

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

In Re: )  
 ) Case No. 10-12185-R  
RC SOONER HOLDINGS, LLC, et al.,<sup>1</sup> )  
 ) Chapter 11  
Debtors. )  
 ) (Jointly Administered)

**FANNIE MAE'S OBJECTION TO MOTION OF THE  
DEBTORS FOR VOLUNTARY DISMISSAL OF CERTAIN  
CHAPTER 11 CASES PURSUANT TO 11 U.S.C. § 1112(b)**

COMES NOW Fannie Mae, an entity organized under the laws of the United States and hereby objects to the Motion of the Debtors For Voluntary Dismissal Of Certain Chapter 11 Cases Pursuant To 11 U.S.C. § 1112 (b), filed May 4, 2010 (Del. Doc. No. 155) (“Motion to Dismiss”). As grounds therefore, Fannie Mae would show the Court as follows:

1. The bankruptcy cases of the 17 debtors in the above jointly administered cases were commenced by the filing of voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on February 22, 2010 (the “Petition Date”) in the United State Bankruptcy Court for the District of Delaware (“Delaware Bankruptcy Court”). The Debtors were, and are Debtors-in-Possession pursuant to 11 U.S.C. § 1107(a), 1108. On February 24, 2010, the

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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.

Delaware Bankruptcy Court entered an order for joint administration of the seventeen (17) bankruptcy cases (Del. Doc. No. 19) under the lead case of RC Sooner Holdings, LLC.

2. On the Petition Date, Fannie Mae held separate valid, enforceable and unavoidable first mortgage liens and security interests against substantially all the real and personal property, including rents, proceeds and cash collateral as defined by 11 U.S.C. § 363(a), comprising the principal assets of eight of the seventeen (17) Debtors namely: 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. (the “Apartment LLCs”) as security for debt owed to Fannie Mae severally by the non-Debtor former owners of the Apartment LLCs.<sup>2</sup>

3. On February 24, 2010, the Delaware Bankruptcy 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 (Del. Doc. No. 20) (“Interim Cash Collateral Order”), whereby the Apartment LLCs’ limited use of Fannie Mae’s cash collateral for specifically budgeted expenditures was approved. The Interim Cash Collateral Order was followed by three subsequent interim cash collateral orders and a final cash collateral order, entered April 27, 2010 (Del. Doc. No. 145) (the “Cash Collateral Order”) providing for the same limited use of cash collateral by the respective

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<sup>2</sup> The Apartment LLCs were sold by the former owners to holding companies formed by the respective Debtors and the principals of the Debtors for the purpose of acquiring the Apartment LLCs. The sales of the Apartment LLCs to the Debtors’ holding companies occurred in October, 2009, without the knowledge or consent of Fannie Mae. The clandestine sales, being done without Fannie Mae’s knowledge or consent, caused defaults (in addition to other pre-existing defaults) in all of the mortgages securing the former owners’ debt to Fannie Mae pursuant to the express terms of the mortgages, which facts were well-known to all buyers and sellers and their respective principals and controlling persons.

Debtors for approved budgeted expenses and for Lender's protection, as respecting the prior Interim Cash Collateral Orders.

4. On February 24, 2010, the Delaware Bankruptcy Court entered an Interim Order Authorizing Maintenance And Utilization Of Debtors' Cash Management System and Bank Accounts, And Continued Use Of Existing Business Forms (Del. Doc. No. 20) ("Cash Management Order") whereby the Debtors were permitted to continue to utilize their existing bank accounts, check stock and cash management procedures. The Cash Management Order provided essentially for all of the rents and revenues attributable to the operation of the apartments owned by the Apartment LLCs to be deposited directly into an account owned and managed by RC Realty Management, Inc. ("RC Management"), a non-Debtor affiliate of the Debtors. According to the Cash Management Order, RC Management would receive all revenues attributable to the Apartment LLCs, pay the approved operating expenses, mortgage payments, payroll and management fees respecting the Apartment LLCs, with the surplus cash to be paid to RC Sooner Holdings, LLC, the lead Debtor in these jointly administered bankruptcy cases. Attached hereto as Exhibit "A" is a schematic of the cash management proposed by the Debtors and ultimately approved by the Delaware Bankruptcy Court, as attached to the Debtor's motion requesting entry of a cash management order. (Del. Doc. No. 5).

5. 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) ("Stay Relief Motion") 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 Apartment LLCs. 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 the apartments owned by Apartment LLCs, including, without limitation, the right to seek appointment of a receiver to manage and operate the apartment properties.

6. 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”).

7. 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. The Foreclosure Cases are proceeding in the Oklahoma State Court.

8. 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 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

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

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.)

9. 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<sup>4</sup>.” (Stay Relief Order P.4,5, ¶11.)

10. 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).

11. 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 and agreements 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 use of Cash Collateral. Specifically, the Debtors have only turned over to the Receiver the following:<sup>5</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. \$25,000 of the \$41,508.58 represents insurance proceeds 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 negotiated without the endorsement of

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<sup>4</sup>Although Fannie Mae agreed to give up \$6,500 of its cash collateral so that the U.S. Trustee in the Delaware Bankruptcy Case could be paid as of the date of the scheduling conference before this Court (July 14, 2010) the Trustee had not yet been paid.

<sup>5</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 objection.

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.

12. 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.
- 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.

13. During the time Fannie Mae and the Receiver have been attempting to obtain records from the Debtors, Fannie Mae has been advised of the following by the Debtors:

- A. The Debtors may not be able to account for expenditures of Cash Collateral by Debtors.
- B. Funds of the Debtors' Estates were commingled with non-Debtor funds.

- C. Allocation of expenses incurred by each Debtor may not be easily discernable.
- D. The check register maintained by RC Management contains numerous entries to which Fannie Mae is not entitled because the information relates to non-debtors and therefore the check registers cannot be easily produced.
- E. There are no books and records to be delivered.
- F. That the Debtors would gather and provide documents in response to Fannie Mae's request as expeditiously as possible and that the Debtors are responding and would provide the documents to the Receiver. (This has obviously not been done.)

14. Fannie Mae has also been advised that RC Management (or one or more the Debtors) fired a number of employees working for the apartments, and RC Management removed documents relating to RC Sooner Holdings LLC's interest with the stated intention of shredding them.

15. The Cash Management Order does not authorize the funds of one Debtor to be used to pay bills of any other Debtor, or to use the funds for any purpose not authorized by the Cash Collateral Order or by other Court Order. The Cash Management Order does not in any way relieve the Debtors of the responsibility to strictly and discreetly account for the receipt and use of the cash of each separate Debtor. The Cash Management Order was obtained by the Debtors for the stated purpose to minimize business interruption, not to allow one estate to finance another. The Cash Management Order certainly does not permit the funds of the jointly administered Debtor estates to be comingled with non-Debtor funds. The motion for entry of the Cash Management Order (Del. Doc. No. 5) made no mention that Debtor funds would be deposited into accounts which were also used as depositories for non-Debtor entities, nor that expenses for non-Debtor entities might be paid out of the Debtors' depository account. Nothing in the simplified cash management structure presented by the Debtors to the Delaware Bankruptcy Court and Fannie Mae suggests that the funds from the respective Debtor estates

would be commingled with non-Debtor funds or used for any other Debtor, nor that any funds would be commingled with non-Debtor funds or possibly used for non-Debtor purposes, nor that the use of the proposed cash management system would render an accounting to be impossible or impracticable.

16. The Apartment LLC cases should not be dismissed until the Debtors have complied with the Stay Relief Order. The Stay Relief Motion, and subsequent agreed Stay Relief Order (Del. Doc. No. 105), are based in part on the undeniable fact that Fannie Mae's mortgages and security interests were not, and could not be adequately protected and there was no equity in the properties for the respective Estates. The purpose and intent of the agreed Stay Relief Order was for the Debtors to turnover management and operation of the apartment complexes along with the unused Cash Collateral and the books, records and accounts necessary to operate the apartments, to the Receiver. In exchange for handing over the apartments and the necessary funds, documents and accounting to operate the apartments, Fannie Mae agreed not to object to dismissal of the bankruptcy cases, but Fannie Mae did reserve the right to pursue any remedies for the Debtors' misuse of Fannie Mae's Cash Collateral.

17. The Stay Relief Order provides:

"In the event the Debtors decide to seek to dismiss the bankruptcy cases of the Apartment Debtors, Fannie Mae stipulates and agrees that it will not object to such a dismissal and hereby forever waives, relinquishes, and abandons the right to assert any and objections it has or may have to such a dismissal." (Stay Relief Order, P.8, ¶ 17.)

And

". . . provided, however, that notwithstanding anything to the contrary herein, Fannie Mae does not release any of the Debtors from claims based upon misappropriation of funds in violation of the cash collateral orders entered by this Court in the Debtor's bankruptcy cases, all of which claims (if any) are expressly preserved . . ." (Stay Relief Order, P.6, ¶ 13.)



18. If the Debtors had performed their obligations and commitments under the Stay Relief Order, Fannie Mae's collateral would have been removed from the bankruptcies together with the means and records to operate and retain the value of the properties. However, the Debtors utterly failed to deliver what they promised and Fannie Mae and the Receiver are materially prejudiced thereby. For example, because the Debtors refused to deliver the check registers, rent rolls, deposit slips and general ledgers (all documents in existence), the Receiver cannot determine whether or which tenants paid rent to the Debtors during the pendency of the bankruptcy cases, whether tenants have security deposits, and in what amounts, whether employment taxes have been paid or withheld, or what unpaid vendor bills are outstanding. The Receiver cannot determine how the \$41,508.58 cash he received from the Debtors should be applied or what it is comprised of. In short, Fannie Mae and the Receiver did not receive what was agreed to be delivered out of the bankruptcy cases pursuant to the Stay Relief Order and the Debtors have utterly failed to handle and account for the cash assets of the estate as required by law.

19. The Apartment LLC bankruptcy cases should not be dismissed until the Debtors have performed the agreements they made in the Stay Relief Order, and the Debtors should be estopped from enforcing Fannie Mae's covenant not to object to dismissal because of the Debtors' material breach of the Stay Relief Order and the substantial resulting prejudice to Fannie Mae.

20. If the bankruptcy cases are dismissed before the Debtors have been ordered to comply with the Stay Relief Order, it will be difficult, if not impossible, for Fannie Mae to obtain compliance with the Order. The foreclosures are proceeding in eight (8) separate actions before several different state judges. The Receiver's entitlement to the accounting and cash collateral

that accrued prior to his appointment, arise, not from the Receivership appointments but from the Cash Collateral Order entered by the Delaware Bankruptcy Court. Furthermore, the pre-receivership management of the properties, based upon representation from the Debtors, was handled by a non-Oklahoma management company, thus making enforcement of the Order by a State Court Judge ever more problematic.

21. In addition to the necessary operational records having not been produced as agreed in the Stay Relief Order, the Debtors have not furnished any accounting for the use of Fannie Mae's Cash Collateral. A Chapter 11 debtor has a strict duty to account for all receipts and expenditures. 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 is required to keep records of receipts and disbursements) and (a)(3) (incorporating § 704(a)(8) of the Code requiring filing of statements of receipts and disbursements). The Debtors did file an initial report (Del. Doc. No.109) and 2 Monthly Operating Reports (Del. Doc. Nos. 147 and 174), but none of these furnishes any detail from which the Court, the U.S. Trustee, creditors or Fannie Mae can determine whether the Debtors' expenditures were authorized by the Bankruptcy Court, Bankruptcy Rules, U.S. Trustee operating guidelines or the Cash Collateral Order. The bankruptcy cases should not be dismissed until the Debtors have provided the accounting required by law, and until the Court and parties in interest are satisfied that the privileges afforded a debtor-in-possession have not be abused in these cases.

WHEREFORE, Fannie Mae requests that the Debtors' Motion to Dismiss be denied, or that the Court delay dismissal until the Debtors have complied with the Stay Relief Order and fully accounted for, and paid all Cash Collateral to the Receiver.

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

By: /s/ Sam G. Bratton II

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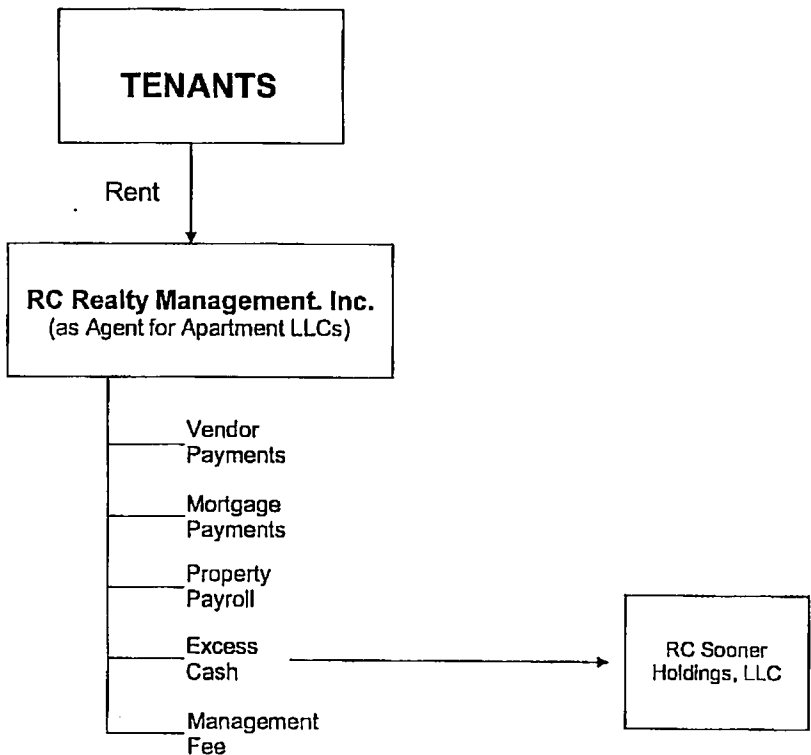
**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of July, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants in this case. A separate certificate as to other service will be filed.

/s/ Sam G. Bratton II  
Sam G. Bratton II

1809688.1

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New York, NY 10001  
  
Op Account: 840312649  
Payroll Account: 840312755



Bank Account  
JP Morgan Chase  
225 5<sup>th</sup> Avenue  
New York, NY 10001  
  
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