IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 17-12560 (KJC) (Jointly Administered) **Hearing Date: August 21, 2018, at 1:00 p.m. (ET)** **Ref. Docket Nos. 2213, 2214, 2300 & 2314**

DEBTORS' REPLY IN FURTHER SUPPORT OF THEIR (I) OBJECTION TO PROOFS OF CLAIM FILED BY ERC I, LLC AND ALAN R. BRILL; AND (II) REQUEST FOR A LIMITED WAIVER OF LOCAL RULE 3007-1(f)(iii), TO THE EXTENT SUCH RULE MAY APPLY

The Debtors[2] respectfully submit this reply in further support of the Claim Objection and in response to the objection thereto Mr. Brill filed on August 7, 2018 [Docket No. 2300] (the "Brill Response"), as supplemented on August 9, 2018 [Docket No. 2314] (the "Supplement").

REPLY

1. The crux of the Claim Objection is that the putative claims asserted in the ERC/Brill Claims already were – or certainly could have been – litigated to final judgment in a prepetition foreclosure action involving the very same real property and loan obligations at the heart of the ERC/Brill Claims. As the exhibits to the Debtors' request for judicial notice [Docket No. 2214] demonstrate, this substantial litigation has traversed the Indiana judicial system and resulted in decisions that definitively reject ERC's and Brill's myriad theories of fraud and theft.

[1] The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors' noticing and claims agent at www.gardencitygroup.com/cases/WGC, or by contacting the undersigned counsel for the Debtors.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to those terms in the *Debtors' (I) Objection to Proofs of Claim Filed by ERC I, LLC and Alan R. Brill; and (II) Request for a Limited Waiver of Local Rule 3007-1(f)(iii), to the Extent Such Rule May Apply* [Docket No. 2213] (the "Claim Objection").

2. The sprawling Brill Response primarily focuses on supporting the merits of the putative claims, including by attaching dozens of emails and related materials dating back to early 2014, notably two years before trial in the Indiana Trial Court. *See* Trial Decision at p. 1 ("The above cause of action came before the Court for trial by court on February 8 - 11, 2016."). Instead of rebutting the central point of the Claim Objection, these attachments and the related narrative in the Brill Response further confirm in several respects why the ERC/Brill Claims should be disallowed and expunged.[3]

3. ***First***, the allegations of "stealing," "scams," "fraud," and the like were among the many counterclaims, third-party claims, and affirmative defenses ERC asserted in state court. As examples of the significant overlap:

- The ERC/Brill Claims are largely premised on some sort of alleged fraud committed by Woodbridge in connection with an acquisition of ERC's mortgage, the so-called "Old Mortgage." *See* Brill Response at pp. 10–11 of 289 (pagination includes numbers 4-5 at the bottom of the pages). In the State Court Action, ERC asserted fraud claims against the Woodbridge parties, as counterclaims, third-party claims, and affirmative defenses to foreclosure. The Indiana Trial Court considered and rejected all of these claims and defenses. *See* Trial Decision Conclusions of Law ¶¶ 52–64 (reciting multiple reasons why constructive fraud claim fails) & ¶¶ 145–159 (similar analysis of fraud and constructive fraud affirmative defenses). Indeed, the state court expressly and repeatedly concluded "that no fraud was committed in this case." *See id.* ¶¶ 156 & 158.

[3] The Brill Response suggests that Brill wants to assert claims against several non-debtor parties, including Robert Shapiro, Joseph Hughis, and Robert Reed. The Debtors take no position regarding whether Brill or ERC may have any rights against any of these individuals, but whatever rights or claims may or may not exist, they ought not be pursued as part of the claims process in the Debtors' bankruptcy cases.

- The Brill Response further outlines a theory regarding how Brill wanted ERC's existing note and mortgage to be refinanced. Brill did not want the existing note and mortgage to be paid off, because this would result in debt-forgiveness income to ERC that flows through to Brill. *See* Brill Response at p. 11 of 289 (pagination includes number 5 at the bottom of the page). Instead, Brill wanted a new lender to purchase the note and mortgage from the existing holder to hold as collateral for the new loan. Brill contends in the ERC/Brill Claims that the purchase of the note and mortgage were to be two inseparable parts of the refinancing transaction. *Id.* But ERC made this precise argument during trial in the State Court Action. The Indiana Trial Court, however, found that Brill later abandoned this transaction structure and requested that Woodbridge move forward with the note purchase separate and apart from Riverdale's loan. *See* Trial Decision Findings of Fact ¶¶ 70–91. Moreover, the Indiana Trial Court rejected Brill's entire theory that upon Woodbridge acquiring the note and mortgage, Riverdale was bound to give Brill a loan. *See id.* ¶¶ 109–112 & *id.* Conclusions of Law ¶¶ 42–45.
- The text of and attachments to the Brill Response reference correspondence and discussions Brill had with various people, including a Mr. Coffman in January 2014, a Mr. Hughis in January and February 2014, and a Mr. Reed in February 2014. *See, e.g.*, Brill Response at pp. 12–17 of 289 (pagination includes numbers 6-11 at the bottom of the pages). Many of these communications were part of the record in the State Court Action that was considered by the Indiana Trial Court. *See, e.g.*, Trial Decision Findings of Fact ¶¶ 45–54, 69 & 80–91. Additionally, Mr. Coffman, Mr. Hughis, and Mr. Reed all testified as witnesses during the trial in the State Court Action. *See, e.g.*, Trial Decision

Findings of Fact ¶¶ 28–31, 33–34 (citing to "Hughis Testimony"), ¶¶ 30–31 (citing to "Reed Testimony") & ¶¶ 33–34 (citing to "Coffman Testimony").

The substance of the Brill Response simply rehashes the same theories and nucleus of facts that were developed as part of a four-day trial before the Indiana Trial Court and were addressed in a lengthy Trial Decision that was affirmed by the Indiana Appellate Court.

4. If there is any doubt about the substantial overlap between the ERC/Brill Claims and the prior litigation, it is dispelled by comparing the Supplement with the Trial Decision:

Supplement's Assertion	**Trial Decision's Findings of Fact**
1. Brill claims he was enticed to contact Riverdale due to Riverdale's website advertising 65% LTV hard money loans.	*See* ¶¶ 27 & 30.
2. Brill communicated with Coffman and laid out his financing needs.	*See* ¶¶ 32–45.
2a – 2e. Brill describes the property, referencing Exhibit A2, which is the same as the "Summary Form" discussed in the Trial Decision.	*See* ¶¶ 35–43.
2d. Brill describes how his mortgage had been sold several times.	*See* ¶¶ 6–8.
2e. Mortgage now held by Joe Temm and Cohen Financial.	*See* ¶¶ 8–13.
2f. Brill claims that Temm entered into a formal contract to sell the note and mortgage for $740,000.	*See* ¶¶ 10–22, outlining a series of events leading to what Brill describes.
2g. Brill's description of his refinancing needs to come up with the $740,000 that Cohen agreed it would take, plus up to $1 million for repairs.	*See* ¶¶ 38–45, describing the pitch Brill made to Riverdale when ERC was looking for a loan from Riverdale.
2h. Brill describes how it was an absolute requirement that the purchase of the Old Mortgage was inseparable from the making of a new loan.	The Indiana Trial Court found that ERC requested Woodbridge to move forward with the note sale separate and apart from the Riverdale loan. In other words, the court rejected Brill's notion that the purchase of the Old Mortgage was inseparable from the making of the new loan. *See* ¶¶ 70–91.
3. Brill continued to communicate with Coffman.	*See* ¶¶ 35–45.
4. Brill spoke with Hughis.	*See* ¶ 48.
5. Brill claims that Coffman told Brill not to worry about the $1.5 million appraisal in the approval letter.	*See* ¶¶ 50–53 regarding Riverdale's issuance of an approval letter. The Indiana Trial Court expressly rejected Brill's claim that Coffman told Brill not to worry about the appraisal requirement, *see* ¶ 69.
6 –7. Brill responds to approval letter.	*See* ¶ 54.

8. Riverdale expresses that buying the Old Mortgage was not normal.	*See* ¶ 55.
9. Brill describes how he wants transaction structured.	*See* ¶¶ 55–56.
10. Hughis sends Brill the Commitment Letter.	*See* ¶¶ 59–63.
11. Brill reviews the Commitment Letter, makes several handwritten changes, signs it, and returns it to Riverdale.	*See* ¶¶ 65–67.
12. Brill claims that he stopped negotiating with Chang to do the deal with Riverdale. He references a February 4, 2014 email.	*See* ¶¶ 89–90, describing Brill's email advising that he had stopped working with Peter Chang at Green Lake. The Indiana Trial Court expressly rejected any suggestion that Riverdale induced Brill to stop negotiating with Mr. Chang at Green Lake, *see* ¶ 94.
13–14. Brill's description of events from approximately February 4-7, 2014.	The Indiana Trial Court found that a different set of events occurred during this time period, *see* ¶¶ 74–95.
15. Brill's description of February 7, 2014 Temm communication regarding need for consent to the deal.	*See* ¶¶ 97–99.
16. Brill's description of February 7, 2014 Reed communication about need for Estoppel Certificate.	*See* ¶¶ 101–107.
17. Brill contends that Hughis was conspiring to steal the mortgage without making a loan.	The Indiana Trial Court found that Brill was a sophisticated businessman who knew the implications of signing the consent to assignment and estoppel certificate; Brill had ultimate control and could have prevented the sale to Woodbridge, *see* ¶¶ 108–112.
18. Whiteacre was founded on February 7, 2014.	*See* ¶ 144.
19. Describing February 12, 2014 Kiefer BPO.	*See* ¶¶ 119–128.
20. Describing an Integra appraisal.	*See* ¶ 138.
21. Discussion of problems with Kiefer BPO, and why Riverdale rejected it.	*See* ¶¶ 129–137.
22. Riverdale advised that it would not do the loan and returned commitment fee.	*See* ¶¶ 139–142.

The balance of the document largely consists of Brill expressing his disagreement with the results of the state court litigation. Regardless, the above comparison leaves absolutely no doubt that Brill is yearning to refight a war that he and ERC already lost.

5. ***Second***, it is apparent that Brill seeks to pursue an impermissible collateral attack on the rulings of the Indiana Trial Court before this federal Court, which is premised largely upon ad hominem statements about the trial judge. For example, the Brill Response describes the state trial judge as an "inept court" who "would not be able to comprehend a sign showing **'1**

+ 1'" and who "twisted" documents "again in stupidity" while adopting "further confused writing [that] made no sense for support of what she determined overall." *See* Brill Response at pp. 18–19 of 289 (pagination includes numbers 12-13 at the bottom of the pages). The name-calling continues in the Supplement as Brill describes the trial judge as showing "stupidity" and "ineptness," being "a disgrace," and causing ERC's counsel to avoid "disgracing her by dealing with her idiocy." *See* Supplement ¶¶ 31–32.[4] These attacks on the intellect of the Indiana Trial Court are highly inappropriate, but they are useful in highlighting that Brill's opposition is grounded in his disagreement with the results the Indiana Trial Court reached after a trial and his desire to have this Court ultimately review and disagree with that court's written findings and conclusions. The appropriate path for such review, however, was in the Indiana Appellate Court – a path Brill pursued and which resulted in a total affirmance of the ruling in favor of the relevant Debtors.

6. ***Third***, the reasons vaguely suggested by the Brill Response for not applying principles of res judicata or the *Rooker-Feldman* doctrine here are unavailing. For example, the Brill Response asserts that the prior Indiana litigation involved only a foreclosure claim by Debtor Whiteacre and that "only the isolated Whiteacre was a party to the foreclosure litigation." *See* Brill Response at pp. 4 & 18 of 289 (pagination includes no number and number 12 at the bottom of the pages). This is demonstrably false. The caption on the Trial Decision alone reveals that ERC named non-debtor Riverdale Funding, LLC and Debtor Fund 2 as third-party defendants and asserted affirmative claims against them for, among other things, fraud. *See* Trial Decision at case caption; *id.* p. 2 (describing procedural posture) & *id.* Conclusions of Law ¶ 1

[4] The state court judge is not the only judicial officer exposed to Brill's attack; Brill also accuses an unidentified bankruptcy judge of "not hav[ing] the balls to crack his judicial buddies for wrongdoing (not only on this shooting but many other acts of clear malfeasance)." *See* Supplement ¶ 28.

(cataloging claims asserted by ERC against all the "Woodbridge Parties"). It defies belief that Brill can now suggest that Debtor Fund 2 (which Brill calls the "stealing party") was not a party to the state court litigation. Additionally, the State Court Action undisputedly resolved not only whether Whiteacre was entitled to foreclose on the real property (it was), but also whether any of the Woodbridge entities committed fraud or other wrongdoing that should have affected Whiteacre's foreclosure (they did not). In fact, ERC stipulated to Whiteacre's entire case in chief (the foreclosure action) in the State Court Action. *See* Trial Decision Conclusions of Law ¶ 121 (referencing the "stipulated evidence"). The trial then focused entirely on ERC's counterclaims, third-party claims, and affirmative defenses based on the same fraud theories that Bill now asserts in the ERC/Brill Claims. *See generally* Trial Decision.

7. Similarly, although "Bril [sic] personally was not and never was a party to such litigation," *see* Brill Response at p. 18 of 289 (pagination includes number 12 at the bottom of the page), Brill was an active participant in the State Court Action, including through live trial testimony and the offering of many of the documents attached to the Brill Response. *See, e.g.*, Trial Decision Findings of Fact ¶¶ 2–3, 14–20 & 32–58. Moreover, as the Brill Response itself recognizes, "Brill owns and controls ERC . . . and operates it through other of his management Companies." Brill Response at p. 10 of 289 (pagination includes number 4 at the bottom of the page). Indeed, the Brill Response goes further and describes how the ERC/Brill Claims "are not claims in four separate amounts but are essentially the same single claim brought by Alan Brill" for alleged damages he suffered through ERC. *See id.* at pp. 9-10 of 289 (pagination includes

numbers 3-4 at the bottom of the pages).[5] These relationships, strategic control, and overlapping interests establish privity between ERC and Brill for purposes of Indiana's res judicata law.[6]

8. At day's end, the State Court Action and the ERC/Brill Claims arise from the same basic facts – certain of the Woodbridge entities became secured lenders on a property owned by ERC for Brill's benefit. When ERC defaulted on its obligations, the mortgage holder sought to enforce its rights through foreclosure. ERC and Brill hotly disputed that lender's right to foreclose and also asserted their own claims, including for fraud and other alleged illegality, against the mortgage holder and against other Woodbridge entities. The same property, conduct, obligations, actors, and events form the common core of all of the ERC/Brill Claims here.

9. The insurmountable problem for ERC and Brill is that the propriety of Whiteacre's foreclosure and the absence of any offsetting claims or defenses against any of the Woodbridge entities were fully resolved in Indiana state court. The state court litigation ended with a final judgment on the merits, and the subject property was sold at a sheriff's sale. Case law repeatedly teaches that neither this Court nor any other court can revisit the myriad theories that were previously litigated in the State Court Action – either based on principles of res

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[5] Because this transaction involved a nonrecourse loan and Brill was not a guarantor, there was and is no deficiency to recover either from ERC or from Brill. The only loss ERC or Brill could have suffered was of title to the real estate previously owned by ERC, which means Brill's putative damages and claims are necessarily derivative of alleged harm to ERC.

[6] *See, e.g.*, *Becker v. State*, 992 N.E.2d 697, 700–01 (Ind. 2013) (finding parties to be in privity when they "had the same substantial interest" and incentives regarding prior litigation); *MicroVote Gen. Corp. v. Ind. Election Comm'n*, 924 N.E.2d 184, 196 (Ind. Ct. App. 2010) (explaining that privies "include[] those who control an action, though not a party to it, and those whose interests are represented by a party to the action," which means a court "looks beyond the nominal parties and treats those whose interest are involved as the real parties"); *Small v. Centocor, Inc.*, 731 N.E.2d 22, 28 (Ind. Ct. App. 2000) (holding that res judicata elements were satisfied when an individual "had complete control over" prior litigation and stood to gain financially "from a favorable outcome of the first action"); RESTATEMENT (SECOND) OF JUDGMENTS § 39 (1982) ("A person who is not a party to an action but who controls or substantially participates in the control of the presentation on behalf of a party is bound by the determination of issues decided as though he were a party.").

judicata,[7] or under the *Rooker-Feldman* doctrine,[8] or both.[9] And it is not just the prior claims that were actually litigated to judgement; any additional theories that ***could have been*** raised against Whiteacre or the other Woodbridge entities in the State Court Action are also barred.[10]

10. Because the ERC/Brill Claims do not assert claims on which relief can be granted by this or any other court, those claims are "unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured" and therefore must be disallowed pursuant to Bankruptcy Code section 502(b)(1). *See, e.g.*, *In re Residential Capital, LLC*, Case No. 12-12020 (MG), 2016 Bankr. LEXIS 3130 (Bankr. S.D.N.Y. Aug. 25, 2016) (disallowing similar proof of claim).

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[7] *See Platt v. CitiMortgage, Inc.*, No. 1:14–cv–02088–JMS–TAB, 2015 U.S. Dist. LEXIS 53837, at *6–10 (S.D. Ind. April 24, 2015) (holding that completed Indiana foreclosure action barred borrower's claims regarding alleged scams and fraud by the lender under Indiana's res judicata law), *aff'd*, 632 F. App'x 294 (7th Cir. 2016); *see also, e.g.*, the additional cases cited at Claim Objection ¶ 19 n.3.

[8] *See, e.g.*, *Forrest v. New Century Mortg. Corp. (In re New Century TRS Holdings, Inc.)*, 423 B.R. 467, 468 & 471–74 (Bankr. D. Del. 2010) (dismissing borrower's complaint containing "a litany of requests for relief in connection with a state court mortgage foreclosure action, including cancellation of a promissory note and mortgage, damages for fraud, damages for violations of state and federal racketeering laws, declaratory judgment with respect to title to real property, and an injunction to prevent transfer of real property," all of which served to challenge "the validity of the debt giving rise to the foreclosure and the efficacy of the state court foreclosure proceeding").

[9] *See Mains v. Citibank, N.A.*, 852 F.3d 669, 673–78 (7th Cir.) (affirming dismissal of borrower's "action in federal court raising various state and federal law theories, related primarily to alleged fraudulent activity by the defendants," because they were inconsistent with and would effectively nullify a judgment rendered in state court foreclosure proceedings), *cert. denied*, 138 S. Ct. 227 (2017); *Scarr v. JPMorgan Chase Bank, N.A.*, No. 1:16-cv-02605-TWP-DML, 2018 U.S. Dist. LEXIS 42835, at *16–20 (S.D. Ind. Jan. 25, 2018) (barring "claims for alleged fraud and misrepresentation, conspiracy, his purported rescission, the TILA and RESPA claims," because "all these matters were decided or, in the case of Chase's standing, the alleged fraud/misrepresentation, and the TILA claims, could have been decided in the state court foreclosure action," and also implicated *Rooker-Feldman*'s jurisdictional bar), *report and recommendation approved and adopted by* 2018 U.S. Dist. LEXIS 41742 (S.D. Ind. Mar. 14, 2018).

[10] *See, e.g.*, *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983) (explaining how federal courts can lack jurisdiction over intertwined matters that could have been, but were not, raised in prior state court proceedings; "[b]y failing to raise his claims in state court a plaintiff may forfeit his right to obtain review of the state-court decision in any federal court"); *Mullarkey v. Tamboer (In re Mullarkey)*, 536 F.3d 215, 225 (3d Cir. 2008) ("The doctrine of res judicata bars not only claims that were brought in a previous action, but also claims that could have been brought."); *Barker v. State*, 191 N.E.2d 9, 11 (Ind. 1963) ("[I]t is a well settled principle of law in this jurisdiction that all issues properly before a court which could have been determined or were determined are considered finally adjudicated and all parties thereto are bound thereby. The principle of res judicata does not permit the repeated litigation of matters settled by a final judgment."); *Olds v. Hitzemann*, 42 N.E.2d 35, 38 (Ind. 1942) ("It is firmly settled that res judicata embraces not only what was actually determined, but every matter which the parties might have litigated in the cause.").

CONCLUSION

WHEREFORE, for all the reasons set forth in the Claim Objection and above, the Debtors again respectfully request that the Court enter the Proposed Order disallowing and expunging the ERC/Brill Claims.

Dated: August 16, 2018
Wilmington, Delaware

/s/ Edmon L. Morton

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