

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: Residential Capital LLC

CASE NO.: 12-12020-mg

George Van Wagner,  
Plaintiff

AP No. 12-01913-mg

v.  
Residential Funding Company LLC  
National City Mortgage  
Golden & Amos PLLC  
Tim Amos, et al.  
Defendants.

NOTICE OF MOTION TO CREDITORS  
AND OTHER PARTIES IN INTEREST

NOTICE IS HEREBY GIVEN THAT: By Motion filed herein, TIMOTHY J. AMOS, INDIVIDUALLY, AND GOLDEN & AMOS, PLLC, will move the Court for an Order to Dismiss this case. Hearing on this motion has been scheduled for January 29, 2013 at 10:00 a.m. If permitted by court, this Defendant(s) will appear telephonically, as we are located in West Virginia and the venue of this case is New York State.

By Counsel,  
Timothy J. Amos, individually, and for  
Golden & Amos, PLLC



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Timothy J. Amos  
WV State Bar #7683  
Post Office Box 81  
Parkersburg, WV 26102  
Telephone: 304/485-3851  
Fax: 304/485-0261

Dated: December 14, 2012



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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In Re: Residential Capital LLC

BK Case No.: 12-12020-mg

George Van Wagner  
Plaintiff

AP No.: 12-01913-mg

v.

Residential Funding Company LLC  
National City Mortgage  
Golden & Amos PLLC  
Tim Amos  
GMAC Mortgage  
Peter T. Demasters  
Flaherty, Sensabaugh, Bonasso PLLC  
Susan Romain  
PNC Bank National Association  
Seneca Trustees Inc  
Jason Manning  
Troutman Sanders LLP  
Defendants

**SPECIAL APPEARANCE**  
**MOTION TO DISMISS**

**NOW COMES** Defendant **TIM AMOS**, individually, and **GOLDEN & AMOS, PLLC**, and makes a Special Appearance moving the Court to Dismiss for lack of Jurisdiction and says as follows:

**Overview**

The Plaintiff has a history of filing unsuccessful pro se civil actions in West Virginia. The Plaintiff's Complaint makes reference to his failed attempts to litigate this matter in the Bankruptcy Court for the Northern District of West Virginia before the Honorable Judge Patrick Flatley, but the Complaint fails to mention his multiple attempts to litigate these same frivolous issues by using the same vague complaint in Federal

District Court.<sup>1</sup> In this particular case, the Plaintiff has filed an Adversary Proceeding in the Southern District of New York against RESIDENTIAL FUNDING COMPANY LLC in the bankruptcy case of RESIDENTIAL CAPITAL LLC [emphasis added]. None of the Defendants named in the Adversary Proceeding are debtors in SDNY Case 12-12020 MG. Tim Amos, Peter T. Demasters, Susan Romain, Golden & Amos PLLC, Flaherty Sensabaugh, Bonasso PLLC, and Seneca Trustees Inc., are all West Virginia attorneys or law firms. Jason Manning and Troutman Sanders LLP are Virginia attorneys or law firms doing business in West Virginia. It appears that the Plaintiff has conjured a cause of action against multiple parties and found a similarly named entity to one of his targets, using that similarly named debtor's bankruptcy case number and the SDNY Bankruptcy Court as a vehicle to blindly sue any person or entity who has ever acted as a lender, servicer, or counsel for a lender or servicer of the loan in question, without regard to the allegations or relief requested.

### Jurisdiction

#### Not a Core Proceeding

#### 28 U.S.C 157 (b)(2)(A)

Subsection (A) requires that a core proceeding be a "matter concerning the administration of the estate". In this Adversary Proceeding, Residential Capital LLC is

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<sup>1</sup> This same Complaint was filed in 3:11-cv-00066-JPB-DJJ in the US District Court for the Northern District of West Virginia. See Attached Exhibit A for a copy of the first complaint. The Court denied the relief requested by the Plaintiff. See Attached Exhibit B for a copy of the Order executed by the Honorable Judge John Preston Bailey. The Plaintiff appealed the Court's decision and the decision to dismiss was affirmed by the 4<sup>th</sup> Circuit Court of Appeals, Judges Wilkinson, King, and Keenan. See Attached Exhibit C for a copy of the Court's Opinion.

the Chapter 11 Debtor. The Debtor is not named in the Complaint. This Adversary Proceeding is not a matter concerning the administration of the estate.

28 U.S.C 157 (b)(2)(C)-(P)

There are no allegations contained in the Complaint, explicit or inferred, that this Adversary Proceeding involves any of the subsections described in 28 U.S.C 157 (b)(2)(C) through and including subsection (P).

The Plaintiff's complaint does not satisfy any of the statutory requirements for a core Proceeding.

Non-Core Analysis

Because the Complaint is a non-core proceeding, the Court should dismiss for lack of jurisdiction unless the Adversary Proceeding is nevertheless integral to the bankruptcy case. Here, the Adversary Proceeding is not related to the SDNY bankruptcy. Other than the similarity of portions of the names of one of the defendants and the debtor, there are no connections between this Adversary Proceeding and the Southern District of New York.

The subject property is in West Virginia.

The Plaintiff lives in West Virginia.

The majority of the Defendants are in or doing business in West Virginia.

None of the Defendants are parties to the bankruptcy.

This is yet another attempt by the Plaintiff to harass the defendants by instituting frivolous litigation, this time in a foreign jurisdiction, with absolutely no ties to the Southern District of New York.

**WHEREFORE**, the Defendant respectfully requests the following relief from  
this Honorable Court:

1. That the case be dismissed for lack of jurisdiction.
2. For such other and further relief as this Honorable Court deems just and  
necessary.
3. Should the Court decline to dismiss the case but instead decide to remove  
it to a district court, then it is important to note that venue is not in New York. The  
Plaintiff, a majority of the defendants, as well as the subject real property, is located in  
the Northern District of West Virginia.

Defendants,

**Tim Amos, individually, and Golden & Amos, PLLC**



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Timothy J. Amos  
WV Bar ID # 7683  
GOLDEN & AMOS PLLC  
543 Fifth Street  
Parkersburg, WV 26101  
(304) 485-3851

EXHIBIT A

CLOSED

**U.S. District Court  
Northern District of West Virginia (Martinsburg)  
CIVIL DOCKET FOR CASE #: 3:11-cv-00066-JPB-DJJ**

Van Wagner v. Residential Funding Company, LLC et al  
Assigned to: Chief Judge John Preston Bailey  
Referred to: Magistrate Judge David J. Joel  
Case in other court: 4th Cir, 11-02393  
Cause: 28:1332 Diversity-Other Contract

Date Filed: 08/12/2011  
Date Terminated: 11/17/2011  
Jury Demand: None  
Nature of Suit: 220 Real Property:  
Foreclosure  
Jurisdiction: Diversity

**Plaintiff**

**George Van Wagner**

represented by **George Van Wagner**  
Post Office Box 867  
Martinsburg, WV 25402  
304-261-4195  
PRO SE

V.

**Defendant**

**Residential Funding Company, LLC**

represented by **Jason E. Manning**  
TROUTMAN SANDERS LLP  
222 Central Park Ave., Suite 2000  
Virginia Beach, VA 23462  
(757) 687-7564  
Fax: (757) 687-1524  
Email:  
jason.manning@troutmansanders.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**National City Mortgage**

**Defendant**

**Golden & Amos, PLLC**

*Tim Amos, Counsel for National City  
Mortgage*

**Defendant**

**Tim Amos**

**Defendant**

**GMAC Mortgage**

represented by **Jason E. Manning**  
(See above for address)

x

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA**

**FILED**

**AUG 12 2011**

**US DISTRICT COURT  
MARTINSBURG, WV 25401**

**GEORGE VAN WAGNER,**

**Plaintiff.**

**V**

**RESIDENTIAL FUNDING COMPANY, LLC, et al.,**

**NATIONAL CITY MORTGAGE,  
GOLDEN & AMOS PLLC;  
TIM AMOS  
GMAC MORTGAGE;  
PETER T. DEMASTERS;  
FLAHERTY, SESABAUGH, BONASSO PLLC;  
SUSAN ROMAIN  
PNC BANK NATIONAL ASSOCIATION;  
SENECA TRUSTEES, INC;  
JASON MANNING,  
TROUTMAN SANDERS LLP**

Civil Action 3:11-cv-0066

**Defendants.**

**COMPLAINT AND MOTION  
TO ENJOIN WRONGFUL FORECLOSURE ACTION**

Comes now, George Van Wagner (hereinafter Van Wagner) Pro se in good faith, and in accordance with Rule 3 of the Federal Rules of Civil Procedure and files his Complaint and Motion to Enjoin Wrongful Foreclosure Action.

**JURISDICTION**

This honorable court has jurisdiction to entertain this complaint within USC 28 §1332, PART 4 chapter 85 whereas there is a diversity in citizenship of parties and the amount in controversy exceeds \$75,000. As well as companies named herein as defendants have federal charters to engage in business in a intrastate as well as interstate capacity.

**PARTIES INVOLVED**

**GEORGE VAN WAGNER, PRO SE**  
P.O. BOX 867  
MARTINSBURG, WV. 25402

**RESIDENTIAL FUNDING COMPANY, LLC** (Charter and entity unknown)  
8400 Normandale Blvd., Ste. 250  
Minneapolis, Minnesota 55437

**SENECA TRUSTEES, INC.**  
6108 MID ATLANTIC DRIVE  
MORGANTOWN, WV. 26505

**NATIONAL CITY MORTGAGE**  
P.O. Box 1820  
Dayton, Ohio 45401-1820

**Golden & Amos PLLC** (*Tim Amos*) Counsel for National City Mortgage  
P.O. Box 81  
Parkersburg, WV. 26102

**PNC BANK** (Successor to City National)  
249 5th Ave., Ste. 30  
Pittsburgh, PA 15222

**Flaherty, Sensabaugh, Bonasso, PLLC** (*Susan Romain and Peter T. Demasters*) (counsel for PNC)  
P.O. BOX 3843  
Charleston, WV. 25338-3843

**GMAC MORTGAGE**  
P.O. BOX 4622



WATERLOO, IA, 50704

**TROUTMAN SANDERS LLP -Jason Manning (counsel of record for GMAC)**  
222 CENTRAL PARK AVENUE SUITE 2000  
VIRGINIA BEACH, VA 23462

### **PROPERTY IN QUESTION**

At the heart of this dispute is the following described real estate, together with its improvements, easements and appurtenances thereunto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described:

All that certain lot or parcel containing 6.000 acres as shown on plat made by Gamma Associates, Arnold L. Godlove, C.E., dated September 19, 1975 and recorded in the Office of the Clerk of the County Court of Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and in existence. At the time of the execution of the Deed of Trust, this property was reported to have an address of (and currently has an address of) 409 three Run Road, Bunker Hill, WV. 25413.

### **WRONGFUL AND NEGLIGENT ACTIONS BY DEFENDANTS**

***LOAN WAS SOLD 3 TIMES WITHOUT NOTIFYING ALL PARTIES  
DECEIT AND FRAUDULENT PRACTICE OF FORECLOSURES  
RENEGE ON AGREEMENT VIOLATED TRUTH-IN-LENDING ACT  
NOT GIVEN TIME TO CURE TO REDEEM  
FAILURE TO PERFORM TITLE TAKEDOWN  
THE SALE AND RESALE(S) OF THE LOAN, OR THE SERVICING OF IT, WAS RIDDLED  
WITH UNFAIR AND DECEPTIVE PRACTICES***

### **STATEMENT OF FACTS**

On October 30, 2006, real estate parcel as described above was conveyed unto the Plaintiff, George Van Wagner and recorded in the Clerk of the County Commission for Berkeley County WV. In Deed Book 852 at page 131. On July 11, 2007, same property was conveyed from George Van Wagner to VAC, LLC through David Pill, trustee. VAC LLC held and holds title to said property, George Van Wagner held and holds deed of trust therein, and City National held the Mortgage Note.

On or about November 2009, in lieu of bankruptcy, a compromise was made to lower the interest rate and National City agreed to pay the taxes. All parties agreed and the presiding Judge signed off on the avoidance of bankruptcy.

Sometime thereafter, National City Mortgage sold the loan and failed to serve VAC, LLC or Van Wagner any documents relating to their sale of the note. On February 16, 2009 National City sent Van Wagner (not VAC) a letter advising that the servicing of the loan was transferred to GMAC.

National never informed GMAC of the bankruptcy proceedings or the new agreement. Although Van Wagner had indeed started paying his new lower payment as agreed, when the transfer to GMAC took place, the payments were not included in the conditions, nor were the amounts credited and the transfer and sale transpired without disclosing the factual terms of the agreement.

Van Wagner believed the payments were to be made to National City as the agreement stipulated, and when Van Wagner received a letter on 02/23/09 from GMAC advising that National City Mortgage will be unable to accept payments after 02/01/09, Van Wagner believing he was a victim of deceit did not know who he was supposed to pay, and payments ceased.

On August 02, 2011, Van Wagner received a letter from Seneca Trustees, Inc. advising that as a substitute trustee at the direction of Residential Funding Company, that the property accelerated to declare all sums due and that property would be sold on August 23, 2011.

Van Wagner has no idea as to the entity of Residential Funding, how they have any claim to the property, or how they retain any right to seek foreclosure, and Residential Funding have yet to produce documentation they hold any interest.

### **ARGUMENT**

Van Wagner has a right to know the rightful owner of the note so an offer for payment of the note at a discount and at fair market value can be made. If the note has been pledged and

encumbered, then that party must be made aware of the foreclosure and your right to negotiate with them a payment and release of the note by you, other lien holders or private parties.

Van Wagner had the right to have his modified term honored, and the renegeing thereof constituted a violation of the truth in lending act.

**The Real Estate Settlement Procedures Act of 1974**  
(RESPA) (12 USC 2601 *et seq.*) (the "Act") became effective on June 20, 1975. The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also protects borrowers against certain abusive practices, including the resale of loan without notifying all parties, and requiring that the Lender must give the "Borrowers" notice of the loan default and an opportunity to cure the default before the loan can be accelerated.

**PART 3500—REAL ESTATE SETTLEMENT  
PROCEDURES ACT 3500.21**

d)Notices of Transfer; loan servicing.(1)Requirement for notice. (i)Except as provided in this paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in paragraph (d)(3) of this section, of any assignment, sale, or transfer of the servicing of the loan. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A)Transfers between affiliates; (B)Transfers resulting from mergers or acquisitions of servicers or subservicers; and (C)Transfers between master servicers, where the subservicer remains the same

#### **WEST VIRGINIA CODE**

##### **§46A-2-106. Notice of consumer's right to cure default; cure; acceleration**

Except as hereinafter provided in this section, after a default on any installment obligation or any other secured obligation other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest or lease, a creditor may not accelerate maturity of the unpaid balance of any such installment obligation or any other such secured obligation, commence any action or demand or take possession of collateral on account of default until ten days after notice has been given to the consumer of his or her right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges and by tendering any other performance necessary to cure such default. Any such cure shall restore a consumer to all his or her rights under the agreement the same as if there had been no default. A consumer who has been in default three or more times on the same obligation and who has been given notice of such fact three or more times shall not have the right to cure a default under this section even though previous defaults have been cured and his or her creditor's right to proceed against him or her and his or her collateral shall not be impaired or limited in any way by this section. There shall be no acceleration of the maturity of all or part of any amount owing in such a consumer credit sale, consumer lease or consumer loan, except where nonperformance specified in the agreement as constituting default has occurred.

#### **COMPANIES HISTORY OF FRAUDULENT PRACTICES**

Without getting into a lengthy discussion of the wide-spread problems of fraud and deceit associated with reselling loans and wrongful foreclosures across the country, the defendants herein have themselves been subjected to litigation for negligent practices; to wit:

A jury, sitting in state court in Jackson County, Missouri had previously found that **Residential Funding Company LLC** and 2 other entities owed the plaintiffs 5.1 million dollars in actual damages, and \$99,000,000.00 in punitive damages for tainted, fraudulent, and deceptive practices regarding reselling loans and foreclosures therein.

WASHINGTON Dept. of Justice- **National City Mortgage Inc.** has agreed to pay the United States \$4.6 million to settle allegations arising under the False Claims Act concerning 58 federally insured loans for mortgages submitted to the Department of Housing and Urban Development (HUD), the Justice Department announced.

In June 2003, **PNC Bank** agreed to pay \$115 million to settle federal securities fraud charges after one of its subsidiaries fraudulently transferred \$762 million in bad loans and other venture-capital investments to an **AIG** entity in order to conceal them from investors

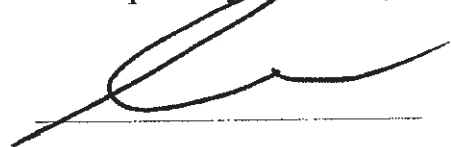
**Ally Financial** and its subsidiary **GMAC Mortgage** are being sued by the Ohio Attorney General for allegedly submitting fraudulent documents in hundreds of foreclosure cases across the state.

### CONCLUSION

George Van Wagner in good faith avoided a bankruptcy proceeding and settled on a lower interest payment. He made two payments of the new term and during the two payments, the loan was sold. He was advised to stop paying a Note Holder. The Note was then sold again, and Van Wagner had no idea and had no documentations. Through deceit and fraud, Residential Funding Company comes out of no where and claims to be the lender, and that the property is going to be sold.

Accordingly, George Van Wagner respectfully requests this Court to enjoin the foreclosure and to issue an injunction to stop the sale, and in light of any negligence found to be committed by the Court, Van Wagner asks for punitive and compensatory damages as well as any other equally effective relief deemed necessary and just.

Respectfully Submitted,



George Van Wagner, Pro se



## SENECA TRUSTEES, INC.

6108 Mid Atlantic Drive | Morgantown, WV 26505  
Toll Free 1-888-534-3132

August 2, 2011

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**AND FIRST CLASS U.S. MAIL**

George VanWagner aka Georg VanWagner Iii  
594 Eagle School Road  
Martinsburg, WV 25401

Re: Notice of Trustee's Sale  
Loan No. 0359529173  
Property: 409 Three Run Rd, Bunker Hill, WV 25413  
Our File No. 48-012527-09

NOTICE is hereby given that Seneca Trustees Inc., Substitute Trustees under that certain Deed of Trust dated October 30, 2006, and recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia in Trust Deed Book 2016 at page 00355, at the direction of the lender, Residential Funding Company, LLC f/k/a Residential Funding Corporation, does hereby:

1. Accelerate and declare all sums secured by said Deed of Trust to be immediately due and payable without further demand, subject to terms of said Deed of Trust and applicable laws; and,
2. Invoke the power given by said Deed of Trust to sell the above-described real estate at public auction on August 23, 2011, at 11:00 o'clock am, at the front door of the Berkeley County Courthouse, Martinsburg, West Virginia.

Notice is also given that any personal property and/or belongings remaining at the property after the foreclosure sale will be deemed to constitute ABANDONED PROPERTY AND WILL BE DISPOSED OF ACCORDINGLY. Insofar as this letter may be interpreted by a Court of competent jurisdiction, that the undersigned is attempting to collect a debt on behalf of a lender, you are informed that any information given by you to the undersigned is information which may be passed on to the lender may be used for the collecting a debt.

You have the right to bring a Court action to assert the non-existence of the default or any other defense you may have to stop the acceleration of the sale. Copy of the Notice of Trustee's sale of valuable real estate is enclosed herewith.

Respectfully,

SENECA TRUSTEES, INC.



### TRUSTEE'S SALE OF VALUABLE REAL ESTATE

The undersigned Substitute Trustee, by virtue of the authority vested in him by that certain Deed of Trust, dated the 30th day of October, 2006, and duly recorded in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Trust Deed Book 2016, at page 00355, George VanWagner aka Georg VanWagner III did convey unto Richard A. Pill, Esq, Trustee(s), certain real property described in said Deed of Trust; and the beneficiary has elected to appoint Seneca Trustees, Inc., as Substitute Trustee by a Substitution of Trustee dated June 14, 2011 and recorded in the aforesaid Clerk's office; and default having been made under the aforementioned Deed of Trust, and the undersigned Substitute Trustee having been instructed by Residential Funding Company, LLC f/k/a Residential Funding Corporation to foreclose thereunder, will offer for sale at public auction at the front door of the Berkeley County Courthouse in Martinsburg, West Virginia, on

August 23, 2011 at 11:00 o'clock am

the following described real estate, together with its improvements, easements and appurtenances thereunto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows:

All that certain lot or parcel of real estate together with the improvements thereon and appurtenances thereto belonging, situate in Mill Creek District, Berkeley County, West Virginia, and more particularly described as follows:

All that certain lot or parcel containing 6.000 acres as shown on a plat made by Gamma Associates, Arnold L. Godlove, C.E., dated September 19, 1975 and recorded in the Office of the Clerk of the County Court of Berkeley County, West Virginia, in Deed Book 291, at page 40, being subject to easements of record and in existence.

At the time of the execution of the Deed of Trust, this property was reported to have an address of: 409 Three Run Rd, Bunker Hill, WV 25413.

The referenced real estate will be conveyed with no covenants of warranty, and subject to all covenants, restrictions, easements, rights of way and reservations which may be a matter of record in the aforesaid Clerk's Office or visible upon the ground, all prior liens and encumbrances, including, without limitation, liens for real estate taxes, incinerator, sanitary and sewer charges. The purchasers at the sale shall be responsible for paying the recording costs and also the tax on the privilege of transferring real property (the cost of the tax stamp to be affixed to the deed). The purchasers shall be responsible for payment of all real estate taxes.

The subject property will be sold in "AS IS" condition. The Substitute Trustee shall be under no duty to cause any existing tenant or person occupying the subject property to vacate said property.

TERMS: \$24,000.00 in cash and/or certified funds as deposit with the balance due and payable within 30 days of the day of sale.

**FEDERAL TAX LIEN:** In the event that there are Federal Tax Liens against the property, the United States would have the right to redeem the property within a period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

Pursuant to the Deed of Trust, the Trustee may postpone the sale by public announcement at the time and place designated or by posting a notice of the same, and act by agent in the execution of the sale. The parties secured by the Deed of Trust reserve the right to purchase the property at such sale.

SENECA TRUSTEES, INC.  
6108 Mid Atlantic Drive  
Morgantown, WV 26508  
(304) 413-0044  
(304) 292-2918  
Toll free: (888) 534-3132  
Reference File No. 48-012527-09

cc: The Journal  
08/12/11, 08/19/11

✓

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February 6, 2009

GEORGE VANWAGNER  
127 WALKER CT  
HEDGESVILLE WV 25427-3831

FEB 23 2009

Enclosure(s)

National City  
Mortgage Co.

A Subsidiary of National City Bank  
3232 Newmark Drive • Miamisburg, Ohio 45342  
Telephone: (937) 910-1200

Mailing Address:  
P.O. Box 1820  
Dayton, Ohio 45401-1820

February 04, 2009

GEORGE VAN WAGNER  
PRO SE  
127 WALKER COURT  
HEDGESVILLE WV 25427

RECEIVED  
FEB 16 2009

RE: Loan No. 0004920821  
Case No. 0800435  
Name: GEORGE VANWAGNER

The servicing of this loan has been transferred from National City Mortgage to GMAC MORTGAGE effective 02-02-2009.

All future correspondence/inquiries should be directed to the following address and telephone number:

GMAC MORTGAGE  
PAYMENT PROCESSING  
P O BOX 780

WATERLOO IA 50704-0780 215-734-5382

Sincerely,

Bankruptcy Department

copy to: Trustee:  
Attorney: GEORGE VAN WAGNER

BD097 009 KMV

409 3 Pen Rd.

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

### I. (a) PLAINTIFFS

**GEORGE VAN WAGNER, PRO SE**

(b) County of Residence of First Listed Plaintiff **BERKELEY**  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

**P.O. BOX 867 304-261-4195  
MARTINSBURG, WV. 25402**

### DEFENDANTS

**RESIDENTIAL FUNDING CO., LLC, et al.**

**HENNEPIN COUNTY**

County of Residence of First Listed Defendant **MINNEAPOLIS, MINN.**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**AUG 12 2011**

**U.S. DISTRICT COURT**

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORECLOSURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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### V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

**USC 28 § 1332 PART 4 CH. 85**

Brief description of cause:

**MOTION TO STOP A WRONGFUL FORECLOSURE**

### VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

### VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**GEORGE VAN WAGNER,**

Plaintiff,

v.

**Civil Action No. 3:11-CV-66  
(BAILEY)**

**RESIDENTIAL FUNDING COMPANY, LLC, et al.,**

Defendants.

**ORDER DISMISSING CASE FOR  
LACK OF SUBJECT MATTER JURISDICTION**

On this day, the above-styled civil action came before this Court for consideration of the *pro se* plaintiff's Amended Complaint and Motion to Enjoin Wrongful Foreclosure Action [Docs. 7 and 8], filed September 2, 2011. The plaintiff seeks to amend his Complaint to assert "minimal diversity" pursuant to the United States Constitution, Article III, Section 2, and argues that the Court has subject matter jurisdiction pursuant to this doctrine [See Doc. 50 at 4]. For the reasons that follow, this Court finds that it lacks subject matter jurisdiction and, thus, that this civil action should be dismissed.

**PROCEDURAL BACKGROUND**

On September 12, 2011, Residential Funding Company, LLC; GMAC Mortgage, LLC; Troutman Sanders, LLP; and Jason E. Manning filed a Motion to Dismiss Plaintiff's Amended Complaint and Motion to Enjoin Wrongful Foreclosure Action [Doc. 13] and a Memorandum in Support [Doc. 14]. Plaintiff filed his response in opposition thereto [Doc. 17] on September 14, 2011. Defendant Seneca Trustees, Inc., filed a Motion to Dismiss

and Joinder in Defendants' Residential Funding Company, LLC; GMAC Mortgage, LLC; Troutman Sanders, LLP; and Jason Manning's Motion to Dismiss [Doc. 32] and a Memorandum of Law in Support [Doc. 33] on September 21, 2011. Plaintiff filed his response in opposition thereto on September 27, 2011 [Doc. 37]. On October 13, 2011, Defendant PNC Bank, National Association filed a Motion to Dismiss [Doc. 42] and a Memorandum in Support [Doc. 43]. Plaintiff filed his response thereto on November 14, 2011 [Doc. 49]. On October 14, 2011, Defendants Peter Demasters, Susan Romaine, and Flaherty Sensabaugh Bonasso PLLC filed a Motion to Dismiss [Doc. 45]. Plaintiff filed his response in opposition thereto on November 14, 2011 [Doc. 50].

In the Amended Complaint [Doc. 7], the plaintiff states that this Court "has jurisdiction to entertain [the] complaint [under 28 U.S.C. § 1332] whereas there is a diversity in citizenship of parties and the amount in controversy exceeds \$75,000 [*id.* at 7 (emphasis added)]. Among other reasons, various defendants claim that the case should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure because "there is no complete diversity among the parties" [See Doc. 45 at 3, 6-9 and FED. CIV. R. P. 12(b)(1)]. In one of his filings, the plaintiff states that "minimal diversity" . . . requires the existence of at least [one] party who is diverse in citizenship from a party on the other side of the case" and that such diversity is present in this case [Doc. 50 at 4].

#### APPLICABLE LAW

The requirement of complete diversity of citizenship was imposed by the Supreme Court of the United States more than 200 years ago in ***Strawbridge v. Curtiss***, 7 U.S. (3

Cranch) 267 (1806); see also *Slavchev v. Royal Caribbean Cruises, Ltd.*, 559 F.3d 251, 255 (4th Cir. 2009) (citing *Strawbridge* for requirement of complete diversity). Since then, only three statutory exceptions have been recognized by Congress. Specifically, minimal diversity suffices to create federal subject matter jurisdiction in cases arising under either the Interpleader Act, 28 U.S.C. § 1335; the Multiparty, Multiforum Jurisdiction Act, 28 U.S.C. § 1369; or the Class Action Fairness Act, 28 U.S.C. §§ 1332(d)(2) and 1453.

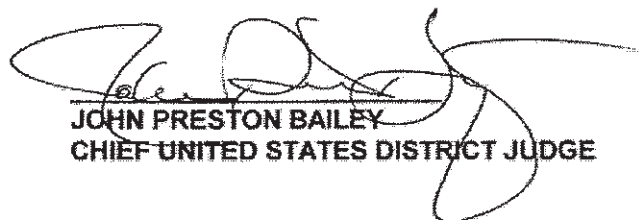
### CONCLUSION

The plaintiff's action does not arise under either of the Acts listed above and, therefore, fails to fall within an exception to the requirement of complete diversity. Complete diversity is not met because plaintiff is a resident of West Virginia and defendant Seneca Trustees, Inc., is incorporated in the state of West Virginia, which is where its principal place of business is also located. Thus, because complete diversity is required but not present here, this Court lacks subject matter jurisdiction. Accordingly, the plaintiff's Complaint [Doc. 1] is hereby **DISMISSED** and the plaintiff's Motion for Leave to File an Amended Complaint [Doc. 8] is **DENIED AS MOOT**. Finally, this matter is **ORDERED STRICKEN** from the active docket of this Court.

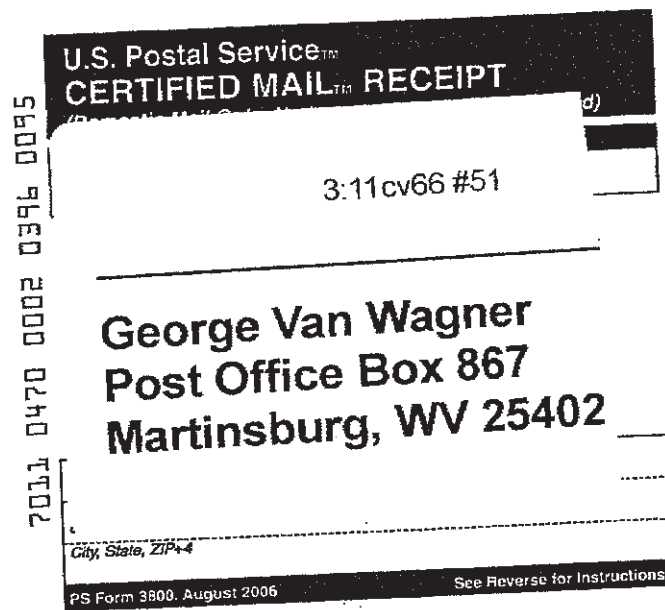
It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

**DATED:** November 17, 2011.



**JOHN PRESTON BAILEY**  
**CHIEF UNITED STATES DISTRICT JUDGE**





UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 11-2393

GEORGE VAN WAGNER,

Plaintiff - Appellant,

v.

RESIDENTIAL FUNDING COMPANY, LLC; NATIONAL CITY MORTGAGE; GOLDEN & AMOS, PLLC, Tim Amos, Counsel for National City Mortgage; TIM AMOS; GMAC MORTGAGE; PETER T. DEMASTERS; FLAHERTY, SENSABAUGH & BONASSO, PLLC, Susan Romain and Peter T. Demasters, Counsel for PNC, a/k/a Flaherty, Sensabaugh, Bonasso, PLLC; SUSAN ROMAIN; PNC BANK, NATIONAL ASSOCIATION, Successor to City National; SENECA TRUSTEES, INC.; JASON E. MANNING; TROUTMAN SANDERS LLP, Jason Manning, Counsel for GMAC,

Defendants - Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:11-cv-00066-JPB-DJJ)

Submitted: March 29, 2012

Decided: April 2, 2012

Before WILKINSON, KING, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

George Van Wagner, Appellant Pro Se. Jason E. Manning, TROUTMAN SANDERS, LLP, Virginia Beach, Virginia; Heather Hovermale, William Joseph Powell, JACKSON KELLY, PLLC, Martinsburg, West

Virginia; Braun A. Hamstead, HAMSTEAD & ASSOCIATES, LC, Charles Town, West Virginia; Christopher Robert Arthur, SAMUEL I. WHITE, PC, Charleston, West Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

George Van Wagner appeals the district court's order dismissing his civil action for lack of jurisdiction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Van Wagner v. Residential Funding Co., No. 3:11-cv-00066-JPB-DJJ (N.D.W. Va. Nov. 17, 2011). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: Residential Capital LLC

CASE NO.: 12-12020-mg

George Van Wagner,  
Plaintiff

AP No. 12-01913-mg

v.  
Residential Funding Company LLC  
National City Mortgage  
Golden & Amos PLLC  
Tim Amos, et al.  
Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of December, 2012, I served a true and correct copy of the Defendant's Special Appearance and Motion to Dismiss upon the following persons by United States Mail, postage prepared addressed according to the information contained in the Plaintiff's Complaint as follows:

See attached service list

Given under my hand this 14th day of December, 2012



---

Timothy J. Amos  
Counsel for Tim Amos, individually, and  
Golden & Amos, PLLC  
WV State Bar #7683  
Post Office Box 81  
Parkersburg, WV 26102  
Telephone: 304/485-3851  
Fax: 304/485-0261

Service List - VanWagner vs. Residential Funding Company, LLC 12-01913

George Van Wagner  
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Martinsburg, WV 25402

Peter Demasters  
Susan Romain  
(Counsel for PNC)  
Flaherty, Sensabaugh, Bonasso, PLLC  
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Charleston, WV 25338-3843

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249 5th Ave., Ste. 30  
Pittsburgh, PA 15222

National City Mortgage  
P.O. Box 1820  
Dayton, OH 45401-1820

Seneca Trustees, Inc.  
6108 Mid Atlantic Drive  
Morgantown, WV 26505

GMAC Mortgage  
P.O. Box 4622  
Waterloo, IA 50704

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