

**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  
 ) (Jointly Administered)  
 )  
Debtors. )

**DEBTORS’ OBJECTION TO 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**

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 objection (the “Objection”) to the Motion of Fannie Mae (the “Motion”) 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 (the “Stipulation”).

**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

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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.

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. 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.

4. 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.

5. 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”<sup>2</sup>), 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. Entities<sup>3</sup> 100% of the membership interests of

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<sup>2</sup> 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.

<sup>3</sup> 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  
(continued...)

eight (8) existing Oklahoma limited liability companies that own the Apartments (collectively, the "Apartment LLCs"<sup>4</sup>). 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").

6. 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.

7. 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").

8. 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

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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.

<sup>4</sup> 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, LLC, whose loan is not held by the Federal National Mortgage Association.

concealed such facts from both Fannie Mae and the Company as recently as the final week of January, 2010.

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

10. 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 STAY RELIEF ORDER AND APPOINTMENT OF RECEIVER**

11. 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 "Stay Relief Order"), which was entered by the Delaware Bankruptcy Court on April 27, 2010 (Bankr.D.Del. Dkt #146).

Pursuant to the Stay Relief 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.

12. 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 Stay Relief Order, the Debtors' responsibility for the day-to-day operations and management of the Apartments and the corresponding employment of non-debtor RC Realty Management, Inc. ("RC Realty") as the Debtors' property management company accordingly ceased as of May 5, 2010, the conclusion of the three day transition period provided by the Stay Relief Order (the "Lift Stay Transition Period").

13. Pursuant to their obligations under the Stay Relief Order, on May 5, 2010 the Debtors shipped to the Apartment offices seventeen boxes of documents related to the operation of each of the Debtors' Apartments.

### **ARGUMENT**

14. The Motion should be denied because the Debtors have cooperated and continue to cooperate with their obligations under the Stay Relief Order, notwithstanding Fannie Mae's assertions to the contrary. Following the expiration of the Lift Stay Transition Period, Fannie Mae has continually expressed dissatisfaction with the quantity and quality of the information provided to them by the Debtors. Puzzlingly, Fannie Mae's laundry list of requested diligence has not abated even where the Debtors have repeatedly advised them that certain information being sought, such as rent rolls and bank statements, are available as attachments to the Debtors' publicly filed monthly operating reports, or are otherwise not within the Debtors' control, such as the security deposits that are openly subject to pending litigation in the Bank of the West Adversary. Nevertheless, the Debtors have continued to respond to Fannie Mae's requests, even

up to the date the Motion was filed and at no time have refused to provide information to Fannie Mae to the extent such information existed or was within the Debtors' control. As such, the Debtors respectfully submit that the relief sought by the Motion is unnecessary in light of the Debtors' past cooperation and continued willingness to cooperate with Fannie Mae.

15. Despite the fact that the Debtors have no employees and lack the services of their former property manager in the wake of the expiration of the transition period under the Stay Relief Order, the Debtors have nevertheless attempted to respond to and reasonably cooperate with Fannie Mae in resolving their requests for additional information in connection with the Stay Relief Order.

16. For example, when the receiver informed the Debtors on May 11, 2010, that certain lease files for Savannah South Apartments were inadvertently omitted from documents originally provided to the receiver under the Stay Relief Order, the Debtors responded by locating, scanning and electronically transmitting copies of such documents directly to the receiver by May 13, 2010, at the same time also providing the receiver with the personal email address of the Debtors' principal to further facilitate the receiver's communications to the Debtors with respect to the Apartment operations and ongoing diligence issues.

17. On May 20, 2010, following the payment of certain remaining expenses as contemplated by the Stay Relief Order, the Debtors sent directly to the receiver a cash collateral payment of \$41,508.58 representing total revenues received less all property related expenses. Contrary to the assertions set forth in the Motion, the allocation of revenue and expenses relating to such sum (including insurance proceeds) were in fact included in the cash flow report provided directly to Fannie Mae's counsel concurrently with the cash collateral payment and in the April, 2010 monthly operating report also filed that same day. All remaining receipts and disbursements of the Apartment LLCs through the end of the Lift Stay Transition Period are

reflected in the Apartment LLC monthly operating reports for May, 2010, which were filed with this Court on July 23, 2010 by agreement with the Office of the United States Trustee.

18. On June 1, 2010, the Debtors electronically provided to Fannie Mae numerous prepetition diligence records furnished to the Debtors by certain of the RemyCo. Entities. Despite Fannie Mae's apparently dismissive comment that such records and documentation "predate the commencement of the bankruptcy cases", such records were specifically demanded by Fannie Mae as a priority item to be turned over, to which demand the Debtors dutifully complied despite the fact that the retrieval and production of such documents required the expenditure of significant efforts on the part of numerous individuals who are not employed by the Debtors. The foregoing is an example of the extent to which the Debtors remain committed to complying with their obligations under the Stay Relief Order, regardless of the views now espoused by Fannie Mae as to the ultimate value of such information after the fact.

19. Moreover, on July 19, 2010, prior to the filing of the Motion, the Debtors had finished assembling another set of operational and financial documents for transmission to the receiver; these documents included receipts, purchase orders, invoices, documents in support of expenditures and many of the other forms of documentation sought by Fannie Mae in its Motion. That day, the Debtors, on their own initiative and unaware of the imminence of Fannie Mae's Motion, notified Fannie Mae's counsel that the foregoing documents were ready to be transmitted (as acknowledged in footnote 4 of the Motion) and such documents were duly delivered to the receiver electronically on July 20, 2010. The foregoing constitutes yet another example of the Debtors' continued willingness to comply with Fannie Mae's requests to the extent possible, and for such reason the Debtors accordingly submit that the relief sought in the Motion is unnecessary.

20. Furthermore, much of the information continued to be sought by Fannie Mae either does not exist or is not within the control of the Debtors. As openly disclosed in their

“first day” pleadings filed on the Petition Date, the Debtors have no employees of their own, and accordingly have no employee payroll records or employee files to produce in response to Fannie Mae’s requests. The Debtors, through their non-debtor affiliate RC Realty, operated the Apartments for less than two months, the period of time between the end of the Transition Period and the filing of the Debtors’ Chapter 11 Cases, much of which time was spent investigating the alleged mismanagement of the Apartments during the Transition Period and attempting to obtain and reconcile financial and operational information from third parties who are now subject to the Adversary Proceedings. As such, the bulk of the Debtors’ operational records with respect to the Apartments are in fact the monthly operating reports that have been filed throughout the pendency of the Chapter 11 Cases. Such monthly operating reports contain much of the information that Fannie Mae alleges has not been provided, including bank statements, rent rolls and an allocation of income and expenses attributable to the respective Apartment properties.

21. With respect to Fannie Mae’s requests concerning the tenant security deposits, as Fannie Mae is aware, and consistent with the Debtors’ filed schedules and statements and allegations set forth in their Adversary Proceedings, such security deposits have been and remain in the control of certain of the RemyCo. Entities since prior to the filing of the Debtors’ Chapter 11 Cases. The security deposits, if any remain, were never transferred to the Debtors and the Debtors accordingly have no practical ability to force the turnover of these deposits outside the context of the pending Adversary Proceedings.

### **CONCLUSION**

22. Since the conclusion of the Lift Stay Transition Period, the Debtors have responded to every supplemental request sought by Fannie Mae and have attempted to produce information responsive to such requests, to the extent that such information exists and is within the Debtors’ control. The information sought in the Motion, to the extent not already provided directly to Fannie Mae or the receiver, has been previously made available through the Debtors’



monthly operating reports and the Debtors' cash collateral reports, or else does not otherwise exist or remains in the control of non-debtor parties, many of whom are subject to the ongoing Adversary Proceedings with respect to such information. Nevertheless, the Debtors have continued to respond to Fannie Mae's continued requests with the few resources the Debtors have remaining, as evidenced by the Debtors' efforts to continue to gather and prepare documentation for delivery up to and including the very date the Motion was filed. Accordingly, the Debtors believe that they have fulfilled their obligations under the Stay Relief Order but remain available to continue to respond to supplemental inquiries to the extent possible. Under the circumstances, the Debtors respectfully submit that the relief sought in the Motion is unnecessary and should be denied.

**WHEREFORE**, the Debtors respectfully request that this Court enter an order (i) denying the relief sought in the Motion and (ii) granting such other and further relief as the Court deems just and proper.

Dated: August 2, 2010

Respectfully Submitted,

BALLARD SPAHR LLP

By: /s/ Christopher S. Chow

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2<sup>nd</sup> day of August, 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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In addition, on that same date the undersigned caused a true and correct file-stamped copy of the above and foregoing instrument to be delivered by First Class U.S. Mail on the following:

Price Edwards & Co.

Attn: Jim Parrack

201 Park Ave. Suite 1000

Oklahoma City, OK 73102

/s/ Christopher S. Chow  
Christopher S. Chow (DE Bar No. 4172)