing joint administration of the Chapter 11 Cases. No trustee, examiner or committee has been appointed in these cases.

3. As of the Petition Date, the Debtors owned, operated and maintained a portfolio of 796 multi-family residential units divided among eight (8) separate apartment complexes (collectively, the “Apartments”) for lease in Tulsa, Oklahoma. RC Sooner is the direct parent of eight (8) Oklahoma limited liability companies (collectively, the “RC LLCs”²), and together with RC Sooner, the “RC Purchasers”) that were formed in October 2009 for the purpose of acquiring (the “Acquisition”) from certain of the RemyCo. Entities³ 100% of the membership interests of eight (8) existing Oklahoma limited liability companies that own the Apartments (collectively, the “Apartment LLCs”⁴). The purchase price of the Acquisition included the assumption of

² The RC LLCs consist of the following co-debtor subsidiaries of RC Sooner: 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. RC Sooner is also the direct parent of non-filing entity RC Old South Owner, LLC, whose real estate assets are not subject to loans held by the Federal National Mortgage Association.

³ The RemyCo. Entities are: 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.

⁴ The Apartment LLCs consist of the following co-debtor indirect subsidiaries of RC Sooner: 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
(continued...)

approximately \$27 million in outstanding loans and mortgages (the “Loans and Mortgages”) currently held by the Federal National Mortgage Association (“Fannie Mae”).

4. During a transition period that lasted from the Closing Date (as defined below) to on or about December 31, 2009 (the “Transition Period”), certain of the RemyCo. Entities remained in possession of, and continued to operate, the Apartment LLCs on behalf of the Company for the purpose of facilitating the transition of the business to the RC Purchasers.

5. Unbeknownst to the RC Purchasers, however, the RemyCo. Entities and their brokers had engaged in a pattern of intentional misconduct and fraudulent misrepresentation from the very outset of negotiations for the sale of the Apartments and the Apartment LLCs, which misrepresentations included the failure to inform the RC Purchasers that the Loans and Mortgages with Fannie Mae had been in default since approximately September 2, 2009, and remained in default as of the closing on or about October 29, 2009 (the “Closing Date”).

6. Fannie Mae was not informed of the RC Purchasers’ purchase of the Apartment LLCs until late January, 2010, and the Company was not made aware of the existence of the defaults under the Loans and Mortgages until that same time, the sellers having actively concealed such facts from both Fannie Mae and the Company as recently as the final week of January, 2010.

7. Upon learning of the purchase of the Apartment LLCs, Fannie Mae declared a non-monetary default on account of the transfer of the Loans and Mortgages, via the Acquisition of the Apartment LLCs, to the Company without Fannie Mae’s consent. Fannie Mae subsequently initiated state court actions (the “State Court Actions”) in Oklahoma against the Apartment LLCs and certain of the sellers petitioning for foreclosure and the appointment of a

(...continued)

Southern Hills Villa Apartments, LLC. RC Sooner is also the ultimate parent of non-debtor Old South Apartments, LLC, whose loan is not held by the Federal National Mortgage Association.

receiver for all of the Apartments, which State Court Actions were subsequently stayed by the filing of the Chapter 11 Cases.

8. In light of the alleged misconduct and other improper acts engaged in by the RemyCo. Entities and other third parties with respect to the Apartments, the Debtors immediately initiated two adversary proceedings (Adv. Pro. Nos. 10-50719 (now Adv. Pro. No. 10-01070-R) (the “Bank of the West Adversary”) and 10-50723 (now Adv. Pro. No. 10-01071-R) (the “Remy Adversary,” and together with the Bank of the West Adversary, the “Adversary Proceedings”)) in the Delaware Bankruptcy Court asserting against the RemyCo. Entities and other third parties various causes of action arising out of the sale and subsequent management of the Apartments.

STIPULATED LIFT STAY ORDER AND APPOINTMENT OF RECEIVER

9. On March 30, 2010, Fannie Mae filed a Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) and Fed.R.Bankr.P. 4001 (the “Lift Stay Motion”). Although unable to agree to a consensual restructuring of the Loans and Mortgages, Fannie Mae and the Debtors subsequently reached an agreement under which the Debtors consented to the relief requested by Fannie Mae in the Lift Stay Motion upon the terms and conditions set forth in a Stipulation and Consent Order Granting the Lift Stay Motion (the “Lift Stay Order”), which was entered by the Delaware Bankruptcy Court on April 27, 2010 (Bankr.D.Del. Dkt #146). Pursuant to the Lift Stay Order, among other things, Fannie Mae was granted relief from the automatic stay to seek the appointment of a receiver by a competent court of the State of Oklahoma to manage and operate the Apartments and to exercise its other state law rights and remedies against the Apartments, including, without limitation, foreclosing upon the same.

10. On April 29, 2010, the Oklahoma District Court in the State Court Actions entered orders in each of the State Court Actions appointing a receiver for each of the

Apartments. Pursuant to the terms of the Lift Stay Order, the Debtors' responsibility for the day-to-day operations and management of the Apartments accordingly ceased as of May 5, 2010.

TRANSFER OF VENUE

11. At a hearing held on June 10, 2010 (the "June 10th Hearing"), the Delaware Bankruptcy Court raised *sua sponte* on its own motion whether, based on the then-current posture of the Chapter 11 Cases, the venue of the Chapter 11 Cases and Adversary Proceedings should be transferred from the District of Delaware to the appropriate federal judicial district pertaining to Tulsa County, Oklahoma pursuant to 28 U.S.C. § 116(a).

12. All counsel present at the June 10th Hearing, including counsel for the Debtors, Fannie Mae, adversary defendant Bank of the West and then-counsel for adversary defendants the RemyCo. Entities, were provided an opportunity to respond to the Delaware Bankruptcy Court's *sua sponte* venue motion. Upon conclusion of oral argument at the June 10th Hearing, the Delaware Bankruptcy Court ordered that the Chapter 11 Cases and Adversary Proceedings be transferred to this federal judicial district.

13. Furthermore, at the June 10th Hearing the Delaware Bankruptcy Court also granted a pending motion withdraw as counsel filed by Montgomery, McCracken, Walker & Rhoads, then-counsel to the RemyCo. Entities (Bankr.D.Del. Dkt # 202). The Debtors are not aware of whether the RemyCo. Entities have since obtained replacement counsel or will otherwise be seeking legal representation in connection with the Chapter 11 Cases or Adversary Proceedings.

14. On June 14, 2010, the Delaware Bankruptcy Court entered the order (the "Transfer Order") transferring venue of the Chapter 11 Cases to the United States District Court for the Northern District of Oklahoma and ordering that the Apartment LLC Dismissal Motion (as defined below) be held in abeyance pending the transfer of venue for subsequent disposition by the transferee court.

15. On June 29, 2010, the Transfer Order was docketed in the United States Bankruptcy Court for the Northern District of Oklahoma (the “Bankruptcy Court”) and files for each of the Chapter 11 Cases and the Adversary Proceedings were opened.

PENDING MOTION TO DISMISS APARTMENT LLC CHAPTER 11 CASES

16. Subsequent to the entry of the Lift Stay Order, on May 4, 2010 the Debtors filed a motion seeking the voluntary dismissal of the Chapter 11 Cases of the Apartment LLC Debtors (Bankr.D.Del. Dkt #155) (the “Apartment LLC Dismissal Motion”). As set forth more fully in the Apartment LLC Dismissal Motion, the Debtors submit that “cause” exists to dismiss the Apartment LLC cases in light of the appointment of the receiver for the Apartments and the pending foreclosure actions, which have effectively rendered the Apartment LLC debtors with no remaining assets to administer and mounting administrative costs. The Apartment LLC Dismissal Motion was timely filed and notice provided to all creditors and parties in interest, and the only response filed was a Reservation of Rights by the RemyCo. Entities (Bankr.D.Del. Dkt #169).

17. At the last hearing held in the Chapter 11 Cases, the Delaware Bankruptcy Court opined that the Apartment LLC Dismissal Motion was ripe for adjudication; however, the Delaware Bankruptcy Court ordered as part of its Transfer Order that the matter be held in abeyance for adjudication by this Court. Accordingly, the Debtors intend to request at the Status Conference that this Court calendar the Apartment LLC Dismissal Motion for hearing at the earliest time convenient for the Court and parties in interest.

THE ADVERSARY PROCEEDINGS

18. The Bank of the West Adversary. On February 23, 2010, the Debtors and non-debtor Old South Apartments, LLC (the “Plaintiffs”) filed a complaint (Bankr.D.Del. Adv. Pro. No. 10-50719, Dkt #1) (the “Bank of the West Complaint”) asserting breach of contract, conversion and turnover causes of action arising from allegations of actions improperly taken by

defendant RemyCo., Inc. in connection with its management and operation of the Apartments during the Transition Period. As set forth in further detail in the filed Bank of the West Complaint, Plaintiffs therein seek the return of approximately \$200,000.00 in rent payments collected by RemyCo., Inc. on behalf of the Plaintiffs and \$200,000.00 in funds loaned by the Plaintiffs to RemyCo., Inc., all of which amounts are or were allegedly on deposit at defendant Bank of the West, who has refused to pay such amounts to the Debtors' non-debtor property management company. Plaintiffs have also asserted in the Bank of the West Adversary a breach of contract action against The Remy Companies, Inc. based on certain guarantee obligations allegedly undertaken by The Remy Companies, Inc. on behalf of RemyCo., Inc. in an outstanding letter agreement.

19. On May 28, 2010, the Bank of the West defendants filed an answer to the Bank of the West Adversary Complaint (*Id.* Dkt #11).

20. The remaining defendants in the Bank of the West Adversary have failed to file any timely response to the Complaint.

21. The Remy Adversary. On March 17, 2010, the Plaintiffs filed an amended complaint (Bankr.D.Del. Adv. Pro. No. 10-50723 Dkt #5) asserting breach of contract, fraud/misrepresentation, civil conspiracy, RICO, fraudulent transfer and recovery causes of action against the RemyCo. Entities and real estate broker Sperry Van Ness/William T. Strange & Associates, Inc. ("SVN/Strange") arising from improper actions allegedly taken by such defendants in connection with the Acquisition of the Apartments. Both the RemyCo. Entities and SVN/Strange have filed motions to dismiss the Remy Adversary (See *Id.* Dkt ##15, 19, 45) and the Plaintiffs have filed an opposition to such motions to dismiss (*Id.* Dkt #27).

22. Because the Delaware Bankruptcy Court previously directed that discovery proceed concurrently with consideration of the motions to dismiss, some discovery has commenced and depositions of certain defendants were scheduled. However, defendants have

sought to postpone such depositions (*Id.* Dkt ##41, 42), which postponement has been opposed by the Plaintiffs (*Id.* Dkt #43).

23. The Debtors intend to request at the Status Conference that this Court consider entry of a scheduling order setting forth dates for the completion of written discovery, the scheduling of depositions, the adjudication of any pending motions to dismiss and/or default judgments, and scheduling dates for trial of all remaining causes of action in the Adversary Proceedings.

WHEREFORE, at the Status Conference the Debtors shall respectfully request that this Court undertake to (i) calendar the pending Apartment LLC Dismissal Motion for hearing; (ii) enter a scheduling order in each of the Adversary Proceedings; and (iii) grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

SNEED LANG HERROLD PC

By s/ David Herrold

David H. Herrold, OBA #17053
Emily M. Jones, OBA #21719
1700 Williams Center Tower I
One West Third Street
Tulsa, Oklahoma 74103-3522
Telephone: (918) 588-1313
Facsimile: (918) 588-1314
Email: dherrold@sneedlangherrold.com
ejones@sneedlangherrold.com

—*and*—

BALLARD SPAHR LLP

Tobey M. Daluz*
Sean J. Bellew*
Christopher S. Chow*
919 N. Market Street, 12th Floor
Wilmington, Delaware 19801
Telephone: (302) 252-4465
Facsimile: (302) 252-4466

Email: daluzt@ballardspahr.com
bellevs@ballardspahr.com
chowc@ballardspahr.com

* *admission pro hac vice pending*

**COUNSEL FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of July, 2010, he caused a true and correct copy of the above and foregoing instrument to be electronically filed through the CM/ECF System maintained by the U.S. Bankruptcy Court for the Northern District of Oklahoma and **believes** said CM/ECF System **should generate** a 'Notice of Electronic Filing,' transmitting a true and correct copy of said filing to the following counsel for parties in the Delaware bankruptcy proceeding who consented to such electronic service pursuant to Fed.R.Bankr.P. 7005 and 9036, Fed.R.Civ.P. 5(b)(2)(E) and 5(d)(3); **however, in an abundance of caution, the undersigned has, in addition, caused the foregoing instrument to be delivered electronically to listed e-mail addressees to ensure electronic service on the date stated above:**

Daniel K. Astin on behalf of Creditor Bank of the West
dastin@ciardilaw.com, vfrew@ciardilaw.com

Mary E. Augustine on behalf of Creditor Bank of the West
maugustine@bglawde.com

Mary E. Augustine on behalf of Defendant Bank of the West
maugustine@bglawde.com

Sean J. Bellew on behalf of Plaintiff Old South Apartments, LLC
bellevs@ballardspahr.com

Noel C. Burnham on behalf of Attorney Burnham Law Associates, LLC
nburnham@burnhamlawassociates.com

Christopher S. Chow on behalf of Debtor Brixton Square Apartments, LLC
chowc@ballardspahr.com

Tobey M. Daluz on behalf of Debtor RC Sooner Holdings, LLC
daluzt@ballardspahr.com

John D. Demmy on behalf of Creditor Public Service Company of Oklahoma d/b/a
American Electric Power jdd@stevenslee.com

Kristi J. Doughty on behalf of Creditor PNC Bank, N.A.
bk.service@aulgur.com

David A. Felice on behalf of Plaintiff Old South Apartments, LLC
feliced@ballardspahr.com

Gary H. Kaplan on behalf of Defendant Sperry Van Ness/William T. Strange &
Associates, Inc. ghkaplan@mdwecg.com, jmbarrowclough@mdwecg.com,
aemoore@mdwecg.com, awlefco@mdwecg.com

Margaret M. Manning on behalf of Creditor Oklahoma Energy Source, LLC
mmanning@klehr.com

David T. May on behalf of Debtor RC Sooner Holdings, LLC
maydt@ballardspahr.com

John D. McLaughlin on behalf of Creditor Bank of the West
jmclaughlin@ciardilaw.com, vfrew@ciardilaw.com, ddorgan@ciardilaw.com,
gpatel@ciardilaw.com

Rachel B. Mersky on behalf of Creditor Fannie Mae
rmersky@monlaw.com

Natalie D. Ramsey on behalf of Attorney Montgomery McCracken Walker & Rhoads
LLP nramsey@mmwr.com

Thomas Patrick Tinker thomas.p.tinker@usdoj.gov

United States Trustee USTPREGION03.WL.ECF@USDOJ.GOV

The undersigned further certifies that on this same date, he caused a true and correct copy of the above and foregoing instrument to be deposited into the U.S. Mails, all postage prepaid thereon, addressed to the following counsel of record not currently receiving Notices of Electronic Filing through the CM/ECF System maintained by the U.S. Bankruptcy Court for the Northern District of Oklahoma:

BMC Group
444 N Nash St
El Segundo, CA 90245

Aaron E. Moore on behalf of Defendant Sperry Van Ness/William T. Strange &
Associates, Inc.
Marshall Dennehey Warner Coleman & Goggi
1845 Walnut Street
Philadelphia, PA 19103-4797

Katherine Vance, Esq.
Assistant U.S. Trustee
224 South Boulder Avenue, Room 225
Tulsa, Oklahoma 74103

s/ David H. Herrold