

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

In re:

RC SOONER HOLDINGS, LLC, et al.,<sup>1</sup>

Debtors.

Case No. 10-12185-R

Chapter 11

(Jointly Administered)

**MOTION OF FANNIE MAE FOR AN ORDER COMPELLING  
DEBTORS' COMPLIANCE WITH THE 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 AND NOTICE OF  
OPPORTUNITY FOR A HEARING**

Comes now Fannie Mae, an entity organized under the laws of the United States, and pursuant to 11 U.S.C. § 105(a), moves the Court for the entry of an Order compelling Debtors' compliance with the 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 ("Stay Relief Order") entered April 27, 2010, in the above jointly administered bankruptcy cases. (Order entered in the United States Bankruptcy Court for the District of Delaware ("Delaware Bankruptcy Case") in Case No. 10-10528(BLS) (Doc. No. 146) prior to the transfer of the cases to this District). As grounds therefore, Fannie Mae would show

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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, 11th Floor, New York, New York 10036-8901.

the Court as follows:

1. The bankruptcy cases of the Debtors herein were commenced on February 22, 2010, by the filing of 17 separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Delaware Bankruptcy Court. An Order for Joint Administration of the 17 Cases was entered in the Delaware Bankruptcy Court on February 24, 2010 (Del. Doc. No. 19).

2. On March 30, 2010, Fannie Mae filed a Motion For Relief From The Stay Pursuant To 11 U.S.C. § 362(d) And Rule 4001 Of the Federal Rules Of Bankruptcy Procedure (Del. Doc. No. 105) requesting that the automatic stay be modified so as to allow Fannie Mae foreclose its' mortgages and liens against the real and personal property owned by 8 of the Debtors (referred to herein as the "Apartment LLCs"<sup>2</sup>), including obtaining appointment of a receiver to manage and operate the properties pursuant to state law. On April 27<sup>th</sup>, 2010, the Delaware Bankruptcy Court entered the 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 ("Stay Relief Order") (Del. Doc. No. 146). The Stay Relief Order, which includes stipulations and agreements between the Debtors and Fannie Mae, terminated the automatic stay so as to allow Fannie Mae to foreclose its mortgages and liens respecting property of the Apartment LLCs, including, without limitation, the right to seek appointment of a receiver to manage and operate the properties. The Stay Relief Order also provides, in part, as follows:

"12. Debtor's Cooperation with Receiver. The Debtors hereby agree to cooperate with the Lender and any Receiver in all matters related to the appointment of the Receiver and to take such steps as are reasonably necessary to effectuate a smooth transition from the management and operation of the Apartment Complexes by the

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<sup>2</sup> The Apartment LLCs consist of the following Debtors: 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, LLC.

Debtors to the management and operation of the Apartment Complexes by the Receiver during the Transition Period. Debtors further agree to deliver copies of all financial documents, books, and records in their possession, custody, and control relating to the Apartment Complexes to the Receiver within three (3) business days after the appointment of the Receiver unless the Receiver otherwise directs. After the conclusion of the Transition Period, the Debtors and RC Realty shall not interfere with the Receiver in the performance of his duties and shall respond to reasonable requests for information related to the operation and management of the Apartment Complexes by the Receiver made during a reasonable time after the Transition Period.” (Stay Relief Order, P.5, ¶12.)

3. The Stay Relief Order also provides that:

“At the conclusion of the Transition Period, the Debtors shall turnover all Cash Collateral less the amounts necessary to pay outstanding checks, to pay RC Realty’s management fees through the end of the Transition Period, and pay U.S. Trustee fees in the amount of \$6,500.” (Stay Relief Order P.4,5, ¶11.)

4. The Stay Relief Order also provides that the Bankruptcy Court . . . “has and will retain jurisdiction to enforce this Stipulation and Order according to its terms” . . . (Stay Relief Order P. 9).

5. Pursuant to the Stay Relief Order, foreclosure cases regarding the Apartment LLCs resumed in State Court in Oklahoma<sup>3</sup> (the “Foreclosure Cases” pending in the “Oklahoma State Court”).

6. By separate orders entered on April 29, 2010, a receiver, Jim Parrack (“Receiver”), was appointed in each of the 8 Foreclosure Cases, and the Receiver is in possession and operating the apartment properties owned by the respective Apartment LLCs.

7. The Receiver and Fannie Mae, acting through Fannie Mae’s Delaware counsel, have made numerous attempts to obtain the Debtor’s voluntary compliance with the stipulations

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<sup>3</sup> *Fannie Mae v. Brixton Square Apartments, LLC, et al.*; Case No. CJ-2010-00658; In the District Court in and for Tulsa County, Oklahoma; *Fannie Mae v. CC Apartments, LLC, et al.*; Case No. CJ-2010-006662; In the District Court in and for Tulsa County, Oklahoma; *Fannie Mae v. Fulton Plaza Apartments, LLC, et al.*; Case No. CJ-2010-00659; In the District Court in and for Tulsa County, Oklahoma; *Fannie Mae v. Magnolia Manor Apartments, LLC, et al.*; Case No. CJ-2010-00660; In the District Court in and for Tulsa County, Oklahoma; *Fannie Mae v. Pomeroy Park Apartments, LLC, et al.*; Case No. CJ-2010-00798, In the District Court in and for Tulsa County, Oklahoma; *Fannie Mae v. Salida Apartments, LLC, et al.*, Case No. CJ-2010-00796; In the District Court in and for Tulsa County, Oklahoma; *Fannie Mae v. Savannah South Apartments, LLC, et al.*; Case No. CJ-2010-00661; In the District Court in and for Tulsa County, Oklahoma; *Fannie Mae v. Southern Hills Villa Apartments, LLC, et al.*; Case

and agreement contained in the Stay Relief Order, specifically the requirements to turnover the Cash Collateral and the business records of the Apartment LLCs, but such efforts to obtain voluntary compliance have been unsuccessful and the Debtor has failed to turn over to the Receiver the basic business records of the Apartment LLCs or to account for the Cash Collateral. Specifically, the Debtors have only turned over to the Receiver the following:<sup>4</sup>

- A. Copies of tenant leases.
- B. \$41,508.58 in a lump sum represented by Debtors to constitute all of the remaining Cash Collateral without any allocation of the sum among the respective Apartment LLCs. Fannie Mae believes that at least \$25,000 of the \$41,508.58 represents insurance funds which were received by one of the Debtors attributable to an insured loss sustained by one of the Debtors, in the form of check made jointly payable to parties, including Fannie Mae. The check was apparently negotiated without the endorsement of Fannie Mae and the proceeds are purported to be included in the \$41,508.58, without any documentation in support.
- C. Pre-Petition due diligence records furnished to the Debtors by the former owners of the Apartment LLCs, all of which records and documentations predate the commencement of the bankruptcy cases.

8. The following documents and records have not been provided to the Receiver despite numerous requests therefor:

- A. Bank statements.
- B. Cancelled checks.
- C. Deposit slips.
- D. Check registers.
- E. General ledgers.
- F. Rent rolls.
- G. Rent receipt records.

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No. CJ-2010-00797; In the District Court in and for Tulsa County, Oklahoma.

<sup>4</sup>On July 19, 2010, Debtors advised Fannie Mae that additional unspecified documents and records had been gathered and are ready to transmit. The documents and records have not been received as of the time of filing of this motion.

- H. Payroll records.
- I. Employee files.
- J. Tax payment records.
- K. Tax deposit accounts.
- L. Bills of sales, warranties, invoices, receipts and maintenance records regarding equipment.
- M. Documents supporting budgeted expenditures pursuant to the Cash Collateral Order.
- N. Security deposits or records of security deposits.

9. The foregoing are primarily ordinary business records which are, or should be, readily available to the Debtors, most of which are required by the Bankruptcy Code, Bankruptcy Rules and U.S. Trustee operating guidelines to be maintained by debtors-in-possession and to be available to be furnished to parties in interest in Chapter 11 bankruptcy cases. Here furnishing the financial documents, books and records to the Receiver is also required by the Stay Relief Order. (Stay Relief Order, P.5, ¶12.) All of the documents are necessary for the transition of operations from the Debtor to the Receiver as contemplated by the Stay Relief Order, and all are necessary for the Receiver's performance of his duties to the Oklahoma State Court and the parties to the Foreclosure Cases.

10. § 105(a) of the Bankruptcy Code authorizes the Court to issue any order necessary or appropriate to carry out the provisions of the Code. Here, such an Order is both necessary and appropriate to carry out the provisions of the Code requiring accounting for estate funds, 11 U.S.C. §§ 704(a)(2) (trustee is accountable for all property received), 1106(a)(1) (Chapter 11 trustee's duties incorporating § 704(a)(2)), 1107(a) (debtor in possession duties include trustee duties under § 1106(a)), and Bankruptcy Rule 2015(a)(2) (debtor-in-possession required to keep a records of receipts and disbursements) and (a)(3) (incorporating § 704(a)(8) of the Code requiring filing of statements of receipts and disbursements), and the Stay Relief Order.

The Delaware Bankruptcy Court specifically reserved jurisdiction to issue such an Order. (Stay Relief Order, P.9.)

11. Fannie Mae requests the Court enter an Order directing the Debtors to turnover and deliver the documents and things specified in paragraph 8 above to the Receiver at: ***Price Edwards & Co., Attention: Jim Parrack, 210 Park Ave., Suite 1000, Oklahoma City, OK 73102***, or at the on-site office addresses of the respective Apartment LLCs within twenty (20) days of the date of entry of such an Order.

**NOTICE OF OPPORTUNITY FOR A HEARING**

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. **If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Northern District of Oklahoma, 224 South Boulder, Tulsa, Oklahoma 74103 no later than 14 days from the date of filing of this request for relief.** You should also serve a file-stamped copy of your response or objection on the movant and on others who are required to be served and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice. The 14 day period includes the three (3) days allowed for mailing provided for in Fed. R. Bank. P. 9006(f).

WHEREFORE, Fannie Mae requests the Court enter an Order directing the Debtors to turnover and deliver the documents and things specified in paragraph 8 above to the Receiver at ***Price Edwards & Co., Attention: Jim Parrack, 210 Park Ave., Suite 1000, Oklahoma City, OK 73102***, or at the on-site office addresses of the respective Apartment LLCs within twenty (20) days of the date of entry of such an Order.

DOERNER, SAUNDERS, DANIEL  
& ANDERSON, L.L.P.

By: /s/ Sam G. Bratton II

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 19, 2010, a true and correct copy of the foregoing application was served electronically on participants in the CM/ECF system according to local procedures. A separate certificate as to other service will be filed.

/s/ Sam G. Bratton II

Sam G. Bratton II

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