

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
NEW CENTURY TRS HOLDINGS, INC., *et al.*,¹ : Case No. 07-10416 (KJC)
: (Jointly Administered)
Debtors. : **Objection Deadline: July 7, 2008 at 4:00 p.m.**
: **Hearing Date: July 14, 2008 at 1:30 p.m.**
: :

**JOINT MOTION OF THE DEBTORS AND THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER
PROVIDING THAT THE AUTOMATIC STAY UNDER SECTION 362(a)
OF THE BANKRUPTCY CODE IS TERMINATED TO PERMIT THE
COMMENCEMENT OR CONTINUATION OF ANY ACTION TO FORECLOSE
UPON A MORTGAGE LIEN LISTED IN THE NAME OF A DEBTOR**

New Century TRS Holdings, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (the “Debtors”) and The Official Committee of Unsecured Creditors (the “Committee”), by and through their undersigned counsel, hereby submit this Joint Motion for an Order Providing That the Automatic Stay Under Section 362(a) of the Bankruptcy Code is Terminated to Permit the Commencement or Continuation of Any Action to Foreclose Upon a Mortgage Lien Listed in the Name of a Debtor (“Motion”), and respectfully represent:

¹ The Debtors are the following entities: New Century Financial Corporation (f/k/a New Century REIT, Inc.), a Maryland corporation; New Century TRS Holdings, Inc. (f/k/a new Century Financial Corporation), a Delaware corporation; New Century Mortgage Corporation (f/k/a JBE Mortgage) (d/b/a NCMC Mortgage Corporate, New Century Corporation, New Century Mortgage Ventures, LLC), a California corporation; NC Capital Corporation, a California corporation; Home123 Corporation (f/k/a The Anyloan Corporation, 1800anyloan.com, Anyloan.com), a California corporation; New Century Credit Corporation (f/k/a Worth Funding Incorporated), a California corporation; NC Asset Holding, L.P. (f/k/a NC Residual II Corporation), a Delaware limited partnership; NC Residual III Corporation, a Delaware corporation; NC Residual IV Corporation, a Delaware corporation; New Century R.E.O. Corp., a California corporation; New Century R.E.O. II Corp., a California corporation; New Century R.E.O. III Corp., a California corporation; New Century Mortgage Ventures, LLC (d/b/a Summit Resort Lending, Total Mortgage Resource, Select Mortgage Group, Monticello Mortgage Services, Ad Astra Mortgage, Midwest Home Mortgage, TRATS Financial Services, Elite Financial Services, Buyers Advantage Mortgage), a Delaware limited liability company; NC Deltex, LLC, a Delaware limited liability company; NCoral, L.P., a Delaware limited partnership; and New Century Warehouse Corporation, a California corporation.

BACKGROUND

1. On April 2, 2007 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101, *et seq.* (the “Bankruptcy Code”). The Debtors have continued in the management and operation of their businesses pursuant to Bankruptcy Code §§ 1107 and 1108, and no trustee has been appointed.

2. On April 9, 2007, the Office of the United States Trustee for the District of Delaware appointed the following seven (7) of the Debtors’ largest unsecured creditors to the Committee: Credit Suisse First Boston Mortgage Capital LLC, Credit-Based Asset Servicing and Securitization LLC, Residential Funding Company, LLC, Deutsche Bank National Trust Co., Wells Fargo Bank, N.A. as Indenture Trustee, Fidelity National Information Services, Inc., and Maguire Properties – Park Place, LLC. Since its formation, the Committee has appointed Kodiak Funding LP as an ex officio member of the Committee. Hahn & Hessen LLP and Blank Rome LLP were selected by the Committee to serve as its co-counsel, and FTI Consulting, Inc. was selected by the Committee to serve as its financial advisor.

3. On February 2, 2008, the Debtors filed the Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of February 2, 2008 (as supplemented, modified, or amended, the “Plan”) and the Disclosure Statement for the Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of February 2, 2008.

4. On March 18, 2008, the Court entered an Order (A) Approving Disclosure Statement Regarding First Amended Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of March 18, 2008 (B) Establishing

Procedures for Solicitation and Tabulation of Votes to Accept or Reject Joint Plan of Liquidation and (C) Scheduling a Hearing on Confirmation of Joint Plan of Liquidation and Approving Related Notice Procedures [Docket No. 5396].

5. On March 18, the Debtors filed the First Amended Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of March 18, 2008. On April 23, 2008, the Debtors filed the Second Amended Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of April 23, 2008.

6. On April 24 and 25, 2008, the Bankruptcy Court held a hearing regarding confirmation of the Plan, at the conclusion of which, the Bankruptcy Court took the matter under submission. As of the filing of this Motion, the Bankruptcy Court's ruling on the confirmation of the Plan remains sub judice.

TERMINATION OF THE AUTOMATIC STAY

7. Prior to the Petition Date, the Debtors were one of largest originators and servicers of subprime mortgage loans to consumers in the United States, originating billions of dollars in new loans every year. These loans would typically be secured by a first or second mortgage lien recorded against the borrower's residence. As part of their business, the Debtors would typically sell the newly-originated mortgage loans to whole loan purchasers or assign them to securitization trusts. Frequently when the loans were originated, the mortgages were recorded in the name of the Debtor that originated the loan and thereafter an assignment of the mortgage would have been recorded in the name of the assignee. However, in instances where a mortgage loan was repurchased by the Debtors due to, for example, an early payment default by a borrower or a breach of a representation or warranty by the Debtor in connection with the sale

of the loan to a third party, the mortgage may remain in the Debtor's name until it is resold.

8. In addition, with respect to the mortgage loans being serviced by New Century Mortgage Corporation ("NCMC"), the mortgages would frequently be listed in the name of NCMC or an affiliate, even though the owner of the economic interest in the loan would be the securitization trust or whole loan buyer. In those instances, NCMC would only hold bare legal title to these mortgages.

9. In anticipation of the large number of motions to lift the automatic stay, foreclosure notices and other actions by servicers and lenders with senior liens seeking to enforce their rights and interests in mortgaged properties against which a junior mortgage listing a Debtor as the mortgagor is recorded against the title, the Debtors filed the Motion of the Debtors and the Debtors in Possession for a Procedure to Grant Relief from the Automatic Stay for Certain Foreclosure Proceedings Pursuant to Sections 105(a) and 362 of the Bankruptcy Code (the "Debtors' Procedure Motion") on May 7, 2007. On June 7, 2007, the Court entered an order (the "Procedure Order") granting the Debtors' Procedure Motion as modified therein providing that any party seeking to assert its rights with respect to a mortgage on property in which the Debtors held a second lien was to provide notice of foreclosure ("Foreclosure Notice") to the Debtors and the Committee and provide a modest payment to the Debtors. The Procedure Order also provided that if the Debtors did not take the necessary steps to protect the second lien held in the name of a Debtor within 30 days after the receipt of the Notice, the automatic stay would be deemed lifted without further order of the Court. Notwithstanding this streamlined procedure, hundreds of lien holders continue to file separate motions with the Bankruptcy Court seeking relief from the automatic stay.

10. During the course of the bankruptcy cases, the Debtors sold and disposed of all of their interests in and to any mortgage loans in which they held an economic interest. As a result, the Debtors no longer own any mortgage loans. Additionally, the Court entered an order on May 23, 2007 approving the sale of the Debtors' servicing business to Carrington Capital Management, LLC and Carrington Mortgage Services, LLC (collectively, "Carrington"), which sale closed on June 29, 2007. As the Debtors have sold all of their interests in mortgage loans and no longer have any obligation to service mortgage loans, the Debtors and the Committee believe that the automatic stay under 11 U.S.C. § 362(a) is no longer needed to remain in place in order to protect the bankruptcy estates' (the "Estates") potential asset or interest in and to any mortgage loan from being foreclosed upon by the holder of a senior mortgage lien. Furthermore, as the Debtors have wound down their operations and the Estates are liquidating, the large number of Foreclosure Notices that are received by the Committee and the Debtors on a weekly basis and the number of motions for relief from the stay that are filed with the Court in connection with efforts to foreclose upon any and all liens still held in the name of a Debtor is placing an unnecessary burden on the Court's and Estates' valuable time and resources.

RELIEF REQUESTED

11. Accordingly, by this Motion, the Committee and the Debtors respectfully request that the Court issue an order providing that the automatic stay under 11 U.S.C. § 362(a) is terminated to permit the commencement or continuation of any action to foreclose upon a mortgage lien recorded against real property in which a Debtor is listed as the holder of the mortgage. In order to ensure that the entry of an order granting this Motion does not unintentionally prejudice the rights of any third party, the proposed form of order granting this Motion specifically provides that the party seeking to foreclose upon a mortgage listed in the

name of a Debtor must comply with all notice requirements under applicable state or local law, including providing Carrington, as successor servicer to the Debtors with respect to mortgage loans owned by securitization trusts, with written notice of the foreclosure action at the address and the contact information specified in the proposed order granting this Motion. This should ensure that Carrington receives notice of the pending foreclosures in connection with its operation of the servicing business.

12. Additionally, so as to reduce the administrative burden on the Court and substantial administrative expense to the Estates', the Debtors request that the Court (i) order any party seeking to foreclose upon a mortgage lien recorded against real property in which a Debtor is listed as the holder of the mortgage not to file a motion for relief from stay relating thereto nor to serve any documents related thereto upon the Debtors, the Committee, the Liquidating Trustee/Plan Administrator or their respective counsel and (ii) authorize such professionals to dispose of and discard all such foreclosure pleadings served upon them prior to or following entry of the order granting this Motion. If possible, to that end, the Debtors and the Committee further request that the Court place on the docket for these chapter 11 cases notice to parties seeking to foreclose upon a mortgage lien recorded against real property in which a Debtor is listed as the holder of the mortgage that such parties are ordered not to file relief from stay motions relating thereto and directing such parties to the order granting this Motion.

13. Furthermore, so as to avoid any conflict between the relief requested herein and the provisions of the Plan or an order confirming the Plan (the "Confirmation Order"), the proposed form of order granting this Motion expressly provides that such order supersedes the Confirmation Order insofar as the Confirmation Order extends the automatic stay and otherwise enjoins the commencement or continuation of any action to foreclose upon a mortgage

lien recorded against real property in which a Debtor is listed as the holder of the mortgage.

LEGAL ANALYSIS

14. Pursuant to section 362(a) of the Bankruptcy Code, the filing of a bankruptcy petition operates as a stay of various actions against the debtor including “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. §362(a)(3). As such, “[o]n request of a party in interest and after notice and a hearing,”² the Court may grant a senior lien holder relief from the automatic stay under Bankruptcy Code section 362(d) to permit it to commence or proceed with an action to foreclose upon any junior lien that is property of the estate. See Wisler v. White (In re White), 383 B.R. 366 (Bankr. W. D. Pa. 2008) (motion seeking relief from the automatic stay was held to be moot as the property on which the movant sought to proceed was abandoned pursuant to section 554(c) of the Bankruptcy Court and, thus, no longer constituted property of the estate).

15. Section 541 of the Bankruptcy Code describes the property of the estate to which the stay provisions of section 362(a) of the Bankruptcy Code apply. In re Spencer, 115 B.R. 471, 476 (Bankr. D. Del. 1990). See 11 U.S.C. § 541. Here, as a result of the Debtors sale of their mortgage loans and the sale of the servicing business to Carrington, the Estates no longer have an interest in any mortgage loan even though a Debtor may be listed as the holder of a mortgage or lien recorded against real property. The Supreme Court has observed that the legislative history of section 541 of the Bankruptcy Code ““indicates that Congress intended to exclude from the estate property of others in which the debtor had some minor interest such as a

² The Debtors and the Committee submit that as parties in interest to these cases, they both have standing to make this Motion.

lien or bare legal title.” Torkelsen v. Maggio (In re Guild & Gallery Plus), 72 F.3d 1171, 1179 (3rd Cir. 1996) (quoting United States v. Whiting Pools, Inc., 462 U.S. 198, 205, n. 8 (1983)).

Thus, pursuant to the definition as set forth in the Bankruptcy Code and interpreted by the Supreme Court, any junior lien in which one of the Debtors is nominally listed as holding bare legal title is not property of the estate.

16. In any event, the Debtors and the Committee believe that the automatic stay is no longer needed to remain in place to stay the foreclosure of a mortgage lien still listed in one of the Debtors’ names as such lien no longer constitutes property of the Estates.

NOTICE

17. Notice of this Motion has been provided to: (1) the Office of the United States Trustee, and (2) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Committee and the Debtors submit that no other or further notice is required.

18. The Committee and the Debtors submit that this Motion does not present any novel issues of law requiring briefing. Therefore, pursuant to Rule 7.1.2 of the Local Rules of Civil Practice of the United States District Court for the District of Delaware, incorporated by reference into Local Rule 1001-1(b), the Committee and the Debtors respectfully request that the Court set aside the briefing schedule set forth in Rule 7.1.2(a).

CONCLUSION

WHEREFORE, for the reasons set forth above, the Committee and the Debtors respectfully requests that this Court grant an order providing (i) that the automatic stay under 11 U.S.C. § 362(a) is terminated to permit the commencement or continuation of any action to foreclose upon a mortgage lien listed in the name of a debtor; (ii) that the order granting this Motion supersedes the Confirmation Order insofar as the Confirmation Order extends the

automatic stay and otherwise enjoins the commencement or continuation of any action to foreclose upon a mortgage lien recorded against real property in which a Debtor is listed as the holder of the mortgage; (iii) that any party seeking to foreclose upon a mortgage lien recorded against real property in which a Debtor is listed as the holder of the mortgage shall not file a motion for relief from stay relating thereto nor shall serve any documents related thereto upon the Debtors, the Committee, or their respective counsel, and that such professionals are authorized to dispose of and discard all such foreclosure pleadings served upon them prior to or following entry of the order granting this Motion; (iv) that a notice be placed on the docket for these chapter 11 cases providing that parties seeking to foreclose upon a mortgage lien recorded against real property in which a Debtor is listed as the holder of the mortgage are ordered not to file relief from stay motions relating thereto and directing such parties to the order granting this Motion; and (v) and for such other and further relief as may be just and proper.

Dated: June 27, 2008
Wilmington, Delaware

/s / Bonnie Fatell

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