



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

REGENTS LA JOLLA COMMONWEALTH LP, )  
 )  
Plaintiff, ) C.A. No. \_\_\_\_\_  
 )  
v. )  
 )  
RECP IV ULLICO INVESTOR LLC and RECP )  
IV ULLICO INVESTOR A LLC, )  
 )  
Defendants. )

**VERIFIED COMPLAINT**

Plaintiff Regents La Jolla Commonwealth LP ("Regents"), by and through its undersigned attorneys, alleges upon personal knowledge as to its own acts and as to all other matters upon information belief as follows:

**NATURE OF THE ACTION**

1. This action arises out of the wrongful refusal of Defendants RECP IV ULLICO Investor LLC and RECP IV ULLICO Investor A LLC (collectively "RECP") to permit Regents to prepay a note of more than \$26,000,000 (the "RECP Note"), as permitted under the note's plain and unambiguous terms. The RECP Note makes clear that it "may be prepaid in full," and Regents has advised RECP on multiple occasions that it is ready, willing and able to do so in accordance with its terms. RECP nevertheless refuses to provide the information necessary for Regents to prepay the RECP Note, precluding Regents from exercising its lawful prepayment right.

2. Indeed, RECP has made clear that it will only provide the required prepayment information if Regents simultaneously prepays a separate note to another lender.

3. But there are no conditions in the RECP Note on Regents' right to prepay other than a notice requirement and the payment of a Prepayment Premium.

4. And nothing in the RECP Note (which permits "the principal balance of *this note* [to] be prepaid in full") conditions its prepayment – or permits RECP to condition prepayment – on the simultaneous prepayment of the other note (emphasis added).

5. Regents therefore seeks an affirmative injunction directing RECP to provide Regents with the wiring instructions and other information necessary to prepay the RECP Note. Because RECP has refused Regents' repeated requests for confirmation of the payoff amount, Regents also seeks a declaratory judgment confirming its calculation of that figure. Lastly, Regents seeks a declaration that the prepayment amount may not include any interest accruing on or after August 4, 2010, the date on which Regents was ready, willing, able and first contractually authorized to prepay the RECP Note, in order to prevent RECP from profiting from its wrongful conduct.

### **THE PARTIES**

6. Plaintiff Regents La Jolla Commonwealth LP is a Delaware limited partnership. Regents owns more than three hundred residential rental units in San Diego, California.

7. Defendants RECP IV ULLICO Investor LLC and RECP IV ULLICO Investor A LLC are Delaware limited liability companies. These entities are lenders under the "Amended and Restated Promissory Note B" dated December 29, 2009, to which Regents is the borrower, referred to herein as the RECP Note.

8. A true and correct copy of the RECP Note is attached hereto as Exhibit A.

### **FACTUAL BACKGROUND**

#### **A. The Original \$54.7 Million Note<sup>1</sup>**

9. In October 2007, Regents borrowed \$53,746,274 from The Union Labor Life Insurance Company (“ULLICO”) in connection with the purchase of certain real estate (the “Original Loan”).

10. The Original Loan was evidenced by a promissory note dated as of October 31, 2007 in the amount of \$53,746,274 (the “Original Note”).<sup>2</sup> The Original Note accrued interest at the rate of six percent per annum (6%).

#### **B. ULLICO Asks Regents For Permission To Split The Original Note**

11. In the fall of 2009, ULLICO approached Regents and sought its consent to divide the Original Note into two separate notes of \$26,873,137 each. ULLICO sought to do so in order to sell half of the outstanding obligations (as reflected in one of the new notes) in order to generate cash for itself.

12. After Regents indicated its willingness to agree to ULLICO’s request, ULLICO sent Regents drafts of (i) an agreement to split the Original Note, (ii) proposed new notes, and (iii) an amendment to the parties’ loan agreement.

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<sup>1</sup> While the resolution of the narrow issues presented in this case turns exclusively upon the plain and unambiguous terms of the RECP Note, Regents provides a brief overview of the background events (as reflected in Sections A and B) to provide the Court with context.

<sup>2</sup> A true and correct copy of the Original Note is attached hereto as Exhibit B.

13. Although the parties engaged in minor negotiations, ULLICO controlled the drafting of the (i) agreement to split the Original Note, (ii) proposed new notes, and (iii) amendment to the parties' loan agreement.

14. Regents and ULLICO subsequently entered into a note splitter agreement dated as of December 24, 2009 (the "Note Splitter Agreement").<sup>3</sup>

15. Attached as exhibits to the Note Splitter Agreement were two new notes, "Note A" and the RECP Note (collectively, the "New Notes").

16. Regents and ULLICO are parties to Note A, which is dated December 24, 2009.

17. Regents and RECP are parties to the RECP Note – the note at issue here – which also is dated December 24, 2009.

18. Both of the New Notes are in the amount of \$26,873,137. Whereas the Original Note carried an interest rate of six percent per annum (6%), the interest rate on Note A is three percent per annum (3%), and the interest rate on the RECP Note is nine percent per annum (9%).

19. As of December 24, 2009, Regents and ULLICO split, divided and severed the indebtedness evidenced by the Original Note into two separate debts as evidenced by the New Notes.

20. The New Notes supersede and replace the Original Note in its entirety.

21. Upon execution of the New Notes, the Original Note had no further legal effect.

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<sup>3</sup> A true and correct copy of the Note Splitter Agreement is attached as Exhibit C.

**C. The Relevant Terms Of The RECP Note**

22. Article VI(b) of the RECP Note provides that at any time after October 31, 2009, “*the principal balance of this Note may be prepaid in full . . . upon sixty (60) days’* prior written notice by Borrower [Regents] specifying in such notice the date on which such prepayment will be made . . . .” (emphasis added).

23. ULLICO drafted Article VI of the RECP Note, which is entitled “Prepayment.”

24. ULLICO also drafted the language in the RECP Note indicating that “[t]he indebtedness of evidenced by the Original Note is hereby split, divided and severed into the indebtedness evidenced by this Note and the indebtedness evidenced by [Note A].”

25. Nothing in the RECP Note conditions its prepayment on the simultaneous prepayment of Note A.

26. Nothing in the RECP Note conditions its prepayment on the fulfillment of any conditions beyond those in the RECP Note.

27. Indeed, the RECP Note expressly permits the prepayment of “the principal balance of *this Note*.” (emphasis added).

28. One condition of prepayment of the RECP Note is the payment of a Prepayment Premium.

29. The Prepayment Premium compensates RECP for its lost interest rate yield on the note.

30. The Prepayment Premium is calculated as a percentage of the unpaid principal balance of the RECP Note.

**D. RECP Wrongfully Refuses To Permit Regents To Prepay The RECP Note**

31. By letter dated June 4, 2010, Regents provided RECP (through its agent, ULLICO) with notice of its intent to prepay the RECP Note on August 4, 2010.

32. A true and correct copy of Regents' June 4, 2010 correspondence to ULLICO is attached hereto as Exhibit D.

33. In its June 4, 2010 letter, Regents advised RECP of its intention to pay the outstanding principal balance of the RECP Note in full, along with the three percent (3%) Prepayment Premium and all accrued interest. Regents also requested that ULLICO "return[] a formal written acknowledgment and payoff statement as soon as possible in order [to] properly plan for th[e] payoff."

34. At all times since June 4, 2010, Regents has been ready, willing and able to prepay the RECP Note.

35. Regents repeated its request for prepayment information for the RECP Note on multiple occasions since June 4, 2010.

36. On June 16, 2010, Regents sent RECP (through its agent, ULLICO) its calculation of the payoff figures (which included the principal prepayment, monthly interest, *per diem* interest, and a prepayment premium on the principal amount of the RECP Note).

37. A true and correct copy of Regents' June 16, 2010 correspondence to RECP is attached hereto as Exhibit E.

38. Most recently, on August 3, 2010, Regents advised RECP that it was ready, willing and able to prepay the RECP Note.

39. On August 3, 2010, Regents requested that RECP (i) confirm Regents' calculation of the prepayment amount, (ii) issue wiring instructions, and (iii) provide Regents with the prepayment statement.<sup>4</sup>

40. RECP contends that Regents may not prepay the RECP Note without simultaneously prepaying Note A.

41. As a result, RECP has refused to provide the requested prepayment information.

42. As a result of RECP's refusal to provide the requested prepayment information, interest is accruing on the RECP Note at the rate of nine percent per annum (9%).

### **COUNT I (Injunctive Relief)**

43. Regents realleges and incorporates by reference the allegations of Paragraphs 1 through 42 as if set forth fully herein.

44. At all times since June 4, 2010, Regents has been ready, willing and able to prepay the RECP Note in accordance with its terms.

45. Regents has, at all times, acted in good faith and has complied with its duties and obligations under the RECP Note.

46. The RECP Note expressly permits the prepayment of "the principal balance of *this Note*" subject to specified notice and other requirements satisfied here (emphasis added).

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<sup>4</sup> A true and correct copy of Regents' August 3, 2010 correspondence to RECP is attached hereto as Exhibit F.

47. Nothing in the RECP Note conditions Regents' right to prepay the note upon the simultaneous prepayment of Note A.

48. Nothing in the RECP Note conditions Regents' right to prepay the note upon the fulfillment of any conditions beyond those in the RECP Note.

49. Regents is entitled to prepay the RECP Note without simultaneously prepaying Note A.

50. RECP nevertheless refuses to provide Regents with (i) confirmation of the required prepayment amount, (ii) wiring instructions, and (iii) the payoff statement unless Regents simultaneously prepays Note A.

51. As a consequence of the foregoing, Regents has suffered and will continue to suffer irreparable harm and loss if an injunction is not granted.

52. While Regents will suffer irreparable harm unless an injunction is granted, RECP will suffer no legally cognizable harm from its issuance.

53. Regents has no adequate remedy at law.

54. Regents is entitled to an affirmative injunction directing RECP to provide Regents with the wiring instructions and all other information required for it to prepay the RECP Note.

## **Count II (Declaratory Relief)**

55. Regents realleges and incorporates by reference the allegations of Paragraphs 1 through 54 as if set forth fully herein.

56. On June 16, 2010, Regents sent RECP its calculation of the payoff amount under the RECP Note.



57. RECP refuses to confirm Regents' calculation of the payoff amount under the RECP Note as reflected in Regents' letter of June 16, 2010.

58. There is therefore a dispute between Regents and RECP regarding the payoff amount.

59. RECP has an interest in contesting this dispute.

60. The interests of Regents and RECP in this dispute are real and adverse.

61. The dispute regarding the payoff amount is ripe for judicial determination.

62. Regents therefore seeks a declaratory judgment that its June 16, 2010 letter correctly calculated the payoff amount under the RECP Note.

**Count III  
(Declaratory Relief)**

63. Regents realleges and incorporates by reference the allegations of Paragraphs 1 through 62 as if set forth fully herein.

64. Regents was ready, willing and able to prepay the RECP Note as of August 4, 2010, the first possible prepayment date.

65. On multiple occasions in advance of August 4, 2010, Regents advised RECP of its willingness and ability to prepay the RECP Note and repeatedly sought payoff information as of that date.

66. Had RECP provided the payoff information in advance of August 4, 2010, Regents would have prepaid the RECP Note on August 4, 2010.

67. As a result of RECP's wrongful failure to provide that information, interest has accrued on the RECP Note that would not have accrued had RECP provided payoff information when requested by Regents.

68. RECP may not profit from its wrongful refusal to provide the requested prepayment information.

69. There is therefore a dispute between Regents and RECP regarding the accrual of interest after August 4, 2010.

70. RECP has an interest in contesting this dispute.

71. The interests of Regents and RECP in this dispute are real and adverse.

72. The dispute regarding the payoff amount is ripe for judicial determination.

73. Regents therefore seeks a declaratory judgment that RECP may not include in the payoff amount required by Count I interest that accumulated after August 4, 2010.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in its favor as follows:

- a. An affirmative injunction directing RECP to provide Regents with the wiring instructions and all other information required for it to prepay the RECP Note;
- b. A declaratory judgment that that its June 16, 2010 letter properly calculated the payoff amount under the RECP Note;
- c. A declaratory judgment that RECP may not include in the payoff amount required by Count I interest that accumulated after August 4, 2010;
- d. An award of all of the reasonable attorneys' fees and expenses and Court costs that plaintiff has incurred in bringing and prosecuting this action; and,
- e. Such other and further relief as this Court deems just and proper.

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