

Hearing Date: January 29, 2013 at 10:00 a.m. (ET)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Case No.: 12-12020 MG
Chapter 11

RESIDENTIAL CAPITAL, LLC, et al.

Jointly Administered

-----X

GEORGE VAN WAGNER,

Plaintiff,

**Adversary Proceeding
No.: 12-01913 MG**

-v-

RESIDENTIAL FUNDING COMPANY, LLC, et al;
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..

-----X

**NOTICE OF FLAHERTY DEFENDANTS'
MOTION TO DISMISS ADVERSARY PROCEEDING COMPLAINT**

PLEASE TAKE NOTICE, that Defendants PETER T. DEMASTERS, FLAHERTY, SESABAUGH, BONASSO PLLC, and SUSAN ROMAIN (the "Flaherty Defendants"), by their attorneys Strongin Rothman & Abrams, LLP, will make a motion to this Court before the Honorable Martin Glenn, Judge of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, Room 501, New York, NY 10004-1408, at the hearing scheduled on January 29, 2013 at 10:00 a.m. of that day or as soon thereafter as counsel can be heard for entry of an Order dismissing the



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Adversary Proceeding Complaint on the following grounds:: (1) pursuant to Bankruptcy Rule 7012 and FRCP 12(c) for judgment on the pleadings to dismiss the above-referenced adversary proceeding (the "Adversary Proceeding") commenced by *pro se* plaintiff George Van Wagner ("Plaintiff") for failure to state a claim; (2) as being barred by res judicata or collateral estoppel; and (3) pursuant to 28 U.S.C. § 1334 (c)(1) in the proper exercise of the Court's discretion by abstaining from jurisdiction over the Adversary Proceeding; and (4) for such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 15, 2013

Yours, etc.

STRONGIN ROTHMAN & ABRAMS, LLP

s/David Abrams

DAVID ABRAMS, ESQ.

Attorneys for Defendants

**PETER T. DeMASTERS, FLAHERTY,
SESABAUGH, BONASSO PLLC and
SUSAN ROMAIN**

5 Hanover Square, 4th Floor
New York, NY 10004
(212) 931-8300

TO:

GEORGE VAN WAGNER
P.O. BOX 867
Martinsburg, WV 25402
Plaintiff *Pro Se*

Norman Scott Rosenbaum, Esq.
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104
Counsel for Defendant (Debtor) Residential Funding Company, LLC

Timothy J. Amos, Esq.
PO Box 81
Parkesburg, WV 26102
Defendant *Pro Se* and as Counsel for Defendant Golden & Amos, PLLC

Kiyam J. Poulson, Esq.
Druckman Law Group PLLC
Bankruptcy/Eviction Departments
242 Drexel Avenue
Westbury, NY 11590
Counsel for Defendant Seneca Trustees, Inc.

Chris R. Arthur, Esq.
Samuel I. White, PC
601 Morris Street, Suite 400
Charleston, WV 25301
Counsel for Defendant Seneca Trustees, Inc.

UNITED STATES BANKRUPTCY COURT
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-v-

RESIDENTIAL FUNDING COMPANY, LLC, et al;
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.

-----X

**MEMORANDUM OF LAW IN SUPPORT OF THE FLAHERTY DEFENDANTS'
MOTION TO DISMISS THE ADVERSARY PROCEEDING COMPLAINT**

Defendants Peter T. DeMasters; Flaherty, Sesabaugh, Bonasso PLLC, and Susan Romain (collectively, the “Flaherty Defendants”) respectfully submit this motion to dismiss the Adversary Proceeding Complaint on the following grounds: (1) pursuant to Bankruptcy Rule 7012 and FRCP 12(c) for judgment on the pleadings to dismiss the above-referenced adversary proceeding (the “Adversary Proceeding”) commenced by *pro se* plaintiff George Van Wagner (“Plaintiff”) for failure to state a claim; (2) as being barred by res judicata or collateral estoppel; and (3) pursuant to 28 U.S.C. § 1334 (c)(1) in the proper exercise of the Court’s discretion by abstaining from jurisdiction over the Adversary Proceeding. In the interest of brevity, as set forth below, the Flaherty Defendants join in, in part, and rely upon, in part, the motions to dismiss of co-defendants: (i) Residential Funding Company, LLC and GMAC Mortgage (“Debtors”), including the exhibits annexed to the Declaration of Jennifer Scoliard, dated November 16, 2012 (the “Scoliard Decl.”), attached thereto, (ii) Defendant Seneca Trustees, Inc. (“Seneca”); and (iii) Defendants Timothy Golden, individually, and Golden & Amos, PLLC (the “Golden Defendants”).

BACKGROUND

Plaintiff filed a Complaint (the “Complaint”), commencing this adversary proceeding in Debtors’ bankruptcy action seeking to enjoin a foreclosure action on a piece of property in West Virginia known as 409 Three Run Road, Bunker Hill, West Virginia 25413 (the “Property”). The Complaint is annexed hereto as Exhibit “A.” In his Complaint, however, Plaintiff admits that his claims with respect to the Property were previously addressed by the Bankruptcy Court in the Northern District of West Virginia in his personal bankruptcy action, and that he litigated his claims in connection with the

Property in that proceeding. (Compl. at p.5) Plaintiff also admits that he stopped paying his mortgage, allegedly because he was confused or concerned that, due to the sale of his mortgage from National City Mortgage Company to GMAC Mortgage, his payments were not or would not be properly credited to his account and that GMAC Mortgage would not honor the payment terms negotiated in his bankruptcy action. (Compl. at p.6-7) However, he does not allege and apparently did not attempt to address these concerns with either National City Mortgage Company or GMAC Mortgage at any time, either before or after he received the Notice of Trustee's Sale. (See Complaint, Exhibit 1.)

Faced with foreclosure for his admitted failure to pay his loan, plaintiff now seeks to assert various claims in this action in an attempt to prevent the foreclosure. Plaintiff's Complaint here apparently purports to assert claims under the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, *et seq.*, the Real Estate Settlement Procedures Act of 1974 ("RESPA"), 12 U.S.C. § 2601, *et seq.*, and West Virginia Code § 46A-2-106, "Notice of Consumers' Right to Cure Default." (the "West Virginia Statute") against various individuals and entities primarily located in West Virginia.

The Flaherty Defendants are a West Virginia law firm, Flaherty Sensabaugh Bonasso PLLC and two of its members, Peter T. DeMasters and Susan Romain. There is not a single allegation in the Complaint regarding the Flaherty Defendants. In the "Parties Involved" section of the Complaint, plaintiff merely lists "Flaherty Sensabaugh Bonasso, PLLC(*Susan Romain and Peter T. DeMasters*)(counsel for PNC)" but does not assert any factual statements or allegations as to the Flaherty Defendants. As to

PNC, plaintiff lists that entity as “Successor to City National” but makes no statements or allegations as to that defendant.

Most significantly, the Complaint does not allege any actions by the Flaherty Defendants in connection with Plaintiff’s claims therein or any factual or legal basis for Plaintiff’s assertion of any claim against the Flaherty Defendants. Furthermore, Plaintiff’s Complaint does not set forth a single allegation that the Flaherty Defendants caused or contributed to the circumstances surrounding the foreclosure at issue. In their Answer, attached as Exhibit “B” hereto, the Flaherty defendants raised the affirmative defense of failure to state a claim (see Exhibit “B,” ¶ 26).

Plaintiff previously litigated his claims with respect to the Property in three venues: his personal bankruptcy action, and in separate actions in state court and in federal court in West Virginia. Plaintiff commenced his personal bankruptcy action when he filed for bankruptcy relief on March 28, 2008 (08-BK-00435) pursuant to Chapter 11 of the U.S. Bankruptcy Code, which he subsequently converted to a chapter 7 case. Plaintiff’s Voluntary Petition, filed on March 28, 2008 (the “Petition”) (See, Debtor’s motion papers, Scoliard Decl. Ex. E) lists the Property among his assets. (See Scoliard Decl. Ex. E at Schedule A). In his Petition, Plaintiff declares that the property is “rental property” owned by him and that there was a month-to-month tenant residing at the Property at the time of the filing. (See Scoliard Decl. Ex. E at Schedule G).

In addition to litigating his claims with respect to the Property in his Bankruptcy action, plaintiff also brought suits in West Virginia state court and in the District Court for the Northern District of West Virginia. Specifically, on May 19, 2010, Plaintiff filed a complaint in the Circuit Court for Berkeley County, West Virginia, Case No. 10-C-390,

seeking to quiet title to the Property, among other requests for relief. Thereafter, on August 12, 2011, Plaintiff filed a complaint in the United States District Court for the Northern District of West Virginia, Case No. 3:11-CV-66, against the same defendants named in his Adversary Proceeding Complaint here, and seeking the same relief sought here including to enjoin the foreclosure. Both of those actions were dismissed. (See Debtors' Motion for Dismissal dated November 16, 2012 ("Debtors' Motion"), ¶¶ 2-37 and exhibits referenced therein, which the Flaherty Defendants expressly incorporate by reference herein.)¹

ARGUMENT

A. The Flaherty Defendants Are Entitled to Judgment on the Pleadings Dismissing the Adversary Proceeding Pursuant to Bankruptcy Rule 7012 and FRCP 12(c)

The provisions of Federal Rules of Civil Procedure ("FRCP"). FRCP 12(c) are incorporated by reference into Bankruptcy Rule 7012. Accordingly, a party to an adversary proceeding may move for judgment on the pleadings to dismiss a complaint where, *inter alia*, a plaintiff has failed to state a claim upon which relief can be granted.

On a motion for judgment on the pleadings to dismiss a complaint under Rule 12(c), the court applies "the same standard as that applicable to a motion under Rule 12(b)(6), accepting the allegations contained in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party." Harrison v. Harlem Hospital, 364 Fed. Appx. 686, 687 (2d Cir. 2010) (citation omitted). The court's obligation is "to assess the legal feasibility of the complaint, not to assay the weight of the evidence

¹ Plaintiff apparently has commenced a second state court action in the Circuit Court of Berkeley County, West Virginia, Civil Action No. 11-C-1000, where motions to dismiss are currently pending. (See Seneca's Memorandum of Law at p.2)

which might be offered in support thereof." Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984) (citation omitted). "To state a claim, a complaint must plead 'enough facts to state a claim to relief that is plausible on its face.'" Harrison, 364 Fed. Appx. At 687 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955 (2007)). The court may consider the contents of any "documents attached to the complaint as an exhibit or incorporated in it by reference, to matters of which judicial notice may be taken, or to documents either in the plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." Brass v. Am. Film Techs., Inc., 987 F.2d 142, 150 (2d Cir. 1993).

To survive the pleading requirements pursuant to FRCP 8(a), made applicable to bankruptcy cases by Federal Rule of Bankruptcy Procedure 7008(a), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FRCP 8(a)(2). It is not sufficient to simply invoke a claim, without alleging the factual basis upon which it rests. In Bell Atlantic v. Twombly, 550 U.S. 544, 127 S. Ct. 1955 (2007), the Supreme Court explained that Rule 8(a) requires:

a "showing," rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only "fair notice" of the nature of the claim, but also "grounds" on which the claim rests.

Twombly, 550 U.S. at 555 n.3. In other words, "the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Thus,

a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" **requires more than labels and**

conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).

Twombly, 550 U.S. at 555 (citations omitted) (emphasis added).

Further, as noted by Debtors in their motion, although complaints drafted by *pro se* plaintiffs are to be “construed liberally,” they must still be supported by factual allegations sufficient to provide the court and the defendant with “a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery.” Iwachiw v. N.Y. City Bd. of Elections, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citations omitted).

Here, plaintiff has utterly failed to provide the factual or legal grounds of his claimed entitlement to relief as to the Flaherty Defendants. The complaint is devoid of **any** allegations as to the Flaherty Defendants. There is not a single factual allegation that, even if true, would form a basis for a claim against the Flaherty Defendants on any of the purported grounds set forth in the Complaint. Rather, plaintiff has done no more than throw out some statutes and some allegations of fraud unrelated to his claims in the hopes that they might stick. In doing so, however, he makes no statements or assertions of any kind that the Flaherty defendants had any involvement whatsoever in the events related to foreclosure of his property. Indeed the Complaint is completely silent as to the Flaherty defendants other than listing them under a heading “Parties Involved.” There is simply no allegation in the Complaint that would provide the Flaherty Defendants with an understanding of plaintiff’s claims against them. Accordingly, inasmuch as plaintiff has completely failed to allege factual allegations that

“raise a right to relief above the speculative level,” the Flaherty Defendants are entitled to judgment on the pleadings and the Adversary Complaint must be dismissed under FRCP12(c)²

**B. The Adversary Proceeding Should Be Dismissed
On the Grounds of Res Judicata and/or Collateral Estoppel**

Plaintiff admits that his claims with respect to the Property were raised and litigated in his personal bankruptcy action in the bankruptcy court for the Northern District of West Virginia. Furthermore, as Defendant Seneca makes clear in its Motion to Dismiss the Adversary Proceeding, to the extent that Plaintiff sought to assert any additional or other claims with respect to the Property or to object to the foreclosure, plaintiff had an affirmative duty to raise them within his bankruptcy case. So as not to burden the Court with duplicative arguments the Flaherty Defendants expressly incorporate by reference herein the arguments set forth in the Memorandum of Law in Support of Defendant Seneca Trustees, Inc.’s Motion to Dismiss, dated November 21, 2012. Accordingly, the Flaherty Defendants respectfully request that the court dismiss Plaintiff’s Complaint on the grounds of res judicata and/or collateral estoppel.

**C. The Court Should Abstain from
Exercising Jurisdiction Over the Adversary Proceeding**

For the reasons set forth in the Debtors’ Motion to Dismiss, ¶¶ 55-60 which the Flaherty Defendants hereby expressly incorporate by reference herein, the

² For the reasons set forth above, Plaintiff has failed to assert any allegations as to the Flaherty Defendants and certainly has not made any allegations that would meet the requirements of Rule 8, let alone the particularity requirements of Rule 9, of the FRCP. However, to the extent that Plaintiff’s Complaint may be construed to assert a claim for negligence, fraud, illegal pursuit of foreclosure and/or wrongful foreclosure, or injunctive relief against the Flaherty Defendants, the Flaherty Defendants expressly incorporate by reference herein the arguments to dismiss these claims set forth in Debtors’ Motion to Dismiss, ¶¶ 48-54.

Flaherty Defendants respectfully request that the Court decline to exercise jurisdiction over Plaintiff's Complaint herein and dismiss the Adversary Proceeding.

D. The Flaherty Defendants Are Entitled to Judgment on the Pleadings Because Plaintiff Does Not Have a Cause of Action Under TILA, RESPA or The West Virginia Statute with Respect to the Loan for the Property

TILA and RESPA were enacted to provide certain protections to consumers in connection with certain real estate and other credit transactions by providing more transparent disclosures of the financial costs of those transactions. See RESPA, 15 U.S.C. § 2601(a) (purpose of statute to "[e]nsure that consumers . . . are provided with greater and more timely information on the nature and costs of the [real estate] settlement process); TILA, 15 U.S.C. § 1601(a) (purpose to assist consumers by "assur[ing] a more meaningful disclosure of credit terms."). However, both of these statutes:

expressly exempt credit transactions for business, commercial, or agricultural purposes. 12 U.S.C. § 2606(a)(1) (RESPA "does not apply to credit transactions involving extensions of credit ... primarily for business, commercial, or agricultural purposes."); 15 U.S.C. § 1603(1) (TILA "does not apply to ... [c]redit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes.").

LaPorte v. Countrywide Home Loans, Inc., 2009 U.S. Dist. LEXIS 80441, at * 3-4 (E.D. Tenn. Sept. 3, 2009) (emphasis added). TILA further specifically states that it "**exempts credit transactions other than those where the security interest relates to real property to be used as the borrower's principal dwelling.**" LaPorte v. Wells Fargo Bank, N.A., 2009 U.S. Dist. LEXIS 59849, at *3 (E.D. Tenn. July 14, 2009) (citing 15 U.S.C. § 1603(3)) (emphasis added).

Applying these exemptions to loans for rental properties:

it is well settled that a loan obtained in order to invest in non-owner occupied rental properties is a loan for business purposes. See Official Staff Commentary, Board of Governors of the Federal Reserve System, Section 226.3, Commentary 3(a)(3), 46 Fed. Reg. 50288, 50297 (Oct. 9, 1981) ('Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes.").

Mauro v. Countrywide Home Loans, Inc., 727 F. Supp. 2d 145, 154-55 (E.D.N.Y. 2010) (citing cases finding rental properties exempt from TILA). See also LaPorte v. Countrywide Home Loans, Inc., 2009 U.S. Dist. LEXIS 80441, at *4 ("several courts have found that where individuals obtain a mortgage to buy secondary property to rent to other persons, such transactions are for business or commercial purposes, exempting them from RESPA and TILA.") (citing LaPorte, 2009 U.S. Dist. LEXIS 59849, at *2 (discussing Antanuos v. First Nat'l Bank of Ariz., 508 F. Supp. 2d 466 (E.D. Va. 2007); Puckett v. Ga. Homes, Inc., 369 F. Supp. 614 (D.S.C. 1974); Dunn v. Meridian Mortgage, No. 3:09CV00018, 2009 U.S. Dist. LEXIS 37593, 2009 WL 1165396 (W.D. Va. May 1, 2009))).

Similarly, the West Virginia Statute clearly states that it applies to "consumer credit sale, consumer lease or consumer loan" and provides a procedure to cure a default as to such consumer financial transactions on notice. W. Va. Code § 46A-2-106. It does not provide any relief or obligation with respect to credit transactions for commercial or business purposes.

In his Petition, Plaintiff clearly disclosed that the Property is a rental property, inhabited by a month-to-month tenant and not by Plaintiff as his primary residence. Accordingly, plaintiff's loan for the Property is clearly exempt from the provisions of the

statutes relied upon by Plaintiff. Inasmuch as there is no circumstance under which plaintiff may be able to state a purported claim under RESPA, TILA or the West Virginia Statute, the Flaherty Defendants are entitled to judgment on the pleadings and Plaintiff's Complaint should be dismissed for failure to state a claim upon which relief can be granted pursuant to FRCP 12(c) for this reason as well.

CONCLUSION

For the reasons set forth above, the Flaherty Defendants respectfully request that the Court grant the instant motion in its entirety and issue an order dismissing Plaintiff's Complaint and Motion to Enjoin Wrongful Foreclosure Action with prejudice, and, for such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 15, 2013

Yours, etc.

STRONGIN ROTHMAN & ABRAMS, LLP

s/David Abrams

DAVID ABRAMS, ESQ.

Attorneys for Defendants

**PETER T. DeMASTERS, FLAHERTY,
SESABAUGH, BONASSO PLLC and
SUSAN ROMAIN**

5 Hanover Square, 4th Floor
New York, NY 10004
(212) 931-8300

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

Case No. 12-12020 MG

RESIDENTIAL CAPITAL, LLC., et al.

Chapter 11

Jointly Administered

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**

Defendants.

AP 12-01913 MG

Complaint

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

**George Van Wagner
P.O. Box 867
Martinsburg, WV. 25402**

Submitted 10/09/2012

Comes now, George Van Wagner (hereinafter Van Wagner) Pro se in good faith, and in accordance with U.S. Bankruptcy Rules and files this COMPLAINT AND MOTION TO ENJOIN WRONGFUL FORECLOSURE ACTION that he filed in accordance with U.S. Bankruptcy Rules and asks that this motion supplement 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
MORRISON & FOESTER LLP
Gary Lee
Lorenzo Marinuzzi
1290 Avenue of the Americas
New York, NY. 10104

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 08/24/2006, George Van Wagner formed VAC, LLC. and filed such entity with the WV. Secretary of State. From 2006 to 2008, among business transactions, there were several properties that were conveyed unto VAC, LLC. Pertinent to this case is one conveyance which is property known as 409 Three Run Road. 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 title to said property, George Van Wagner held the deed of trust therein, and City National held the Mortgage Note.

On March 28, 2008, VAC filed for chapter 11 bankruptcy (08-BK-00435) in the US Bankruptcy Court for the Northern District of WV (Flatley). During the Chapter 11 bankruptcy proceedings, Van Wagner possessed membership or equity interests in various business entities, including: Hickory Ridge, LLC; Vanwood, LLC; Leisure Living, LLC; Norwood, Inc.; VAC, LLC; and Topaz, LLC.

Within the VAC entity, several properties were conveyed to VAC (One of those were the 409 Three Run Road which is at the heart of this action). Subsequently and during open court in the bankruptcy proceedings Judge Flatley had determined that the conveyed deeds to VAC were fraudulent because they were conveyed within the 1 year period of filing for bankruptcy in accordance with 11 U.S.C. § 548. This was not intentional on Van Wagner and no challenges were made to that affect, nonetheless the conveyances became void by proxy And the properties reverted back to Van Wagner.

Flatley then stipulated that those properties that were fraudulently conveyed reverted back to Van Wagner and were now part of his personal assets and subjected to his bankruptcy case. Flatley then proceeding to address each of the properties separately as properties of George Van Wagner and for 2 years has been litigating those properties as George Van Wagner, Debtor.

On April 17, 2009, upon Van Wagner's motion and without an objective response, the Honorable Flatley issued an ORDER to remove National City Mortgage as claimant to mortgage on 409 Three Run Road. On February 23, Van Wagner received notice that GMAC is taking over the National City Mortgage and that National will no longer accept payments.

Van Wagner then was denied a refund of 2 payments made to National (each \$1,649.90) since they no longer was to accept payments. The filed RESPONSE OF NATIONAL CITY MORTGAGE CO. TO MOTION OF DEBTOR HAVE NATIONAL CITY MORTGAGE COMPANY RETURN UNREPORTED PAYMENTS on the face at least acknowledges that Van Wagner is the Debtor, and Van Wagner personally made payments toward 409 Three Run Road.

In July 2009, the companies mentioned above were converted from chapter 11 to chapter 7 proceedings. The only exception was VAC, LLC. as stated above was fraudulently instituted, and the properties therein were reverted back to Van Wagner. On 11/01/2010, through the WV. Secretary of State, VAC was officially revoked.

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

Undoubtedly and for the reasons stated above and in accordance with Judge Flatley's rulings, Van Wagner is debtor, holds deed, and title to 409 Tree Run road. 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 reneging 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.

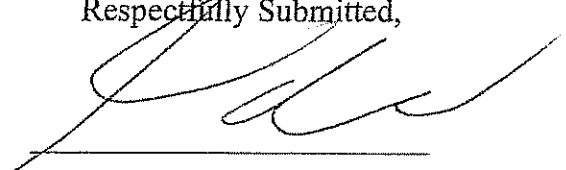
In June 2003, **PNC Bank** agreed to pay \$115 million to settle federal securities fraud charges after one of its subsidiaries fraudulently transferred \$762 million in bad loans and other venture-capital investments to an AIG entity in order to conceal them from investors. Ally Financial and its subsidiary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

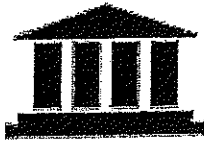
Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'George Van Wagner', is written over a horizontal line.

George Van Wagner, Pro se

P. O. Box 867

Martinsburg, WV. 25402



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

√

GMAC Mortgage
Transfer Dept.
PO Box 780
Waterloo IA 50704-0780

GMAC Mortgage

February 6, 2009

10/27/08 09:00 0000423 20090209 18097101 DEFLT 1 OZ DOM 1809710000 146216 WI

GEORGE VANWAGNER
127 WALKER CT
HEDGESVILLE WV 25427-3831

RECEIVED

FEB 23 2009

RE: Account Number 0359529173
Property Address 409 THREE RUN RD
BUNKER HILL WV 25413-0000

Dear George Vanwagner:

Welcome to GMAC Mortgage. You were recently notified by National City Mortgage that the servicing of the above referenced account was transferred to our office effective 02/01/09. The new GMAC Mortgage Account Number is listed above.

We are pleased to serve you and hope you find our services a perfect match for your needs.

Beginning 02/01/09, payments should be sent to GMAC Mortgage as National City Mortgage will be unable to accept payments and apply them to the account on or after that date. We realize you may have inquiries regarding the transfer of the account and have included contact information below. For questions regarding the transfer of servicing to GMAC Mortgage or past servicing of the account, please contact National City Mortgage's Customer Service at 800-822-5626 (call collect if not toll-free). For consumer information that may be required by your state, please see the enclosed Required Disclosures.

GMAC Mortgage is committed to providing superior service to our customers! Please detach the contact information below and keep it for future reference.

Sincerely,



Charles R. Hoecker
Sr. Vice President, Customer Care
Loan Servicing

Enclosure(s)

~~National City~~
Mortgage Co.

20-2 Filed 01/15/13 Entered 01/15/13 20:28:53 Exhibit A
(Complaint) Pg 17 of 17

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 3rd Rd.

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Case No.: 12-12020 MG
Chapter 11

RESIDENTIAL CAPITAL, LLC, et al.

Jointly Administered

-----X
GEORGE VAN WAGNER,

Plaintiff,

AP 12-01913 mg

-v-

RESIDENTIAL FUNDING COMPANY, LLC, et al.

ANSWER

NATIONAL CITY MORTGAGE, GOLDENT &
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

Defendants.
-----X

Defendants, **PETER T. DeMASTERS, FLAHERTY, SESABAUGH, BONASSO
PLLC and SUSAN ROMAIN**, by and through undersigned counsel, hereby answer the
Complaint of Plaintiff, as follows:

JURISDICTION

1. Deny each and every allegation contained in the first unnumbered
paragraph of this section of the Complaint but beg leave to refer all questions of law to
the court at the trial of this action.

PARTIES INVOLVED

2. Deny each and every allegation contained in the first unnumbered paragraph of this section of the Complaint insofar as the allegations contained in this paragraph of Plaintiff's Complaint refer in any way to these answering defendants.

PROPERTY IN QUESTION

3. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the first unnumbered paragraph of this section of the Complaint.

WRONGFUL AND NEGLIGENT ACTIONS BY DEFENDANTS

4. Deny each and every allegation contained in the first unnumbered paragraph of this section of the Complaint insofar as the allegations contained in this paragraph of Plaintiff's Complaint refer in any way to these answering defendants.

STATEMENT OF FACTS

5. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the first unnumbered paragraph of this section of the Complaint.

6. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the second unnumbered paragraph of this section of the Complaint.

7. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the third unnumbered paragraph of this section of the Complaint.

8. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the fourth unnumbered paragraph of this section of the Complaint.

9. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the fifth unnumbered paragraph of this section of the Complaint.

10. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the sixth unnumbered paragraph of this section of the Complaint.

11. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the seventh unnumbered paragraph of this section of the Complaint.

12. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the eighth unnumbered paragraph of this section of the Complaint.

13. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the ninth unnumbered paragraph of this section of the Complaint.

14. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the tenth unnumbered paragraph of this section of the Complaint.

15. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the eleventh unnumbered paragraph of this section of the Complaint.

ARGUMENT

16. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the first unnumbered paragraph of this section of the Complaint.

The Real Estate Settlement Procedures Act of 1974

17. Deny each and every allegation contained in the first paragraph of this section of the Complaint but beg leave to refer all questions of law to the court at the trial of this action.

PART 3500-REAL ESTATE SETTLEMENT PROCEDURES ACT 3500.21

18. Deny each and every allegation contained in the first paragraph of this section of the Complaint but beg leave to refer all questions of law to the court at the trial of this action.

WEST VIRGINIA CODE §46a-2-106.

Notice of consumer's right to cure default; cure; acceleration

19. Deny each and every allegation contained in the first paragraph of this section of the Complaint but beg leave to refer all questions of law to the court at the trial of this action.

COMPANIES HISTORY OF FRAUDULENT PRACTICES

20. Deny each and every allegation contained in the first unnumbered paragraph of this section of the Complaint insofar as the allegations contained in this paragraph of Plaintiff's Complaint refer in any way to these answering defendants.

21. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the second unnumbered paragraph of this section of the Complaint.

22. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the third unnumbered paragraph of this section of the Complaint.

23. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the fourth unnumbered paragraph of this section of the Complaint.

CONCLUSION

24. Deny any knowledge or information sufficient to form a belief as to the allegations contained in the first unnumbered paragraph of this section of the Complaint.

25. Deny each and every allegation contained in the second unnumbered paragraph of this section of the Complaint insofar as the allegations contained in this paragraph of Plaintiff's Complaint refer in any way to these answering defendants.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

26. Plaintiff's Complaint fails to state a claim upon which relief can be granted in law or equity against these answering defendants, and the Complaint must therefore be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

27. The court lacks in personam jurisdiction over the answering defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

28. That the answering defendants were not properly served in accordance with the provisions of the Federal Rules of Civil Procedure and/or the Federal Rules of Bankruptcy Procedure and the court, therefore, lacks jurisdiction over the person of said defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

29. That process was insufficient under the Federal Rules of Civil Procedure and/or the Federal Rules of Bankruptcy Procedure as against these answering defendants and the court therefore lacks jurisdiction over the person of said defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

30. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

31. These answering defendants did not owe any duties to plaintiff and did not breach any duties allegedly owed to plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

32. The court lacks subject matter jurisdiction over this action and therefore the Complaint must be dismissed.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

33. Plaintiff is not a proper party to an adversarial proceeding in the subject bankruptcy action under the Federal Rules of Bankruptcy Procedure and/or applicable law and therefore the court lacks subject matter jurisdiction over this action and plaintiff's Complaint should be dismissed.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

34. Plaintiff lacks standing to bring this action and therefore plaintiff's Complaint must be dismissed.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

35. This is a frivolous action as defined in Rule 11 of the Federal Rules of Civil Procedure, and defendants are entitled to dismissal of this action and recovery of costs, sanctions, and attorneys fees to the full extent provided by the aforementioned statute.

WHEREFORE, WHEREFORE, these answering defendants demand judgment dismissing the Complaint, together with the attorney's fees, costs and disbursements of this action.

Dated: New York, New York
November 16, 2012

Yours, etc.



STRONGIN ROTHMAN & ABRAMS, LLP

DAVID ABRAMS, ESQ.

Attorneys for Defendants

**PETER T. DeMASTERS, FLAHERTY,
SESABAUGH, BONASSO PLLC and
SUSAN ROMAIN**

5 Hanover Square, 4th Floor
New York, NY 10004
(212) 931-8300

TO:

GEORGE VAN WAGNER
P.O. BOX 867
Martinsburg, WV 25402
Plaintiff Pro Se

Residential Funding Company, LLC
Morrison & Foester LLP
Gary Lee
Lorenzo Marinuzzi
1290 Avenue of the Americas
New York, NY 10104

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

National City Mortgage
PO Box 1820
Dayton, Ohio 45401-1820

Golden & Amos PLLC
Tim Amos, Counsel for National City Mortgage
PO Box 81
Parkesburg, WV 26102

PNC Bank (Successor to City National)
249 5th Avenue, Suite 30
Pittsburgh, PA 15222

GMAC Mortgage
PO 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

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

LYUDMILA TIMOSHENKO being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years, and resides in Middlesex County, New Jersey. That on this 16th day of November, 2012 she served the within **ANSWER** upon:

GEORGE VAN WAGNER
P.O. BOX 867
Martinsburg, WV 25402
Plaintiff Pro Se

National City Mortgage
PO Box 1820
Dayton, Ohio 45401-1820

Residential Funding Company, LLC
Morrison & Foester LLP
Gary Lee
Lorenzo Marinuzzi
1290 Avenue of the Americas
New York, NY 10104

Golden & Amos PLLC
Tim Amos, Counsel for National City
Mortgage
PO Box 81
Parkesburg, WV 26102

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

PNC Bank (Successor to City National)
249 5th Avenue, Suite 30
Pittsburgh, PA 15222

GMAC Mortgage
PO 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

by depositing a true copy of same securely enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Postal Office within the State of New York, by Regular Mail.



LYUDMILA TIMOSHENKO

Sworn to before me this
16th day of November, 2012



NOTARY PUBLIC

JENNIE J. CHOY
Notary Public, State of New York
No. 02CH6222197
Qualified in New York County
Commission Expires May 17, 2014