

Hearing Date and Time: September 24, 2013 at 10:00 a.m. (Prevailing Eastern Time)
Response Date and Time: September 16, 2013 at 4:00 p.m. (Prevailing Eastern Time)

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Gary S. Lee
Norman S. Rosenbaum
Paul Galante
Erica J. Richards

*Counsel for the Debtors and
Debtors in Possession*

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

-----X	:	
Derrick Lytle,	:	
	:	
Plaintiff,	:	Adv. Proc. 12-02069 (MG)
	:	
v.	:	
	:	
GMAC Mortgage, LLC, <i>et al.</i> ,	:	
	:	
Defendant.	:	
-----X	:	
In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered
-----X	:	

**NOTICE OF DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S ADVERSARY COMPLAINT**

PLEASE TAKE NOTICE that the undersigned have filed the attached
Defendant's Motion to Dismiss Plaintiff's Adversary Complaint (the "**Motion**") with the United
States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") in



the above-captioned adversary proceeding. A hearing to consider the Motion is scheduled for **September 24, 2013 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Martin Glenn, United States Bankruptcy Judge, in Courtroom 501 at the Bankruptcy Court, One Bowling Green, New York, New York 10004.

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **September 16, 2013 at 4:00 p.m. (prevailing Eastern Time)**, upon (a) counsel for the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee, Norman S. Rosenbaum, Paul Galante, Erica J. Richards); (b) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (c) the Office of the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001 (Attn: US Attorney General, Eric H. Holder, Jr.); (d) Office of the New York State Attorney General, The Capitol, Albany, NY 12224-0341 (Attn: Nancy Lord, Esq. and Neal Mann, Esq.); (e) Office of the U.S. Attorney for the Southern District of New York, One St. Andrews Plaza, New York, NY 10007 (Attn: Joseph N. Cordaro, Esq.); (f) counsel for Ally Financial Inc., Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022 (Attn: Ray Schrock and Richard M. Cieri); (g) counsel to Barclays Bank PLC, as administrative agent for the DIP lenders, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036 (Attn: Ken Ziman & Jonathan H. Hofer); (h) counsel

for the committee of unsecured creditors, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Kenneth Eckstein & Greg Horowitz); (i) counsel for Ocwen Loan Servicing, LLC, Clifford Chance US LLP, 31 West 52nd Street, New York, NY 10019 (Attn: Jennifer C. DeMarco and Adam Lesman); (j) Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101-7346 (if by overnight mail, to 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016); and (k) Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281-1022 (Attn: George S. Canellos, Regional Director).

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the motion as conceded, and enter an order granting the relief requested in the Motion without further notice or hearing.

Dated: September 5, 2013
New York, New York

/s/ Norman S. Rosenbaum

Gary S. Lee

Norman S. Rosenbaum

Paul Galante

Erica J. Richards

MORRISON & FOERSTER LLP

1290 Avenue of the Americas

New York, New York 10104

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

*Co-Counsel for the Debtor Defendant
GMAC Mortgage, LLC*

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	:	Chapter 11
	:	
Debtors	:	Jointly Administered
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DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S ADVERSARY COMPLAINT

Defendant GMAC Mortgage, LLC (“GMACM” 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 submits this motion (the “Motion”) to dismiss the above-referenced adversary proceeding (the “Adversary Proceeding”) commenced by Plaintiff Derrick Lytle (“Plaintiff”). The Court should dismiss the Adversary Proceeding for Plaintiff’s failure to comply with the Court’s Supplemental AP Procedures and for Plaintiff’s failure to comply with the Court’s order requiring him to pay the adversary proceeding filing fee.

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Venue is proper under 28 U.S.C. § 1409. This is a non-core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2). Nonetheless, pursuant to Local Bankruptcy Rule 7012-1, GMACM consents to entry of a final order or judgment by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

II. BACKGROUND

A. General Bankruptcy Case Background

2. On May 14, 2012 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

3. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. Their chapter 11 cases (collectively, the “Chapter 11 Cases”) are being jointly administered pursuant to Rule 1015(b) of

the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). No trustee has been appointed in the Chapter 11 Cases.

4. On May 16, 2012, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed a nine member official committee of unsecured creditors.

5. On July 3, 2012, the U.S. Trustee appointed the Honorable Arthur T. Gonzalez, former Chief Judge of this Court, as examiner.

6. On June 20, 2012, the Court directed that an examiner be appointed (the “Examiner”), and on July 3, 2012, the Court approved Arthur J. Gonzalez as the Examiner [Docket Nos. 454, 674]. On May 13, 2013, the Examiner filed his report under seal [Docket Nos. 3677, 3697]. On June 26, 2013, the report was unsealed and made available to the public [Docket No. 4099].

7. On July 3, 2013, the Debtors filed the *Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 4153] (the “Plan”) and the *Disclosure Statement for the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 4157] (the “Disclosure Statement”). On August 16, 2013, the Debtors filed a revised Disclosure Statement, which includes a revised copy of the Plan [Docket No. 4733]. On August 23, 2013, the Court entered an order approving, *inter alia*, the Disclosure Statement, as amended [Docket No. 4809].

B. Events Giving Rise to the Adversary Proceeding

8. On December 19, 2012 Derrick Lytle filed a complaint initiating this Adversary Proceeding. [Docket No. 1].¹ Mr. Lytle, however, has failed to make any effort to prosecute his case.

9. On February 1, 2013, Silverman Acampora LLP, as special counsel to the Official Committee of Unsecured Creditors for borrower matters (“Special Borrowers’ Counsel”), attempted to contact Plaintiff by written correspondence—Plaintiff never responded. (Declaration of Justin Krell, ¶ 2) (“Krell Decl.”).

10. On February 19, 2013, prior to entry of the Supplemental AP Procedures, Silverman Acampora LLP again attempted to contact Plaintiff. (Krell Decl., ¶ 3). Again he failed to respond. (Krell Decl., ¶ 3).

11. On February 27, 2013, the Bankruptcy Court issued an Order Denying Plaintiff’s Motion to Proceed in Forma Pauperis and ordered him to pay the adversary proceeding filing fee, in full, within 14 days of the date of the order. [Docket No. 12]. Plaintiff has yet to pay the filing fee. (Declaration of Paul Galante, ¶ 6.) (“Galante Decl.”).

12. On March 22, 2013, the Bankruptcy Court in the above-captioned chapter 11 cases entered the Mandatory Supplemental AP Procedures for AP Actions (“Supplemental AP Procedures”), [Docket No. 3293], as amended on April 22, 2013. [Docket No. 3490].

13. On March 26, 2013, GMACM’s counsel served a Notice of Applicability of The Order Approving Mandatory Supplemental AP Procedures on Plaintiff (“Notice of AP Procedures”) [Docket No. 16]. The Supplemental AP Procedures require, among other things,

¹ Plaintiff never filed a proof of claim.

that Plaintiff provide the Debtors with his contact information, participate in an initial conference with the Debtors and Special Borrowers' Counsel, and meet and confer in good faith.

Supplemental AP Procedures, ¶¶ 1, 4.

14. After being served with the Notice of AP Procedure, Plaintiff failed to comply with its terms. First, Plaintiff failed to provide Defendant with updated contact information as required by paragraph 2 of the Supplemental AP Procedures. (Galante Decl., ¶ 2).

15. Plaintiff then failed to cooperate with Defendant's efforts to schedule the initial conference, as required by paragraph 4 of the Supplemental AP Procedures. (Galante Decl. ¶¶ 3-4). Defendant's counsel, Morrison & Foerster LLP, attempted to contact Plaintiff through letters sent via overnight mail directed to the address listed by Plaintiff in his complaint on May 8, 2013. (Galante Decl., ¶ 3). On May 16, 2013, Defendant informed Plaintiff by letter sent via overnight mail that it intended to file a motion to dismiss this Adversary Proceeding due to Plaintiff's failure to comply with the Supplemental AP Procedures. (Galante Decl., ¶ 4). Plaintiff never responded to GMACM's letters. (Galante Decl., ¶¶ 3-4).

16. On May 30, 2013, GMACM filed a Progress Report with this Court, stating that it planned to move to dismiss Plaintiff's Complaint because he had failed to comply with the Supplemental AP Procedures. [Docket No. 18]. Lytle never contacted GMACM's counsel or Special Borrowers' Counsel after GMACM filed the Progress Report (Galante Decl. ¶ 5), nor did Lytle file his own progress report with the Court.

III. ARGUMENT

17. Plaintiff has made no effort to prosecute this Adversary Proceeding. Nor has he attempted to meet and confer with GMACM or Special Borrowers' Counsel or otherwise comply with the mandatory provisions of the Supplemental AP Procedures enacted by this Court.

Moreover, he has failed to comply with the Court's February 27, 2013 Order directing him to pay the adversary proceeding filing fee. Accordingly, GMACM moves to dismiss this Adversary Proceeding pursuant to paragraph 4 of the Supplemental AP Procedures.²

18. Paragraph 4 of the Supplemental AP Procedures provides that the Debtors may move before the Bankruptcy Court "for an order dismissing the AP Action for failure to prosecute and comply with the Supplemental AP Procedures." Supplemental AP Procedures, ¶ 4. Plaintiff has neither complied with the Supplemental AP Procedures nor has he given any indication that he intends to prosecute this Adversary Proceeding.

19. The Supplemental AP Procedures require that Plaintiff provide the Debtors with his contact information, participate in an initial conference with the Debtors and Special Borrowers' Counsel, and meet and confer in good faith. Supplemental AP Procedures, ¶¶ 1, 4. The Supplemental AP Procedures also require that Plaintiff collaborate with the Debtors to submit a Joint Progress Report to the Court that documents the extent of progress and status of the case. Id. Plaintiff failed to comply with each of these requirements.

20. As discussed above, Special Borrowers' Counsel reached out to Plaintiff twice in February, 2013—he never responded. In March, 2013 the Notice of Supplemental AP Procedures was served on Plaintiff—he failed to comply with the procedures by not providing the Debtors with his contact information. In May, 2013, GMACM's counsel also attempted to make contact with Plaintiff twice—sending letters on May 8th and May 13th. Plaintiff never responded. Finally, on May 30, 2013, GMACM filed a Progress Report and served a copy on Plaintiff. The Progress Report stated that GMASM intended to file a motion to dismiss due to

² As provided under paragraph 4 of the Supplemental AP Procedures, GMACM reserves its right to file additional motions to dismiss at a later date.

Plaintiff's failure to comply with the Supplemental AP Procedures and for failing to prosecute his case. Plaintiff never responded to GMACM and never bothered to file a progress report of his own.

21. Moreover, Plaintiff failed to pay the adversary proceeding filing fee—in direct violation of the Court's February 27, 2013 Order warning Plaintiff that he must pay the fee "within 14 days . . . [or] the court may dismiss the plaintiff's adversary proceeding." [Docket 12] (Emphasis omitted). This court may dismiss Plaintiff's adversary complaint on that basis alone. See In re Rutherford, 427 B.R. 656, 660 (Bankr. S.D. Ohio 2010); In re Ashraf, 367 B.R. 151, 153 (Bankr. D. Ariz. 2007); In re Hinze, No. 10-80637-G3-7, 2012 WL 2917352 (Bankr. S.D. Tex. July 17, 2012); In re Michal, No. 05-80212, 2006 WL 6591611, at *1 (Bankr. N.D. Ga. Oct. 4, 2006).

22. In light of Plaintiff's repeated failure to comply with the Court-ordered Supplemental AP Procedures and failure to pay the adversary proceeding filing fee, GMACM hereby moves for dismissal of this Adversary Proceeding.

IV. CONCLUSION

Accordingly, for the reasons set forth herein, GMACM respectfully requests that the Court dismiss the Adversary Proceeding with prejudice and grant such other and further relief as it deems just and proper.

Dated: September 5, 2013
New York, New York

/s/ Norman S. Rosenbaum

Gary S. Lee

Norman S. Rosenbaum

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Erica J. Richards

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