

1 Jennifer L. Wilson, Sui Juris
2 4365 School House Commons, 500-251
3 Harrisburg, NC 28075
4 Ph.: 704-773-1712

5
6 **UNITED STATES BANKRUPTCY COURT**
7 **SOUTHERN DISTRICT OF NEW YORK**

8
9 Jennifer L. Wilson

CASE NO: **12-12020 (MG)**

10 Plaintiff,

ADV. CASE: 12-019363-mg

11 v.

12 RESIDENTIAL CAPITAL, LLC;
13 RESIDENTIAL FUNDING
14 COMPANY, LLC; and Does 1 – 10
inclusively,

15 Defendants.
16
17
18

19 **MOTION FOR COURT ORDER TO FILE; 1) PLAINTIFF'S REPLY IN**
20 **OPPOSITION TO RESCAP LIQUIDATING TRUST'S SUPPLEMENTAL**
21 **BRIEF IN SUPPORT OF DEBTOR'S MOTION FOR DISMISSAL OF**
22 **ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE**
23 **7012(B) AND FRCP 12(B)(1) AND 12(B)(6) OR, IN THE ALTERNATIVE,**
24 **PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. § 1334(c)(1); AND**
25 **2) PLAINTIFF'S OBJECTION TO DECLARATION OF LAUREN**
26 **GRAHAM DELEHEY, CHIEF LITIGATION COUNSEL FOR THE**
27 **RESCAP LIQUIDATING TRUST, IN SUPPORT OF DEBTORS' MOTION**



1 **FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO**
2 **BANKRUPTCY RULE 7012(B) AND FRCP 12(B)(1) AND 12(B)(6) OR, IN**
3 **THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28**
4 **U.S.C. § 1334(c)(1) *nunc pro tunc* ON JUNE 19, 2014 AT 1:44 P.M.**
5

6 TO MARTIN GLENN, JUDGE; THE CLERK OF THE COURT; AND ALL
7 PARTY DEFENDANTS AND THEIR ATTORNEY(S) OF RECORD:

8 Plaintiff, Jennifer L. Wilson (“Wilson”), moves this Court for an Order
9 directing the Clerk of the Court file Plaintiff’s REPLY IN OPPOSITION TO
10 RESCAP LIQUIDATING TRUST’S SUPPLEMENTAL BRIEF IN SUPPORT
11 OF DEBTOR’S MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING
12 PURSUANT TO BANKRUPTCY RULE 7012(B) AND FRCP 12(B)(1) AND
13 12(B)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION
14 PURSUANT TO 28 U.S.C. § 1334(c)(1); and OBJECTION TO DECLARATION
15 OF LAUREN GRAHAM DELEHEY, CHIEF LITIGATION COUNSEL FOR
16 THE RESCAP LIQUIDATING TRUST, IN SUPPORT OF DEBTORS’ MOTION
17 FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO
18 BANKRUPTCY RULE 7012(B) AND FRCP 12(B)(1) AND 12(B)(6) OR, IN
19 THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28
20 U.S.C. § 1334(c)(1) (hereinafter “The Replies”) *nunc pro tunc* June 19, 2014 at
21 1:44 p.m.

22 **STATEMENT OF FACTS**

23 At the May 1, 2014 hearing the Court Ordered Debtor to submit a
24 Supplemental Brief and Declaration to Debtor’s Motion For Dismissal of
25 Adversary Proceeding Pursuant To Bankruptcy Rule 7012(B) and FRCP 12(B)(1)
26 AND 12(B)(6) or, In The Alternative, Permissive Abstention Pursuant To 28

1 U.S.C. § 1334(c)(1). Additionally, Plaintiff was given 1 week to reply to Debtor's
2 Supplemental Brief.

3 By stipulation the Debtor and Plaintiff ("the parties") agreed to extend the
4 deadline for the filing of The Replies to June 19, 2014 at 5:00 p.m. (See *Dkt. # 57*).

5 On June 18, 2014, Wilson deposited, postage prepaid, Express Delivery
6 guaranteed, with the United States Postal Service ("USPS") The Replies, see USPS
7 Receipt attached hereto and incorporated herein as "Exhibit A."

8 On June 23, 2014, Wilson observing The Replies were not docketed called
9 the Clerk of the Court to inquire the reasoning thereof. The Clerk of the Court, Ms.
10 Aurea Suarez, informed Ms. Wilson The Replies were not received until June 20,
11 2014, and told Ms. Wilson if she had evidence of the delivery on June 19th that she,
12 Ms. Suarez, would see what she could do regarding the filing date and time.

13 Wilson accessed the United States Postal Service website to secure the
14 "Proof of Delivery." (See "Exhibit B" attached hereto and incorporated herein by
15 reference) The Proof of Delivery states The Replies were delivered on June 19,
16 2014 at 1:44 p.m.

17 Wilson emailed Ms. Suarez the USPS Receipt and the Proof of Delivery
18 following up with a phone call to Ms. Suarez. Ms. Suarez stated there is no way the
19 USPS could deliver The Replies from their N.Y office to the Court in five minutes
20 therefore she could do nothing for Ms. Wilson. Ms. Suarez's response compels
21 Wilson to file this Motion.

22 ARGUMENT

23 By stipulation of the parties Wilson had until June 19, 2014 at 5:00 p.m.
24 EDT to file The Replies.

25 Local Bankruptcy Rule 5005-1 in relevant part states, "Except as provided in
26 Local Bankruptcy Rule 1002-1, unless submitted by electronic means, all papers

1 may be submitted for filing in the Clerk's office located in any of the three
2 divisions of the Court identified in Rule 1073-1(a). ..."

3 Local Bankruptcy Rule 1002-1 states, "A petition commencing a case under
4 the Bankruptcy Code may be filed in any office of the Clerk or by electronic means
5 established by the Court.

6 Local Bankruptcy Rule 5005-2 in relevant part states, "Unless the Court
7 directs otherwise, all attorneys practicing in the Court, including attorneys
8 admitted pro hac vice, are required to file all pleadings, motions, or other
9 documents (except documents to be placed under seal) by electronic means, and all
10 such documents required to be signed or verified shall be signed or verified by
11 electronic means, in each case consistent with the Procedures for the Filing,
12 Signing, and Verification of Documents by Electronic Means issued by the Court,
13 which shall be available on the Court's website
14 (<http://www.nysb.uscourts.gov/sites/default/files/5005-2-procedures.pdf>)."

15 Local Bankruptcy Rule 1073-1(a) in relevant part states, "*Cases.* Where the
16 street address of the debtor set forth on the petition is in (i) New York County or
17 Bronx County, the Clerk shall assign the case to a Judge sitting in New York
18 County; (ii) Rockland County or Westchester County, the Clerk shall assign the
19 case to a Judge sitting in Westchester County; or (iii) Dutchess County, Orange
20 County, Putnam County, Sullivan County or Ulster County, the Clerk shall assign
21 the case to a Judge sitting in Dutchess County. No case assignment will be based
22 upon a post office box address."

23 The United States Bankruptcy Court, Southern District of New York website
24 states the Manhattan mailing address is "US Bankruptcy Court, Southern District
25 of New York, One Bowling Green, New York, NY 10004-1408." (See
26 <http://www.nysb.uscourts.gov/content/manhattan>).

1 The Replies were addressed to "Clerk of the Court, U.S. Bankruptcy Court
2 Southern District of N.Y., One Bowling Green, New York, NY 10004-1408," with
3 a tracking number of EI 424569248 US (See Exhibit A).

4 The USPS Delivery Status, attached hereto and labeled "Exhibit B," states,
5 delivery for tracking number EI 424569248 US was on June 19, 2014 at 1:44 p.m.

6 The 2nd Circuit has defined filing to mean "delivery [of papers] into the
7 actual custody of the proper officer, designated by statute." *In re Gubelman*, 10 F.
8 926, 929 (2d Cir. 1925); cited in *Greenwood v. New York*, 842 F.2d 636, 639 (2d
9 Cir. 1988).

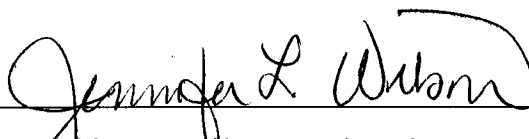
10 Wilson asserts the evidence clearly shows The Replies were properly
11 addressed and delivered to the custody of the Clerk of the Court for Southern
12 District Manhattan on the due date of June 19, 2014 at 1:44 p.m.

13 **RELIEF REQUESTED**

14 WHEREFORE Plaintiff, Jennifer L. Wilson, respectfully request this Court
15 issue an ORDER directing the Clerk of the Bankruptcy Court for the Southern
16 District of New York to stamp The Replies "FILED" *nunc pro tunc* as of June 19,
17 2014 at 1:44 p.m.

18
19 Date: June 23, 2014

20 Respectfully submitted,

21
22 

23 Jennifer L. Wilson, Sui Juris
24 4366 School House Commons, 500-251
25 Harrisburg, NC 28075
26 Ph.: 704-773-1712
27 //

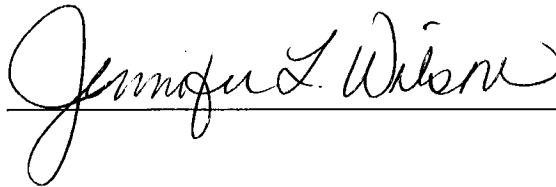
CERTIFICATE OF SERVICE

I Jennifer L. Wilson hereby certify that on June 24, 2013, I served a copy of the foregoing by email addressed to defendants counsel of record:

Samantha Martin, Associate
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104
(212) 336-4128
(212) 468-7900
SMartin@mofo.com

This the 24th day of June, 2014.

By: _____



//

//

//

//

//

//

//

//

//

//

//

EXHIBIT A



EI 424569248 US



Customer Copy
Label 11-B, March 2004

UNITED STATES POSTAL SERVICE®

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code 28075	Day of Delivery Next <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> 2nd Del. Day	Postage \$ 35.00
Date Accepted 6/18/14	Scheduled Date of Delivery 6/19	Return Receipt Fee \$
Month Day Year	Month Day	
Time Accepted 3:07 PM	Scheduled Time of Delivery Noon <input checked="" type="checkbox"/> 3 PM <input type="checkbox"/>	COD Fee \$
Flat Rate <input type="checkbox"/> or Weight 2.30 lbs.	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day <input type="checkbox"/>	Insurance Fee \$
	Int'l Alpha Country Code	Total Postage & Fees \$ 35.00
	Acceptance Emp. Initials	

DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No. ☐ WAIVER OF SIGNATURE (Domestic Mail Only)
Additional merchandise insurance is void if customer requests waiver of signature.
I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY

☐ Weekend ☐ Holiday ☐ Mailer Signature

FROM: (PLEASE PRINT)

PHONE (704) 773-1712

Jennifer Wilson
4165 School House Commons
SPO-251
Harrisburg, NK 28075

TO: (PLEASE PRINT)

PHONE ()

Clerk of Court
U.S. Bankruptcy Court
Southern District of NY
One Bowling Green
New York, NY

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES.)

1 0 0 0 4 + 1 4 0 8

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

FOR PICKUP OR TRACKING

Visit www.usps.com

Call 1-800-222-1811



EXHIBIT B

English

Customer Service

USPS Mobile

Register / Sign In



Search USPS.com or Track Packages

Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

USPS Tracking™



Customer Service >
Have questions? We're here to help.

Tracking Number: EI424569248US

Scheduled Delivery Day: Thursday, June 19, 2014, 12:00 pm
Money Back Guarantee
Signed for By: WAIVED // NEW YORK, NY 10004 // 1:44 pm

Product & Tracking Information

Postal Product:

Priority Mail Express 1-Day™

Features:

\$100 insurance included

PO to Addressee

DATE & TIME

June 19, 2014 , 1:44 pm

STATUS OF ITEM

Delivered

LOCATION

NEW YORK, NY 10004

Your item was delivered at 1:44 pm on June 19, 2014 in NEW YORK, NY 10004. Waiver of signature was exercised at time of delivery.

June 19, 2014 , 1:39 pm

Arrival at Post Office

NEW YORK, NY 10004

June 19, 2014 , 8:48 am

Processed through USPS
Sort Facility

NEW YORK, NY 10199

June 18, 2014 , 10:05 pm

Depart USPS Sort Facility

CHARLOTTE, NC 28228

June 18, 2014 , 7:22 pm

Processed through USPS
Sort Facility

CHARLOTTE, NC 28228

June 18, 2014 , 3:05 pm

Acceptance

HARRISBURG, NC 28075

Available Actions

Proof of Delivery

Text Updates

Email Updates

Track Another Package

What's your tracking (or receipt) number?

Track It

LEGAL

Privacy Policy >

Terms of Use >

FOIA >

No FEAR Act EEO Data >

ON USPS.COM

Government Services >

Buy Stamps & Shop >

Print a Label with Postage >

Customer Service >

Delivering Solutions to the Last Mile >

Site Index >

ON ABOUT.USPS.COM

About USPS Home >

Newsroom >

USPS Service Alerts >

Forms & Publications >

Careers >

OTHER USPS SITES

Business Customer Gateway >

Postal Inspectors >

Inspector General >

Postal Explorer >

National Postal Museum >



Copyright© 2014 USPS. All Rights Reserved.