

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

IN REF:

Adv, Case No.: 14-01778

GMAC MORTGAGE LLC

Debtor,

Case No.: 12-12032

CHARLES C. HEYWARD, PRO SE

14120 BISHOP CLAGGETT CT

UPPER MARLBORO MARYLAND 20772

vs.

GMAC MORTGAGE LLC,

7 CENTURY DRIVE

PARSIPPANY, NJ 07054

AND

OCWEN LOAN SERVICING, LLC

1661 WORTHINGTON ROAD

WEST PALM BEACH FL, 33409

AND

ALLY FINANCIAL, INC

AND

HOMEcomings FINANCIAL, LLC

P.O. BOX 205

WATERLOO, IA 50704

AND

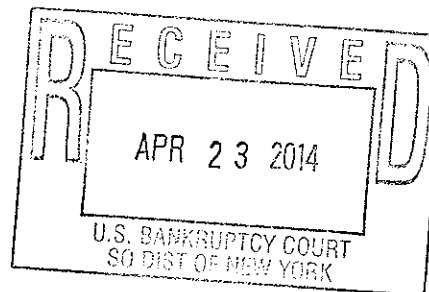
AMERICAN RESIDENTIAL MORTGAGE

AND

MORTGAGE ELECTRONIC REGISTRATION

SYSTEMS INC

**PLAINTIFF'S SECOND
EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING
ORDER**



PLAINTIFF'S SECOND EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER - 1



121202014042400000000007

1 AND

2 DEUTSCHE BANK TRUST COMPLANY

3 AMERICAS AS TRUSTEE FOR RALI 2006-QS6

4 AND

5 JOHN E. DRISCOLL, III, SUBSTITUTION OF

6 TRUSTEE, 2300 CANDLEWOOD DRIVE

7 ALEXANDRIA, VA 22308

8 AND

9 ROBERT E. FRAZIER, SUBSTITUTION OF

10 TRUSTEE, 20636 RAMSEY DRIVE

11 LEXINGTON PK, MD 20653

12 AND

13 JANA M. GANTT, SUBSTITUTION OF TRUSTEE

14 11450 LITTLE PATUXENT PKWY APT 602

15 COLUMBIA, MD 21044

16 AND

17 LAURA D. HARRIS, SUBSTITUTION OF TRUSTEE

18 1626 MELBY COURT

19 BALTIMORE, MD 21234

20 AND

21 KIMBERLY LANE, SUBSTITUTION OF TRUSTEE

22 AND

23 DEENA L. REYNOLDS, SUBSTITUTION OF

24 TRUSTEE, 302 KING FARM BLVD APT 3

25 ROCKVILLE, MD 20850

26 AND

27 CLASSIC SETTLEMENTS, INC

28 6 MONTGOMERY VILLAGE AVE

GAITHERSBURG, MD 20852

1 AND
2 RESIDENTIAL FUNDING COMPANY, LLC FKA
3 RESIDENTIAL FUNDING CORPORATION
4 800 NORMANDALE BLVD STE 250
5 MINNEAPOLIS, MN 55437
6 AND
7 SAMUEL I. WHITE, P.C.
8 121 HUMBIRD ST
9 CUMBERLAND, MD 21502
10 AND
11 HARVEY WEST AUCTIONEERS
12 300 E. JOPPA ROAD
13 HAMPTON PLAZA-SUITE 1103
14 BALTIMORE, MD 21286
Defendant

15 TO: THE HONORABLE MARTIN GLENN UNITED STATES BANKRUPTCY
16 JUDDGE
17

18 Charles C. Heyward, pro se Plaintiff in the within adversary proceeding
19
20 ("Plaintiff"), respectfully represent:

- 21 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§
22 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
23
 - 24 2. Ocwen Loan Servicing LLC is the entity that is trying to conduct an illegal
25 foreclosure on Plaintiff's property. Ocwen Loan Servicing LLC has no legal
26 standing to do so, Ocwen Loan Servicing LLC is a third party debt collector,
27
28 have no injury, have no legal interest in my home, nor legal standing, or
- PLAINTIFF'S SECOND EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER - 3

1 capacity to sue on an unlawful debt that has been paid in full via the Pooling
2 and Servicing Agreement and Plaintiff's Birth Certificate Bond.

3 3. For the purpose of section 1692f(6) of this title, such term of "debt collector"
4 also includes any person who uses any instrumentality of interstate commerce
5 or the mails in any business the principal purpose of which is the enforcement
6 of security interests. In Shapiro & Meinhold v. Zartman, a case that supports
7 the proposition that if a security enforcer meets the broad definition of debt
8 collector she is subject to the whole of the FDCPA. The FDCA doesn't allow for
9 (1) a notice of default, (2) Notice of substitution of trustee, and (3) Notice of
10 trustee sale since debt collectors cannot take property. Further proof of this is
11 on the notice of any auction sale which reads: "You are bidding on a lien, not
12 on the property, and there is no representation on whether the lien has been
13 perfected or not." According to all that language, this is proof I am not in
14 foreclosure.

15 4. Ocwen Loan Servicing LLC and Samuel I. White, P.C., ALL debt collector
16 violates that section by "[t]aking or threatening to take any non-judicial action
17 to effect dispossession or disablement of property if there is no present right to
18 possession of the property claimed as collateral through an enforceable
19 security interest. Walker v. Quality Loan Service Corp. of Washington

20 5. Ocwen Loan Servicing LLC nor Samuel I. White, P.C. has never had a
21 recorded security interest in my property in the public record, and Ocwen Loan
22 Servicing LLC and Samuel I. White, P.C., never had a present right to
23

1 possess the property through non-judicial foreclosure because they never held
2 the note or the underlying debt and were not lawfully appointed under the
3 DTA.
4

5 **RELIEF REQUESTED**

- 6 6. Plaintiffs have filed this Motion for a Temporary Restraining Order seeking to
7 restrain the Defendants GMAC Mortgage LLC, Residential Funding LLC,
8 Ocwen Loan Servicing LLC and Samuel I. White, P.C. from foreclosing on
9 Plaintiff's home on April 28, 2014 at 10:00 a.m. and allowing Plaintiff to
10 proceed with the Loan Modification, that was requested by him from GMAC
11 Mortgage but was never received by the Plaintiff.
12
13

14 **BASIS FOR RELIEF REQUESTED**

- 15 7. Plaintiff has never received proper notice of the alleged foreclosure, and just
16 became aware that Ocwen Loan Servicing LLC is his servicer.
17
18 8. Plaintiff has requested for a loan Modification but was told by GMAC that
19 they was transferring his loan servicing rights to OCWEN LOAN SERVICING
20 LLC, and that he would receive a package in the mail.
21
22 9. Plaintiff never received the loan package from Ocwen Loan Servicing LLC, and
23 was told by Ocwen that they had not received his paperwork from GMAC,
24 because of their pending Chapter 11.
25
26 10. The Motion for a Temporary Restraining Order or for a Preliminary Injunction
27 could not have been brought sooner and now that irreparable harm is
28

1 threatened by the prospect of a foreclosure sale on April 28th, 2014 at 10:00
2 a.m., plaintiff are similarly requesting that his Motion for a Temporary
3 Restraining Order be heard via Court Call on January 29, 2014 to stop the
4 Defendants of their illegal action.
5

6 11. This circumstance is not one of plaintiffs' choosing, and this motion is
7 necessitated by the debtors' illegal assignments and false representation that a
8 loan modification package would be coming.
9

10 12. Fed.R.Civ.P.65 does not require notice of filing of a Motion for a Temporary
11 Restraining Order, although defendants' counsel are being notice via fax and
12 U.S. Express Mail.
13

14 13. By this motion Plaintiff request, pursuant to the Federal Rules of Bankruptcy
15 Procedure 9006©, that the Court fix the date and time for the hearing on the
16 Motion for a Temporary Restraining Order so that it may be heard on April 25,
17 2014.
18

19 CONCLUSION

20 The Plaintiff respectfully request that the Court grant the proposed Order for a
21 Temporary Restraining Order for April 28, 2014. At 10:00 a.m.
22

23
24 
25 CHARLES C. HEYWARD, PRO SE
26
27
28

CERTIFICATE OF SERVICE

This certifies that on April 22, 2014 I sent copies of Plaintiff's Second Emergency Motion for A Temporary Restraining Order to the opposing party by first class mail, and via fax. They were addressed as follows:

1. Samuel I. White, P.C. Attorney and Counselors at Law
611 Rockville Pike, Suite 100 Rockville, MD 20852
Phone: 301-804-3400; Fax: 301-838-1954
2. Lorenzo Marnuzzi
MORRISON & FOERSTER LLP
1290 Avenue of the Americas New York, NY 10104 Via: Fax 212-468-7900
3. Larren M. Nashelsky
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, NY 10104
4. Deutsche Bank Trust Company Americas as Trustee for Rali 2006-QS6 Via
Fax: 212-797-0291
60 Wall Street New York, New York
5. Ocwen Loan Servicing, LLC 1661 Worthington Road, Suite 100 West Palm
Beach FL 33409
Fax: 407-737-6174



CHARLES C. HEYWARD, PRO SE