

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

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

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.

**PLAINTIFFS' BRIEF REGARDING THE COURT'S JURISDICTION OVER THE
ADVERSARY PROCEEDINGS**

RC Sooner Holdings, LLC ("RC Sooner" or the "Company") and certain direct and indirect subsidiaries of RC Sooner, as debtors and debtors in possession (collectively, the "Debtors"), and non-debtor Old South Apartments, LLC ("Old South Apartments", and together with the Debtors, the "Plaintiffs"), by their undersigned attorneys, respectfully submit this brief regarding the Court's jurisdiction over Adversary Proceeding No. 10-01070-R (the "BOW Action") and Adversary Proceeding No. 10-01071-R (the "Rescission Action", and, together with the BOW Action, the "Adversary Proceedings").

I. INTRODUCTION

On July 14, 2010, the Court held a status conference regarding the Adversary Proceedings. At the status conference the Court requested that the Plaintiffs submit a brief regarding whether the Court properly has jurisdiction over the Adversary Proceedings. The Court made this inquiry, in part, because of the inclusion of a non-debtor plaintiff (Old South Apartments) in the Adversary Proceedings and the fact that the Apartment LLCs (as defined below) would also become non-debtor plaintiffs should the Court ultimately grant the Debtors' pending motion to dismiss the chapter 11 cases of the Apartment LLCs.

II. BACKGROUND AND STATEMENT OF FACTS

Both the BOW Action and the Rescission Action were filed by RC Sooner, the RC LLCs,² the Apartment LLCs,³ and Old South Apartments. RC Sooner is the direct parent of the

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 ("RC Old South"), whose real estate assets are not subject to loans held by the Federal National Mortgage Association.

RC LLCs (together with RC Sooner and RC Old South, the “RC Purchasers”) that were formed in October 2009 for the purpose of acquiring (the “Acquisition”) from certain of the RemyCo. Entities⁴ 100% of the membership interests of the Apartment LLCs and Old South Apartments. The purchase price of the Acquisition included the assumption of approximately \$27 million in outstanding loans and mortgages (the “Loans and Mortgages”) currently held by the Federal National Mortgage Association (“Fannie Mae”).

During a transition period that lasted from October 29, 2009 (the “Closing Date”) 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 and Old South Apartments on behalf of the Company for the purpose of facilitating the transition of the business to the RC Purchasers. 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 Apartment LLCs and Old South Apartments, 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 Date.

³ 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 Southern Hills Villa Apartments, LLC. RC Sooner is also the ultimate parent of non-debtor Old South Apartments, whose loan is not held by the Federal National Mortgage Association.

⁴ 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.

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 RC Purchasers as recently as the final week of January, 2010.

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 RC Purchasers 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 receiver for all of the apartments managed and owned by the Apartment LLCs (the "Apartments"), which State Court Actions were subsequently stayed by the filing of the Debtors' chapter 11 cases.

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 Plaintiffs immediately initiated the Adversary Proceedings. In the BOW Action, Plaintiffs assert claims for (i) breach of contract; (ii) turnover pursuant to 11 U.S.C. § 542; (iii) turnover and an accounting pursuant to 11 U.S.C. § 543; and (iv) conversion. In the Rescission Action, Plaintiffs assert claims for (i) breach of contract; (ii) fraud/misrepresentation; (iii) civil conspiracy; (iv) RICO violations; and (v) fraudulent transfer and recovery pursuant to 11 U.S.C. §§ 548 and 550.

III. ARGUMENT

District courts have original but not exclusive jurisdiction of "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). District courts are permitted to provide that any and all cases "arising under title 11, or arising in or

related to cases under title 11 shall be referred to the bankruptcy judges for the district.” 28 U.S.C. § 157(a). The District Court for the Northern District of Oklahoma (the “District Court”) has referred to the Bankruptcy Courts for the Northern District of Oklahoma (the “Bankruptcy Court”) all bankruptcy cases to the full extent permitted by section 157(a). See N.D.Okla. LCvR 84.1(a); In the Matter of Rules of Court, Miscellaneous No. M-128, specifically the Orders dated July 10, 1984 (“Order of Referral of Bankruptcy Cases”) and April 11, 1985 (“District Court Rules for Bankruptcy Practice and Procedure”). As a result, this Court has jurisdiction over the Adversary Proceedings so long as they arise under title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the “Bankruptcy Code”), or arise in or are related to cases under the Bankruptcy Code.

A. The Causes of Action in the Adversary Proceedings All Arise Under the Bankruptcy Code or are Related To the Bankruptcy Cases

Proceedings “arising under title 11” of the Bankruptcy Code are those that arise under specific provisions of the Bankruptcy Code (i.e., did federal bankruptcy law create the cause of action). 1 COLLIER ON BANKRUPTCY, ¶ 3.01[3][c][i] at 3-13 (16th ed. revised 2010) (citing H.R. Rep. No. 585, 95th Cong., 1st Sess. 445 (1977)). This Court is entitled to hear and determine all such core proceedings arising under title 11 and may enter appropriate orders and judgments in those proceedings. 28 U.S.C. § 157(b)(1). 28 U.S.C. § 157(b)(2) provides a non-exclusive list of core proceedings.

The section 542 and 543 turnover claims asserted in the BOW Action and the section 548 and 550 fraudulent transfer and recovery claims asserted in the Rescission Action are core proceedings arising under specific provisions of the Bankruptcy Code within the meaning of 28 U.S.C. § 157(b)(2). See 28 U.S.C. § 157(b)(2)(E, H) (“orders to turn over property of the estate” and “proceedings to determine, avoid, or recover fraudulent conveyances”). This Court accordingly has proper jurisdiction to hear and fully adjudicate such core proceedings.

Bankruptcy courts may also hear non-core proceedings that are otherwise related to a bankruptcy case under 28 U.S.C. § 157(c)(1). Non-core proceedings are proceedings that do not depend on the bankruptcy laws for their existence, but nevertheless “could alter the debtor's rights, liabilities, options, or freedom of action in any way, thereby impacting on the handling and administration of the bankruptcy estate.” Gibson v. Rotunno, No. 96-4076, 1996 U.S. App. LEXIS 33324, at *5 (10th Cir. December 20, 1996)⁵ (quoting Gardner v. United States (In re Gardner), 913 F.2d 1515, 1518 (10th Cir. 1990)); see also Plotner v. AT&T Corp., 224 F.3d 1161, 1173 (10th Cir. 2000); In re Gardner, 913 F.2d 1515 at 1518 (“The test for determining whether a civil proceeding is related in bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.”) (citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d. Cir. 1985)).

In hearing non-core proceedings, unless consent is provided pursuant to Fed.R.Bankr.P. 7012(b), the Bankruptcy Court, rather than rendering appropriate orders or judgments, must submit proposed findings of fact and conclusions of law to the District Court. 28 U.S.C. § 157(c)(1). The District Court then enters any final orders or judgment after considering the Bankruptcy Court’s proposed findings of fact and conclusions of law. Id. The mere presence of non-core matters in a pending proceeding, however, does not deprive the Bankruptcy Court of jurisdiction to hear such matters. See Telluride Asset Resolution, LLC v. Telluride Global Dev., LLC (In re Telluride Income Growth LP), 364 B.R. 390, 398 (B.A.P. 10th Cir. 2007) (“The bankruptcy court has jurisdiction over non-core proceedings when they are related to the bankruptcy in that they could conceivably have an effect on the bankruptcy estate.”) (citing

⁵ A copy of Gibson v. Rotunno is attached hereto as Exhibit A.

Gregory Ranch v. Lyman (In re Gregory Rock House Ranch, LLC), 339 B.R. 249, 253 (Bankr. D.N.M. 2006)).

In the BOW Action, the breach of contract and conversion claims are non-core proceedings related to the bankruptcy case, because such claims impact the Debtors' rights and affect the Debtors' estates. Specifically, these "related to" claims stem from the breach of prepetition contracts with RC Sooner and each of the RC LLCs and, should the Plaintiffs recover under these claims, funds will be brought into the estates for the benefit of creditors.

In the Rescission Action, the breach of contract, fraud/misrepresentation, and RICO claims are related to the bankruptcy case because such claims also impact the Debtors' rights and affect the Debtors' estates. Specifically, these "related to" claims stem from the breach of prepetition contracts and related misrepresentations made to RC Sooner and the RC LLCs by the defendants in the Rescission Action and, should the Plaintiffs recover under these claims, will result in funds being brought into the Debtors' estates for the benefit of creditors. Further, choses in action, such as causes of action belonging to the debtor at commencement of the bankruptcy cases, are property of the estate under Bankruptcy Code section 541. See Sender v. Simon, 84 F.3d 1299, 1305 (10th Cir. 1996).

The breach of contract and conversion claims in the BOW Action and the breach of contract, fraud/misrepresentation, civil conspiracy, and RICO claims in the Rescission Action, none of which depend on bankruptcy law to exist and could have been brought in another court, are non-core proceedings over which this Court may properly exercise "related to" jurisdiction due to the impact of such proceedings on the Debtors' rights and bankruptcy estates. 28 U.S.C. § 157(c)(1). See also Sender, supra. Although the instant Adversary Proceedings include both core proceedings and non-core proceedings, this Court's jurisdiction to hear all such proceedings is proper because all of the proceedings either arise under the Bankruptcy Code or are otherwise

related to the Debtors' chapter 11 cases and constitute estate property (except for those causes of action asserted by non-debtor plaintiff Old South Apartments, whose joinder as a plaintiff is nevertheless proper as discussed below).

B. The Joinder of a Non-Debtor As a Plaintiff Does Not Deprive This Court of Jurisdiction Over the Adversary Proceedings

The inclusion of Old South Apartments as a plaintiff⁶ in the Adversary Proceedings does not, ipso facto, deprive this Court of jurisdiction over them. The causes of action asserted by Old South Apartments in each of the Adversary Proceedings stem from the same set of facts and circumstances underlying the causes of action asserted by the debtor-plaintiffs, and are thus appropriately asserted by a non-debtor pursuant to Rule 7020 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Bankruptcy Rule 7020 provides that plaintiffs may join an action if:

(A) [T]hey assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.

FED. R. BANKR. P. 7020(a)(1)(A-B).

Bankruptcy Rule 7020 is not limited to debtor-plaintiffs, but rather can allow the joinder of non-debtors as well. Apgar v. Homeside Lending, Inc. (In re Apgar), 291 B.R. 665 , 669 n. 5

⁶ As noted by Debtors' counsel at the July 14, 2010 status conference, the Plaintiffs intend to file a motion to amend the complaints in each of the Adversary Proceedings. Such motion shall seek to amend the complaints to (i) dismiss the Apartment LLCs as plaintiffs, because only the RC Purchasers were parties to the agreements that gave rise to the causes of action asserted in the complaints; and (ii) substitute non-debtor RC Old South in place of Old South Apartments, as RC Old South is the signatory to the agreements underlying the causes of action originally asserted by Old South Apartments, and is therefore the proper party to bring those causes of action in each of the complaints. Because the party substitution to be sought would still leave a non-debtor entity as a plaintiff, however, the jurisdictional ramifications of including a non-debtor as a plaintiff in the Adversary Proceedings will still apply regardless of whether the motion to amend is ultimately granted, and are accordingly discussed herein.

(Bankr. E.D.Pa. 2003) (“although not a debtor, Mrs. Apgar is properly joined as a plaintiff pursuant to B.R. 7020.”). In other words, the mere fact that a non-debtor is a plaintiff does not deprive the bankruptcy court of jurisdiction over an adversary proceeding.

In the instant Adversary Proceedings, Old South Apartments is properly joined as a plaintiff because its claims meet the requirements of Bankruptcy Rule 7020. In both Adversary Proceedings, Old South Apartments seeks the same relief as the Debtors (aside from the core proceedings – which Old South Apartments does not join in). In addition, in both Adversary Proceedings, Old South Apartments’ causes of action arise from the same questions of law and fact as those of the debtor-plaintiffs.

In the BOW Action, a portion of the rents collected by defendant RemyCo., Inc. (“RemyCo.”) are attributable to Old South Apartments, as are a portion of the funds provided by the Plaintiffs to RemyCo. to meet its expenses, and a portion of the security deposits currently possessed or controlled by RemyCo. Old South Apartments’ causes of action for breach of contract and conversion seek the same relief as that of the debtor-plaintiffs and arise out of the same transaction and occurrences underlying the debtor-plaintiffs’ causes of action. Further, all questions of law and fact are the same as between the debtor-plaintiffs and Old South Apartments.

Regarding the Rescission Action, Old South Apartments’ causes of action for breach of contract, fraud/misrepresentation, civil conspiracy, and RICO seek the same relief as that of the debtor-plaintiffs and arise out of the same transaction and occurrences underlying the debtor-plaintiffs’ causes of action. Further, all questions of law and fact are the same as between the debtor-plaintiffs and Old South Apartments.

The inclusion of Old South Apartments as a plaintiff accordingly does not strip this Court of jurisdiction over the Adversary Proceedings, as Old South Apartments was properly joined pursuant to Bankruptcy Rule 7020.

IV. Conclusion

This Court properly has jurisdiction over the BOW Action and the Rescission Action because the causes of action asserted in both Adversary Proceedings either arise under the Bankruptcy Code or are related to the Debtors' chapter 11 cases. Furthermore, the inclusion of Old South Apartments, a non-debtor plaintiff, does not deprive this Court of jurisdiction to hear the Adversary Proceedings. The Court can render final orders and judgment on the core proceedings and can submit proposed findings of fact and conclusions of law for the non-core proceedings.⁷

Respectfully Submitted,

BALLARD SPAHR LLP

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**Admitted Pro Hac Vice*

⁷ The Plaintiffs, in part for purposes of judicial economy in having one court render a final judgment for all of the causes of action, have contacted counsel of record for the defendants who have appeared in these cases in order to seek such defendants' consent to withdraw the reference and have the Adversary Proceedings heard by the District Court. As this Court has not yet conducted any pre-trial proceedings in either Adversary Proceeding (i.e., motions or discovery, etc.), assuming withdrawal of the reference becomes appropriate or necessary, the Plaintiffs respectfully submit that this Court need not retain the Adversary Proceedings prior to trial.

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and

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th 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 understands said CM/ECF System will generate a 'Notice of Electronic Filing,' transmitting a true and correct copy of said filing to the following counsel for parties in this 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), as follows:

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