

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Norman S. Rosenbaum
Stefan W. Engelhardt
Paul Galante

*Counsel for the Debtors and
Debtors in Possession*

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

-----X	:	
	:	
Bruce DeMustchine,	:	
	:	Adv. Proc. 12-02065 (MG)
Plaintiff,	:	
	:	
v.	:	
	:	
RAHI Real Estate Holdings, LLC.	:	
	:	
Defendant.	:	
-----X	:	
In re	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	Chapter 11
	:	
Debtors	:	Jointly Administered
-----X	:	

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT



PRELIMINARY STATEMENT

Defendant RAHI Real Estate Holdings, LLC (“RAHI” or “Defendant”), a debtor and debtor in possession in the above-captioned chapter 11 case (collectively with all affiliated non-defendant debtors and debtors in possession, the “Debtors”), hereby responds to and answers the Complaint (“Complaint”) of plaintiff Bruce DeMustchine (“Plaintiff”) filed on December 14, 2012 in the above-referenced adversary proceeding. To the extent that the Complaint asserts factual allegations in its headings, RAHI denies those allegations. To the extent that any matters alleged in the Complaint are not expressly admitted herein, they are denied.

1. Defendant admits that Plaintiff purports to bring an action against RAHI.
2. Paragraph 2 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.
3. Defendant admits the allegations contained in paragraph 3 of the Complaint.
4. Defendant admits that it filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court on May 14, 2012, which was assigned Case Number 12-12050 and is jointly administered under Case Number 12-12020.
5. Defendant admits the allegations contained in paragraph 5 of the Complaint.
6. Defendant admits that Plaintiff purports to bring an action against RAHI and respectfully refers the Court to the Complaint for the document’s complete contents.
7. Defendant admits that Plaintiff filed a Complaint against it in Essex County, Massachusetts Superior Court, Case Number ESCV-2010-01498 (the “State Court Complaint”).
8. Defendant admits the allegations contained in the first sentence of paragraph 8 of the Complaint. The second sentence of paragraph 8 purports to summarize the

State Court Complaint and Defendant respectfully refers the Court to the State Court Complaint for the document's true and accurate contents.

9. Paragraph 9 purports to summarize the State Court Complaint and Defendant respectfully refers the Court to the State Court Complaint for the document's true and accurate contents.

10. Paragraph 10 purports to summarize the State Court Complaint and Defendant respectfully refers the Court to the State Court Complaint for the document's true and accurate contents.

11. Paragraph 11 purports to summarize the State Court Complaint and Defendant respectfully refers the Court to the State Court Complaint for the document's true and accurate contents.

12. Paragraph 12 purports to summarize the State Court Complaint and Defendant respectfully refers the Court to the State Court Complaint for the document's true and accurate contents.

13. Paragraph 13 purports to summarize the State Court Complaint and Defendant respectfully refers the Court to the State Court Complaint for the document's true and accurate contents.

14. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 14 and, therefore, denies those allegations.

15. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 15 and, therefore, denies those allegations.

16. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 16 and, therefore, denies those allegations.

17. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17 and, therefore, denies those allegations.

18. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 18 and, therefore, denies those allegations.

19. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19 and, therefore, denies those allegations.

20. Defendant admits that Plaintiff sent a letter dated March 23, 2010 requesting a copy of the mortgage and note for his property at 6 Vernon Street, Newburyport, MA. Defendant further states that to the extent paragraph 20 purports to state legal conclusions, no response is required.

21. Paragraph 21 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

22. Defendant denies the allegations contained in paragraph 22 of the Complaint. Defendant further states that to the extent that paragraph 22 purports to state legal conclusions, no response is required.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint. Defendant further states that to the extent that paragraph 23 purports to state legal conclusions, no response is required.

24. Defendant denies the allegations contained in paragraph 24 of the Complaint. Defendant further states that to the extent paragraph 24 purports to state legal conclusions, no response is required.

25. Defendant denies the allegations contained in paragraph 25 of the Complaint except admits that it initiated foreclosure proceedings.

26. Defendant admits the allegations contained in paragraph 26 of the Complaint.

27. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 27 and, therefore, denies those allegations.

28. Defendant admits the allegations contained in paragraph 28 of the Complaint.

29. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 29 and, therefore, denies those allegations.

Defendant further states that to the extent that paragraph 29 purports to state legal conclusions, no response is required.

30. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first sentence of paragraph 30, and therefore, denies those allegations. The second sentence of paragraph 30 purports to summarize the State Court Complaint and Defendant respectfully refers the Court to the State Court Complaint for the document's true and accurate contents.

31. Defendant admits the allegations contained in paragraph 31 of the Complaint.

32. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first sentence of paragraph 32, and therefore, denies those allegations.

33. Defendant admits that the Plaintiff filed a motion for a preliminary injunction and respectfully refers the Court to such motion, attached as Exhibit C to the Complaint, for its true and correct contents.

34. Defendant admits that Plaintiff filed a motion for entry of default and respectfully refers the Court to such motion for its true and correct contents.

35. Defendant admits the allegations contained in paragraph 35 of the Complaint.

36. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 36, and therefore, denies those allegations.

37. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 37, and therefore, denies those allegations. Defendant further states that to the extent that paragraph 37 purports to state legal conclusions, no response is required.

38. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 38 and, therefore, denies those allegations.

39. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 39 and, therefore, denies those allegations.

40. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 40 and, therefore, denies those allegations.

41. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 41 and, therefore, denies those allegations.

42. Defendant admits the allegations contained in paragraph 42 of the Complaint.

43. Paragraph 43 purports to summarize a court order and Defendant respectfully refers the Court to such order, attached as Exhibit C to the Complaint, for its true and accurate contents.

44. Paragraph 44 purports to summarize a docket entry concerning the State Court Complaint and the Defendant respectfully refers the Court to the docket for its true and accurate contents.

45. Defendant admits the allegations contained in paragraph 45 of the Complaint.

46. Defendant denies the allegations contained in paragraph 46 of the Complaint.

47. Defendant admits the allegations contained in paragraph 47 of the Complaint.

48. Defendant admits that a notice of default was issued on December 15, 2010.

49. Defendant admits that a default judgment was issued and respectfully refers the Court to such default judgment for its true and correct contents.

50. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 50 and, therefore, denies those allegations.

51. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 51 and, therefore, denies those allegations.

52. Defendant admits the allegations contained in paragraph 52 of the Complaint.

53. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 53 and, therefore, denies those allegations.

54. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 54 and, therefore, denies those allegations.

55. Paragraph 55 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

56. Paragraph 56 purports to summarize the docket concerning the State Court Complaint that was removed to federal district court and Defendant respectfully refers the Court to the docket, attached as Exhibit B to the Complaint, for its true and accurate contents.

57. Paragraph 57 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

58. Defendant admits that it filed a motion to vacate the default judgment on February 17, 2012. Defendant further states that Paragraph 58 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

59. Paragraph 59 purports to summarize a court order and Defendant respectfully refers the court to such order, attached as Exhibit H to the Complaint, for its true and accurate contents.

60. Defendant admits the allegations contained in paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in paragraph 61 of the Complaint.

62. Defendant admits the allegations contained in paragraph 62 of the Complaint

63. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 63 and, therefore, denies those allegations.

64. Paragraph 64 purports to summarize a document which is attached as Exhibit I to the complaint and Defendant respectfully refers the Court to such document for its true and accurate contents.

65. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 65 and, therefore, denies those allegations.

66. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 66 and, therefore, denies those allegations.

67. Defendant denies the allegations contained in paragraph 67 of the Complaint.

68. Defendant denies the allegations contained in paragraph 68 of the Complaint.

69. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 69 and, therefore, denies those allegations.

70. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 70 and, therefore, denies those allegations.

71. Defendant admits that it filed a notice of appeal on October 23, 2012.

72. Paragraph 72 purports to summarize an order issued by Judge Woodlock and Defendant respectfully refers the Court to that order for its true and accurate contents.

73. Defendant denies the allegations contained in paragraph 73 of the Complaint.

74. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 74 and, therefore, denies those allegations.

75. Defendant denies the allegations contained in paragraph 75 of the Complaint.

76. Defendant denies the allegations contained in paragraph 76 of the Complaint.

77. Defendant denies the allegations contained in paragraph 77 of the Complaint.

78. Paragraph 78 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

79. Paragraph 79 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

80. Defendant admits that RAHI filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code on May 14, 2102. The remaining allegations contained in paragraph 80 are denied.

81. Paragraph 81 purports to summarize a document attached as Exhibit J to the Complaint and Defendant respectfully refers the Court to such document for its true and correct contents.

82. Paragraph 82 purports to summarize a document attached as Exhibit K to the Complaint and Defendant respectfully refers the Court to such document for its true and correct contents.

83. Paragraph 83 purports to summarize a document attached as Exhibit K to the Complaint and Defendant respectfully refers the Court to such document for its true and correct contents.

84. Paragraph 84 purports to summarize a document attached as Exhibit K to the Complaint and Defendant respectfully refers the Court to such document for its true and correct contents.

85. Paragraph 85 purports to summarize a document attached as Exhibit K to the Complaint and Defendant respectfully refers the Court to such document for its true and correct contents.

86. Defendant denies the allegations contained in paragraph 86 of the Complaint.

COUNT I (Violation of Automatic Bankruptcy Stay)

87. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

88. Paragraph 88 purports to state legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

89. Paragraph 89 purports to state legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

90. Paragraph 90 purports to state legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

91. Paragraph 91 purports to state legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

92. Paragraph 92 purports to state legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations.

93. Defendant denies the allegations contained in paragraph 93 of the Complaint.

94. Defendant denies the allegations contained in paragraph 94 of the Complaint.

COUNT II (Filing Untrue and Inaccurate Bankruptcy Petitions and Schedules)

95. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

96. Defendant admits the allegations of paragraph 96 of the Complaint.

97. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 97 and, therefore, denies those allegations.

98. Defendant denies the allegations contained in paragraph 98 of the Complaint.

99. Defendant denies the allegations contained in paragraph 99 of the Complaint.

100. Defendant denies the allegations contained in paragraph 100 of the Complaint.

101. Defendant denies the allegations contained in paragraph 101 of the Complaint.

102. Defendant denies the allegations contained in paragraph 102 of the Complaint.

103. Defendant denies the allegations contained in paragraph 103 of the Complaint.

104. Defendant denies the allegations contained in paragraph 104 of the Complaint.

105. Defendant denies the allegations contained in paragraph 105 of the Complaint.

106. Defendant denies the allegations contained in paragraph 106 of the Complaint.

107. Defendant denies the allegations contained in paragraph 107 of the Complaint.

108. Defendant denies the allegations contained in paragraph 108 of the Complaint.

COUNT III (Intentional Infliction of Emotional Distress)

109. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

110. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 110 and, therefore, denies those allegations. Defendant further states that Paragraph 110 purports to state legal conclusions, to which no response is required.

111. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 111 and, therefore, denies those allegations. Defendant denies engaging in any “bullying” actions.

112. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 112 and, therefore, denies those allegations.

113. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 113 and, therefore, denies those allegations.

114. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 114 and, therefore, denies those allegations.

115. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 115 and, therefore, denies those allegations.

116. Defendant denies the allegations contained in paragraph 116 of the Complaint.

117. Defendant denies the allegations contained in paragraph 117 of the Complaint.

118. Defendant denies the allegations contained in paragraph 118 of the Complaint.

119. Defendant denies the allegations contained in paragraph 119 of the Complaint.

120. Defendant denies the allegations contained in paragraph 120 of the Complaint.

121. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 121 and, therefore, denies those allegations.

122. Defendant denies the allegations contained in paragraph 122 of the Complaint.

COUNT IV (Abuse of Process)

123. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

124. Defendant denies the allegations contained in paragraph 124 of the Complaint.

125. Defendant denies the allegations contained in paragraph 125 of the Complaint.

126. Defendant denies the allegations contained in paragraph 126 of the Complaint.

127. Paragraph 127 purports to summarize a document attached to the Complaint as Exhibit K and Defendant respectfully refers the Court to that document for its true and accurate contents.

128. Defendant denies the allegations contained in paragraph 128 of the Complaint.

COUNT V (Declaratory Judgment)

129. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

130. Paragraph 130 purports to summarize a document attached to the Complaint as Exhibit F and Defendant respectfully refers the Court to that document for its true and accurate contents.

131. Paragraph 131 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

132. Paragraph 132 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

133. Paragraph 133 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

134. Paragraph 134 purports to summarize court order and Defendant respectfully refers the Court to that document for its true and accurate contents. Defendant further states that Paragraph 134 purports to state legal conclusions, to which no response is required. To the extent that a response is deemed required, Defendant denies the allegations.

135. Defendant denies the allegations contained in paragraph 135 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint fails to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff has waived any claims they he may have had against RAHI, and he is, therefore, barred from the statutory and common law claims asserted in this action.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff is estopped from asserting any claims that he may have had against RAHI, and he is, therefore, barred from the statutory and common law claims asserted in this action.

FOURTH AFFIRMATIVE DEFENSE

(Set-Off)

The relief sought by the Complaint is subject to set-off of all sums due and owing to Defendant and the Debtors.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Complaint is barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

The Complaint is barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

The Complaint is barred, whole or in part, by Plaintiff's failure to mitigate his claimed damages.

EIGHTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The relief sought by the Complaint is barred, in whole or in part, by applicable statutes of limitations.

NINTH AFFIRMATIVE DEFENSE

(Good Faith)

All acts or omission of RAHI were at the time of conduct or omission done in good-faith conformity with applicable rules, regulations, and/or interpretations of applicable law.

TENTH AFFIRMATIVE DEFENSE

(Third Parties)

The Complaint and each of the causes of action are barred, in whole or in part, because Plaintiff's damages, if any, were proximately caused and/or contributed to by the acts, omissions, negligence, and/or intentional misconduct of third parties over which RAHI has no control, and were not caused by RAHI.

ELEVENTH AFFIRMATIVE DEFENSE

(Conduct Not Outrageous or Extreme)

The allegations made by Plaintiff in his complaint do not describe conduct by Defendant that is sufficiently extreme or outrageous as to meet the standards for intentional infliction of emotional distress.

PRAYER FOR RELIEF

WHEREFORE, RAHI prays for judgment as follows:

1. That Plaintiff takes nothing by virtue of the Complaint;
2. That judgment be entered in favor of RAHI;
3. For attorneys' fees and costs of suit for RAHI; and
4. For such further and other relief as the Court deems just and proper.

Dated: February 19, 2013
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum
Stefan W. Engelhardt
Paul Galante
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

*Counsel for the Debtors and
Debtors in Possession*