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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Lead Case No. 12-12020-mg Adv. Pro. No. 14-02388-mg

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In the Matters of:
RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.

- - - - -x

OCWEN LOAN SERVICING LLC,
Plaintiff,

- against -

THE RESCAP LIQUIDATING TRUST,
Defendant.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York
June 30, 2015
2:06 PM

B E F O R E:
HON. MARTIN GLENN
U.S. BANKRUPTCY JUDGE

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(CC: Doc. no. 8) Motion for Summary Judgment.

(CC: Doc. no. 7) Motion for Summary Judgment filed by Joseph J. Saltarelli on behalf of Ocwen Loan Servicing, LLC.

(Doc# 8647, 8130, 8131) Hearing RE: (I) Motion of Plaintiff Ocwen Loan Servicing, LLC for Summary Judgment and (II) The ResCap Liquidating Trusts Motion for Summary Judgment.

Transcribed by: Penina Wolicki
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

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A P P E A R A N C E S :

HUNTON & WILLIAMS LLP

Attorneys for Plaintiff - Ocwen Loan Servicing LLC
200 Park Avenue
New York, NY 10166

BY: JOSEPH J. SALTARELLI, ESQ.

PATRICK L. ROBSON, ESQ.

MORRISON & FOERSTER LLP

Attorneys for Defendant - ResCap Liquidating Trust
250 West 55th Street
New York, NY 10019

BY: JAMIE A. LEVITT, ESQ.

TODD M. GOREN, ESQ.

1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. We're here
3 in Residential Capital, number 12-12020, and in the adversary
4 proceeding Ocwen Loan Servicing, LLC v. the ResCap Liquidating
5 Trust, adversary proceeding number 14-02388. Can I have the
6 appearances, please, for the plaintiff first.

7 MR. SALTARELLI: For Ocwen, Your Honor, Joseph
8 Saltarelli and Patrick Robson of Hunton & Williams.

9 MS. LEVITT: Good afternoon, Your Honor. For the
10 ResCap Liquidating Trust, it's Jamie Levitt and Todd Goren from
11 Morrison & Foerster.

12 THE COURT: Thank you very much. All right. So we
13 have cross motions. Let me hear from Mr. Saltarelli first,
14 okay?

15 MR. SALTARELLI: Thank you, Your Honor. I'm happy to
16 answer any questions the Court has, and I don't want to belabor
17 any of the arguments that have been briefed exhaustively in the
18 papers. But I would like to focus, if I may, on one of the
19 arguments that ResCap has propounded, which is that the
20 segregation and delivery that we're talking about here is
21 either not a service to be provided to Ocwen by ResCap, or at
22 best, is a service to be provided by Ocwen to ResCap, at
23 ResCap's option. In other words, they could say, thank you,
24 but we don't want to have these segregated; we don't want to
25 pay the cost.

1 And in addition to the points we've raised in the
2 briefing, Your Honor, and one of the central ones of which is
3 that there are two schedules to the TSA agreement in this case,
4 the transition services agreement, that set forth the various
5 statements of work or SOWs in this case, there is only one
6 records management SOW at issue. That SOW, however, is listed
7 on both Schedule 1, which is ResCap services to be provided to
8 Ocwen, as well as Schedule 2, which is services to be provided
9 by Ocwen to ResCap.

10 But more fundamentally, Your Honor, I believe the
11 argument really misses the point about what the SOW is about
12 and where this particular provision at issue, which is section
13 6.1, is.

14 When you look at the RM SOW itself, the specific
15 services, records management services, that are supposed to be
16 provided, are set forth. They're described in sections 2 --
17 which is called "The Scope of Record Management Services" --
18 and 3, "Deliverables for Ocwen." But this particular provision
19 is set off in a separate section, and it's called "Assumptions
20 and Dependencies". It is not listed, per se, as a service to
21 be provided to ResCap or something that ResCap can turn on and
22 off at its option.

23 What it is is a basic assumption to the SOW. The SOW
24 itself was part of this agreement which provided that Ocwen
25 would render record management services in the aftermath of the

1 asset purchase agreement, where they acquired most of, but not
2 all, of the servicing rights that ResCap had. That means --
3 and it's in the stipulated facts -- that there were some
4 servicing files -- not an insignificant amount -- some
5 servicing files that were retained by ResCap that were stored,
6 and most importantly, Your Honor, they were comingled -- they
7 were interspersed --

8 THE COURT: Can you give me a sense of what was the
9 total population of files? What was -- what's the number of
10 that total that Ocwen acquired servicing rights in? What was
11 the number that was left behind?

12 MR. SALTARELLI: As a percentage, Your Honor, I don't
13 know the percentage. I don't know that number. I mean, it's
14 not in the stipulated facts.

15 THE COURT: That's why I -- yeah.

16 MR. SALTARELLI: Yeah.

17 THE COURT: I know it's not in the stipulated facts.

18 MR. SALTARELLI: Yeah.

19 THE COURT: But I'm trying to get a sense in my own
20 mind of -- I mean, I think I have a pretty good idea of how
21 this was supposed to work. But I don't know whether it was
22 just a small number of files that were staying behind or
23 whether it was a large number. I don't know --

24 MR. SALTARELLI: I do --

25 THE COURT: -- how difficult the segregation of the

1 files were. And I understand you both seem to agree that they
2 were comingled.

3 MR. SALTARELLI: Correct, Your Honor. I do think
4 there's some indication of the volume of these records in
5 Exhibit E to the joint statement, and that is the Iron Mountain
6 statement -- scope of work that was prepared. And there, it
7 does talk about the estimate -- at issue here, it talks about
8 847,000 files that needed to be retrieved, and then --

9 THE COURT: That's the total population of everybody's
10 files --

11 MR. SALTARELLI: I believe that may be the total --

12 THE COURT: -- at Iron Mountain.

13 MR. SALTARELLI: -- I'm sorry, one second.

14 THE COURT: No, go ahead.

15 MR. SALTARELLI: So I'm not sure that that's the exact
16 number --

17 THE COURT: Okay.

18 MR. SALTARELLI: -- that is there today, but I think
19 it gives some sense of the number. And that is where the seven
20 million dollars estimate, which at the time, as you recall from
21 the briefing, ResCap at first agreed to authorize this work.
22 Iron Mountain started to get the people and whatnot together.
23 They put together the scope of work --

24 THE COURT: Well, they would have been happy to do the
25 work for seven million dollars, I'm sure.

1 MR. SALTARELLI: Seven million dollars, yeah. I think
2 we're all in the wrong business, Your Honor. But -- and it was
3 at that point, when the seven-million-dollar figure came out,
4 that ResCap suddenly said --

5 THE COURT: Sudden sticker shock.

6 MR. SALTARELLI: -- wait a minute, sticker shock, and
7 we don't want to do that.

8 So I do think that gives some sense of the volume
9 there. So it's not an insignificant cost to segregate out
10 these files, which ones belong to ResCap and which belong to
11 Ocwen. But --

12 THE COURT: But let me ask you this. Again --

13 MR. SALTARELLI: Yes.

14 THE COURT: -- this is not in the stipulation, but I'm
15 just trying to get a sense of this. So the work stopped; the
16 files haven't been segregated. So what's happened in the real
17 world? What happens when Ocwen wants to see a file? What
18 happens when ResCap wants to see a file?

19 MR. SALTARELLI: Well, Your Honor, those file requests
20 continue to be made.

21 THE COURT: By both?

22 MR. SALTARELLI: By both sides. Because there may be
23 foreclosure cases --

24 THE COURT: Sure.

25 MR. SALTARELLI: -- cases -- yeah. And those files

1 need to be made. That's correct. And Iron Mountain will pull
2 those files. And there are various charges associated with it.

3 So those files continue to be comingled as of today.

4 They --

5 THE COURT: So why did they have to be segregated if a
6 request to pull files could be made and Iron Mountain would
7 dutifully -- if the Trust requested a file for a loan that
8 remained behind, they get the file, and if Ocwen wants them,
9 Ocwen gets it.

10 MR. SALTARELLI: Well, Your Honor, from Ocwen's
11 perspective, obviously, if the files continue to be stored at
12 Iron Mountain, Iron Mountain charges for the storage of these
13 files. It's not an insignificant amount of money. I believe
14 there's a statement to the effect of 110,000 or so, at least,
15 with respect to Iron Mountain. So the storage fees are
16 significant, and Ocwen would prefer not to have the files
17 stored there.

18 THE COURT: What were you -- what was Ocwen going to
19 do if the files were segregated and --

20 MR. SALTARELLI: It was going to move them either to
21 its own location -- it was going to store some of them
22 digitally so they didn't incur those kind of fees.

23 THE COURT: Right.

24 MR. SALTARELLI: So that's the issue there, that to
25 the extent they continue to remain at Iron Mountain and are

1 subject to being pulled, there is a storage fee associated with
2 it. And Ocwen's view is that on the basis of the RM SOW, it
3 has the right to have them removed to a location of its choice
4 or electronically, or whatever, at ResCap's cost, and then not
5 have to incur ongoing storage costs.

6 THE COURT: So I'm just curious. I have to say -- I
7 mean, I'll decide -- there are cross motions; I'll go ahead and
8 decide it. It's sort of -- I don't understand how this hasn't
9 gotten worked out, but put that aside, okay?

10 Did -- well, let me not ask that. Go ahead.

11 MR. SALTARELLI: Well, Your Honor, I would just go
12 back to my earlier point, which is that the purpose of this RM
13 SOW, was that on an ongoing basis, Ocwen would provide certain
14 services with respect to servicing files that had been retained
15 and not transferred, for which Ocwen would be compensated under
16 the various schedules as set forth in the TSA.

17 THE COURT: So why don't you just move all the files,
18 and then when you have to do some services for the Trust with
19 respect to loans they kept you have a schedule that says how
20 much you get paid for it?

21 MR. SALTARELLI: Why don't we move --

22 THE COURT: Yes.

23 MR. SALTARELLI: -- the files, Your Honor? Well, if
24 we did, Iron Mountain won't do that unless they're paid.

25 THE COURT: No, take all the files from Iron Mountain

1 and do what you will with it. When ResCap asks Ocwen to
2 perform services with respect to loans that they retained, you
3 charge them for it. And so you don't pay the storage charges.

4 MR. SALTARELLI: Well, Your Honor, that wouldn't
5 resolve the issue of Iron Mountain's charges to pull these
6 files, remove them. There may be -- may be -- some issue about
7 reducing the cost if they don't have to segregate those files,
8 but there's still --

9 THE COURT: What was -- you made the request -- let's
10 assume the files were segregated by them and you say Ocwen was
11 going to remove its files. What was -- what charges could Iron
12 Mountain make and who would be responsible? So this
13 group --they segregate them. This group's Ocwen's, you want to
14 remove them, put them in your own storage, what were the
15 charges that Iron Mountain was permitted to make, and who was
16 supposed to pay them?

17 MR. SALTARELLI: Well, at that point, Your Honor, the
18 remaining files would have been ResCap's responsibility. So
19 any storage fees related to that --

20 THE COURT: Was Ocwen -- was Iron Mountain -- was
21 there a schedule of charges that Iron Mountain could charge
22 Ocwen for giving you your files back?

23 MR. SALTARELLI: It is not my understanding that that
24 existed, Your Honor.

25 THE COURT: All right.

1 MR. SALTARELLI: What was contemplated here, at one
2 point, was the provision to Iron Mountain of a listing of which
3 files belong to Ocwen and which files belong to ResCap. That
4 would have been necessary also, obviously, for the segregation.

5 THE COURT: Um-hum.

6 MR. SALTARELLI: But I am not aware that there is a
7 separate -- or sort of an itemization of the charges with
8 respect to each. All I can say is that whatever the charges
9 were if the files had been removed when Ocwen asked for that to
10 happen, they would have taken care of those files; and the
11 remaining fee, which would be less than 110,000, I assume,
12 would have been the responsibility of ResCap, Your Honor.

13 THE COURT: Okay, go ahead.

14 MR. SALTARELLI: Okay. So my only point is, Your
15 Honor, that given that is the structure and nature of the --
16 and the purpose of the RM SOW, so when you look at the
17 assumption and dependencies, it is clear that that is not a
18 service that can be provided to or accepted at its own option
19 by ResCap, but rather it's a fundamental premise to the SOW
20 itself -- to the RM SOW and to the TSA.

21 THE COURT: Okay, well, the files have to be
22 segregated, and the ones that belong to Ocwen, you get.

23 MR. SALTARELLI: Correct, Your Honor. Because --

24 THE COURT: That's your position?

25 MR. SALTARELLI: Correct, Your Honor. Because that is

1 what the nature of the asset purchase agreement was. There is
2 nothing inconsistent with that interpretation of section 5.1
3 and the other provisions that have been cited by ResCap in the
4 case, specifically section 3.4 of a totally separate agreement.
5 And that's been fully briefed and I won't get into that, but --

6 THE COURT: When was the segregation supposed to have
7 been completed?

8 MR. SALTARELLI: Within eighteen months of the
9 effective date of the TSA, Your Honor.

10 THE COURT: And that would have been when?

11 MR. SALTARELLI: And that -- it's a good point.
12 Because that would have been approximately August of 2014. And
13 when you go -- because the TSA's effective date was mid-
14 February of 2013. When you go to the schedules in the case,
15 Schedule A(2) lists the expected termination date of the RM
16 SOW -- Schedule A(1), I should say. This is with respect to
17 ResCap's obligations to Ocwen. And the expected termination
18 date listed there for the records management services SOW,
19 which is referred to as -- or involving storage cost
20 reimbursement from ResCap to Ocwen, is listed as August 31,
21 2014, which is consistent with section 5.1, which says, "within
22 eighteen months of the effective date," which would be roughly
23 August 2014, Your Honor.

24 THE COURT: What's the total of the storage charges
25 that have accrued since August of 2014?

1 MR. SALTARELLI: Since that time, Your Honor?

2 THE COURT: Yes.

3 MR. SALTARELLI: I don't know. I believe the total
4 now is over ten million dollars, correct? One moment.

5 THE COURT: I think it was like a million-and-a-half
6 that we were talking about but --

7 MR. SALTARELLI: So, well, Your Honor, it is that
8 100,000 dollars per month figure. So since August of 2014,
9 you're talking maybe an additional one million dollars or so,
10 based on that. And that's an approximation I'm basing solely
11 on the 110,000-dollar-per-month figure, Your Honor.

12 THE COURT: Okay.

13 MR. SALTARELLI: Okay. Unless the Court has any
14 other -- yes?

15 THE COURT: No, no, let me -- I'm just trying to
16 understand. Really what -- are you telling me that what this
17 dispute is really about is the million dollars of storage
18 charges that's accrued since the time when you say that you
19 should have gotten your files?

20 MR. SALTARELLI: No, Your Honor. Because the fees
21 that have been estimated by Iron Mountain, include fees for
22 segregating all of these files and repackaging them and storing
23 them. And it's a very elaborate process to do that. So that
24 is at least a seven-million-dollar figure, which was the
25 estimate given at that time by Iron Mountain.

1 THE COURT: Okay.

2 MR. SALTARELLI: Ocwen's position is that -- on its
3 claim for a declaratory judgment, that it is asking for a
4 declaratory judgment that it is entitled to have ResCap bear
5 those costs under section 5.1. As we've pointed out in the
6 briefing, Your Honor, it probably is necessary and appropriate
7 to have some kind of an accounting part of this process after a
8 declaratory judgment is granted or summary judgment is granted,
9 for the parties to try to work out exactly any splitting of the
10 costs, per se. And that is, we believe, a proper subject for
11 an accounting at the end of the case.

12 THE COURT: Okay, thanks, Mr. Saltarelli.

13 MR. SALTARELLI: Thank you, Your Honor.

14 THE COURT: Ms. Levitt, are you going to argue?

15 MS. LEVITT: Good after -- can you hear me? Is this
16 on?

17 Good afternoon, Your Honor. I just wanted to answer
18 some of the questions that Your Honor just asked my colleague,
19 and then we will -- if you don't mind, I will tell you why I
20 think that the --

21 THE COURT: Sure.

22 MS. LEVITT: -- servicing transfer agreement is what
23 governs here and why this case should be dismissed.

24 One just easy question is, it's about 2.1 million, I
25 believe, in fees, that are owed by Ocwen to ResCap for the

1 storage of their files. They have stopped paying invoices
2 since September of 2013.

3 In terms of the actual sort of practical state of
4 where we are, which is what Your Honor asked; for all intents
5 and purposes, we don't understand why this case isn't over. We
6 have -- and I would like, if I could, to hand to the Court and
7 to Ocwen's counsel -- we have transferred all of Ocwen's files,
8 pursuant to the servicing transfer agreement. We have also,
9 out of just circumstances and time, segregated out everything
10 that's ResCap's.

11 This isn't a surprise. This is a document they've
12 seen before. Can I hand it up to Your Honor?

13 THE COURT: Sure, come on up.

14 Give me a minute to read it.

15 (Pause)

16 THE COURT: Okay, go ahead.

17 MS. LEVITT: Okay. Your Honor, just backing up for
18 one minute. Your Honor knows that the asset purchase agreement
19 was signed in 2012 -- November of 2012. And pursuant to the
20 transfer of ResCap's servicing platform, there were certain
21 agreements entered into to effectuate that, and those include
22 the servicing transfer agreement and the transition services
23 agreement, just to make very confusing the acronyms. And so
24 that's what we're talking about here.

25 Under the servicing transfer agreement, which

1 specifically was to describe how we were going to transfer the
2 servicing and the documents and files and everything related
3 thereto, there is this provision that has been fully briefed
4 for Your Honor, 5.03, which lays out the scenarios for how to
5 transfer files to Ocwen.

6 One of those scenarios is where the Ocwen and ResCap
7 share a vendor -- here Iron Mountain -- the transfer is
8 complete when we indicate to Iron Mountain that the files
9 should be held for Ocwen's account. On April 29th, as you can
10 see from the e-mail, ResCap did provide to Iron Mountain a list
11 of the loans that belonged to ResCap -- that's the only
12 visibility that we had -- and then the reverse is, everything
13 else is to be held for the account of Ocwen.

14 THE COURT: But do you agree that the files in storage
15 at Iron Mountain are comingled, so that providing a list
16 doesn't simply tell -- there isn't one section of the Iron
17 Mountain storage with those files. All the files are
18 comingled; some are yours some are theirs. And so simply
19 providing the list -- I'm not getting to the legal issue that
20 you raise about who bears the cost for doing that segregation,
21 but the segregation is necessary because your files and their
22 files are comingled together. And just providing a list of
23 these are ours, those are yours -- or these are ours,
24 everything else is yours, doesn't result in -- somebody can't
25 just go and say that whole wall of boxes, ship them off to

1 Ocwen. Do you agree with that?

2 MS. LEVITT: Yeah, agree with that in the past they
3 were comingled. But the next part that's in that letter is
4 just from circumstances and time and what has occurred, we have
5 now segregated out -- or are very close and in the process of
6 segregating out what is ResCap's.

7 So there were four categories of loans that ResCap
8 retained, loan files. 1) were the Fannie Mae servicing that we
9 sold to Walter Green Tree. Those have been segregated and
10 removed. 2) are the --

11 THE COURT: They've been removed; they're no longer in
12 Iron Mountain?

13 MS. LEVITT: They're no longer there. 2) are the
14 loans sold to Berkshire Hathaway. Your Honor, knows about
15 those. Those were removed. They're no longer comingled.
16 3) were excluded deals ResCap maintained the servicing under
17 certain excluded deals. We have been working with Ocwen on
18 that, and my understanding is that we are in the process of
19 removing those -- we're not done, but we are sending those to
20 third parties.

21 THE COURT: How are you going about removing them?

22 MS. LEVITT: How are we --

23 THE COURT: Yeah.

24 MS. LEVITT: -- removing them? We've hired someone.
25 And I don't know the exact details, but that process is

1 underway at ResCap to remove them.

2 THE COURT: Well, the files physically are at Iron
3 Mountain?

4 MS. LEVITT: And they're physically being removed.

5 THE COURT: And there -- those files are comingled
6 with all of the other loan files that are there, correct?

7 MS. LEVITT: Right. So someone has to pull them out
8 of boxes.

9 THE COURT: Somebody has to go physically --

10 MS. LEVITT: Yes.

11 THE COURT: -- find and then pull those files?

12 MS. LEVITT: Right. And that is happening.

13 THE COURT: Okay.

14 MS. LEVITT: And that, we are doing.

15 THE COURT: When is that supposed to be done.

16 MS. LEVITT: You know, I'd hoped it'd be done by the
17 time I came here today, but I understand it's still in the
18 process. I guess it takes a while to pull documents out of --

19 THE COURT: I'm sure it does. That's why --

20 MS. LEVITT: -- out of warehouses.

21 THE COURT: -- Iron Mountain was going to charge a lot
22 of money to do it.

23 MS. LEVITT: Right. And we don't believe, Your Honor,
24 we have, as we've indicated, any obligation to be doing this.

25 But we are.

1 THE COURT: I'm not -- that's a different issue.

2 MS. LEVITT: Okay.

3 THE COURT: I'm just --

4 MS. LEVITT: Right, yeah.

5 THE COURT: -- I'm just trying to understand what it
6 is you're all fighting about.

7 MS. LEVITT: Yes, me too. And then the last one is
8 servicing of loans owned by Ally. Ally is segregating those.
9 So Ally actually is going and removing those by themselves.

10 THE COURT: They're going to the Iron Mountain
11 facility --

12 MS. LEVITT: Correct.

13 THE COURT: -- somebody's pulling --

14 MS. LEVITT: Yes.

15 THE COURT: -- those files. And when's that --

16 MS. LEVITT: And that's not done.

17 THE COURT: -- supposed to be done?

18 MS. LEVITT: They're negotiating with Iron Mountain on
19 the fees. Ally can negotiate fees. So that part is being
20 done. At that point, Your Honor -

21 THE COURT: But you don't know when it's going to be
22 completed?

23 MS. LEVITT: I hope soon. I don't have an exact date,
24 but my understanding is, in the near future those, as well,
25 will be gone.

1 THE COURT: Can I ask why it took ResCap so long to
2 remove its files? When did it -- when were you -- well, you're
3 not completed, so -- I'm just trying to understand. When was
4 the removal of, I'll call them, the ResCap files for -- I think
5 you know what I mean.

6 MS. LEVITT: Um-hum.

7 THE COURT: When was the removal of those files
8 substantially completed, physically?

9 MS. LEVITT: When will be, the last two buckets?

10 THE COURT: No. When -- you're saying -- so it's not.
11 Do you have any idea of the number of files that remain?

12 MS. LEVITT: Yes, my understanding is that there
13 approximately 5 million loan files at Iron Mountain that we're
14 talking about, and approximately 200,000 are those that are
15 still in the process of being removed.

16 THE COURT: That belong to --

17 MS. LEVITT: That belong to either Ally or ResCap, and
18 so we're removing those.

19 Your Honor, it is our understanding, at that point,
20 then we are no -- we have no obligations -- we didn't have them
21 in the first place, but there's certainly nothing more that
22 ResCap can be or should be doing at that time. We have -- I
23 think the reason it took so long is because we didn't think it
24 was our obligation; but it's easier just to remove --

25 THE COURT: When did you start pulling them?

1 MS. LEVITT: Well, it does depend on the category.
2 The first two happened more quickly. The last two, we've been
3 working with Ally, so I would say over the last year, that
4 process -- I mean, the negotiations of it. But now the pulling
5 is actually happening, if that makes sense.

6 And if I --

7 THE COURT: I understand what you're saying. I was
8 just --

9 MS. LEVITT: And then just to go back to -- and Your
10 Honor does have a lot of briefing here. I mean, I think it's
11 very clear that there are two agreements at issue, as I
12 mentioned earlier: the servicing transfer agreement, which
13 deals with -- was negotiated later --

14 THE COURT: Well, but Ms. Levitt, I mean, an issue for
15 me is whether the three -- the two agreements and the statement
16 of work --

17 MS. LEVITT: Um-hum.

18 THE COURT: -- combined are an integrated agreement
19 that should be construed, interpreted, together. I mean, you
20 say no, they say yes.

21 MS. LEVITT: Well, Your Honor, I do think the
22 servicing transfer agreement's entire agreement clause -- when
23 it comes to the question of transfer of files as opposed to
24 other services that were going on, it is integrated and that is
25 the final and best understanding. But even, Your Honor, if we

1 looked at these all together, they coexist. The servicing
2 transfer agreement discusses the transfer. It includes a
3 contemplation of segregation in -- I think Your Honor saw in
4 the briefs that there are four ways the transfer can occur.
5 One of them -- and it doesn't fit into the other buckets, is
6 for us to segregate and deliver loan files.

7 So the 3.04 of the STA was negotiated after the
8 statement of work, after the provision that Ocwen relies on.
9 The parties heavily negotiated how they were going to deal with
10 this transfer. They came up with four scenarios.

11 THE COURT: Are they correct that you originally
12 agreed to bear the cost until you saw what the dollar figure
13 was?

14 MS. LEVITT: No. What we agreed to do was to -- they
15 asked Iron Mountain to look at the cost of removing some
16 trailing documents, not everything, a subset of trailing
17 documents. And when we saw it was go -- the numbers of seven
18 million or millions, we said no, we're not going to do this.
19 We had no obligation to do this. So yes, we did say let's not
20 go forward with that.

21 If it had been inexpensive, maybe we could have
22 avoided having a fight. But we didn't believe we were
23 obligated, and so, no, it didn't make sense to spend estate
24 resources that could go to better uses than to pay Iron
25 Mountain to segregate files. So we have segregated them out

1 otherwise.

2 But the statement of work which predated this
3 servicing transfer agreement, is entirely -- and I think it's
4 important to look -- looking at the language of the statement
5 of work, it specifically says ResCap is the recipient of
6 services; Ocwen is the supplier of services. That's stated
7 very clearly in the overview. "This SOW sets forth each
8 party's responsibilities with respect to record manage services
9 to be provided by Ocwen as supplier, to or on behalf of the
10 recipients."

11 We do have one obligation and only one, as the
12 schedules and the SOW show. Schedule A(1) that was mentioned
13 earlier, which is ResCap Services -- if you look at number 2 --
14 all our obligation is, is to store the records -- record manage
15 services storage, subject to their reimbursement. That's the
16 only service. And when you look at the SOW as well, under
17 section 6.2, we have to pay for any -- we have to store and
18 Ocwen has to pay us back.

19 The only thing that we're obligated to do in the SOW
20 and the schedules to the TSA with respect to records
21 management, are simply to store their files at their cost.
22 Everything else -- when you look at Schedule A(1) -- excuse
23 me -- A(2), and you look down at section 9 -- number 9, the
24 records management services that Ocwen provides are everything
25 in the Ocwen to estate records management SOW, not limited --

1 like A(1) is -- to just storage. Our says records management
2 storages. There is all of records management services.

3 With respect to the provision in the SOW specifically,
4 I mean, I agree it's not the most well-drafted language. But
5 our understanding and our belief, as we put into our papers, is
6 because Ocwen is the supplier and we are the recipient of
7 services, had we wanted Ocwen to provide this service, then we
8 would have requested it and Ocwen would have then directed its
9 vendor, at our cost, to do the segregation. But that's really
10 a provision that would take effect somewhere we didn't have
11 privity with a vendor anymore. So for example, with Kenwood,
12 where we didn't have privity, and we wanted the service of
13 segregation, we would have asked Ocwen, and Ocwen would, at our
14 cost, have directed its vendor to do the segregation --

15 THE COURT: So doesn't the SOW provide the -- that
16 it's meant to "detail the deliverables and/or services to be
17 performed in accordance with the terms and conditions of" --
18 it's really the TSA? That's why -- where I'm having trouble,
19 Ms. Levitt, it seems to me -- I'm not decided on this --

20 MS. LEVITT: Right.

21 THE COURT: -- but the three -- the two agreements and
22 the statement of work are compatible and can be construed
23 together. And without ignoring any of the terms, I don't find
24 an inconsistency, because of the way that they covered slightly
25 different things.

1 MS. LEVITT: And Your Honor --

2 THE COURT: You want to -- your argument requires me
3 to conclude that the statement of work is not part of the
4 agreements between the parties. Isn't that true?

5 MS. LEVITT: So I -- no, then we have not written our
6 briefs well.

7 THE COURT: No, maybe I'm just -- I have to go back
8 and read it again.

9 MS. LEVITT: I mean, yes, we do believe that with
10 respect to the question of transfer, the STA would govern here
11 and supersede any other language. But yes we agree with you
12 that these documents coexist. There's the asset purchase
13 agreement with the TSA, and the STA, and the statements of
14 work. But the statement of work that's at issue here, which is
15 the records management services under the TSA, that statement
16 of work, sets forth Ocwen's responsibility as supplier to us.
17 There's no way that in that agreement in which Ocwen is
18 supplying us services, we agreed that we were going to allow
19 them to obligate us to take on tens or more of millions of
20 dollars of fees to pay Iron Mountain, not our creditors, to
21 segregate files. That's not what is going on in this
22 particular statement of work.

23 I agree, there are other statements of work where
24 ResCap has obligations. But this is the Ocwen to estate -- I
25 mean, the footer has "Ocwen as supplier, ResCap as recipient"

1 on every page. The overview talks about that.

2 So I agree entirely with you, Your Honor, that there's
3 no -- these can coexist. While I think the STA governs the
4 transfer, sure, these are all an integrated group of
5 agreements, and everyone has their own responsibilities. One
6 of our responsibilities is not to pay tens of millions of
7 dollars to Iron Mountain to segregate files, when that's not
8 required by the documents.

9 And if for any reason it was -- and I don't even
10 really want to go here -- but if it was, we would have just
11 terminated that service. And section 14.1 of the transition
12 services agreement gives us, as recipient, the right, with
13 notice, to terminate a service. It's not an improper exercise.
14 It's an exercise of our agreed-upon rights. It just never got
15 there, Your Honor, because we never had this -- we never
16 obliged ourselves to that sort of enormous cost to segregate
17 files. It's just not what the documents allow for.

18 And then the --

19 THE COURT: But that's effectively what you've done,
20 now, right? You've sent people in to pull the files that
21 either belong to ResCap or Ally. So the segregation, at some
22 point -- you haven't told me when that's going to be done, but
23 at some point the segregation's going to be done. What's going
24 to remain at Iron Mountain is going to be Ocwen's files.

25 MS. LEVITT: Correct. And I hope that's very soon.

1 As I said, I had hoped it would be before I had to stand up
2 here today, but it's certainly underway.

3 So with that, Your Honor, we would request that their
4 adversary proceeding be dismissed.

5 THE COURT: Thank you.

6 MR. SALTARELLI: If I may, Your Honor?

7 THE COURT: Yeah, please.

8 MR. SALTARELLI: Thank you, Your Honor. First, I
9 would like to note our objection to raising this document,
10 which is just an e-mail, as well as all these related arguments
11 about things that have happened in the last --

12 THE COURT: I'm going to decide it based on the --

13 MR. SALTARELLI: Okay.

14 THE COURT: -- the stipulation and the documents that
15 are --

16 MR. SALTARELLI: Yes.

17 THE COURT: -- before me.

18 MR. SALTARELLI: The motion raises purely a question
19 of law for the Court's decision. If anything, our own
20 information is that there are significant numbers of ResCap
21 files still intermingled -- comingled at Iron Mountain. They
22 may not be files -- according to Ocwen, they may not be files
23 that are active for ResCap, but they may be old cases, settled
24 cases, resolved cases. But those files are significant
25 numbering -- our number is in the hundreds of thousands, and

1 would still need to be segregated out of those documents.

2 THE COURT: Why?

3 MR. SALTARELLI: If anything Your Honor --

4 THE COURT: Why do they need to be segregated out?

5 MR. SALTARELLI: Well, Your Honor, because we don't
6 want them. I mean, if they're ResCap's old files that were not
7 transferred to us and they deal with old matters, why would we
8 take on the burden of having to carry --

9 THE COURT: Because they don't seem to want them. I
10 mean, if they wanted them, they should have taken them.

11 MR. SALTARELLI: Well, Your Honor, I think the -- that
12 is our information about this. I think it's inappropriate for
13 them to have raised it. But my point is that if anything, all
14 of these questions about what ResCap has been doing in the last
15 several weeks or months, pulling their own files out of there,
16 maybe the amount of segregation will be less, ultimately, that
17 Iron Mountain has to do, is something that we would submit is
18 to be resolved in an accounting part of this case after the
19 purely legal issue that is raised by the cross motions is
20 resolved.

21 And then these types of issues, based on an accurate
22 assessment of what exactly remains at Iron Mountain, what are
23 the costs that Iron Mountain would assess, are all things that
24 could be resolved, hopefully amicably, between the parties, but
25 in a separate phase. It is not something to be decided on the

1 cross motions for summary judgment.

2 If I may just briefly touch upon some of the other
3 points, Your Honor?

4 You mentioned and you raised the issue of integrated
5 agreements. And Ms. Levitt acknowledges that these agreements
6 coexist. We believe they're separate and independent
7 agreements. They each have an integration clause. But you're
8 absolutely correct, and we have briefed and argued that even if
9 you view this as part of the same transaction, the STA was
10 signed on the same day as the TSA. The TSA incorporates the
11 statement of work. So the statement of work exhibit to the TSA
12 is part of the TSA and effective the same date.

13 Even if you look at those two agreements together with
14 the asset purchase agreement, there is nothing about section
15 3.04 of the STA that is inconsistent with or mutually exclusive
16 with respect to section 5.1.

17 The transfer of possession can take place -- could
18 take place legally under section 3.04, as you've pointed out.
19 That doesn't change the fact that the parties have agreed to
20 something entirely separate in section 5.1. There's no
21 reference to segregation --

22 THE COURT: So when --

23 MR. SALTARELLI: -- no abrogation --

24 THE COURT: -- the statement of work was issued when?

25 MR. SALTARELLI: I'm sorry, Your Honor?

1 THE COURT: The statement of work was issued when?

2 MR. SALTARELLI: The statement of work is dated -- and
3 that's one of their arguments -- February 1st of 2013. It was
4 obviously in the process of formation and negotiation as the
5 parties worked forward. It then is incorporated and makes
6 specific reference to the TSA, dated effective February 15th, I
7 believe, of 2013.

8 If you look at the very top of the RM SOW, that's the
9 reference. So when it was finalized, it clearly refers to the
10 TSA. And the TSA itself incorporates the schedules and the
11 statements of work into the document.

12 So there's no question, as Your Honor has pointed out,
13 that the statement of work is part of, incorporated in the TSA.
14 So even if you look at the agreements as one integrated
15 agreement arising out of the same transaction, the question
16 then becomes -- the legal question -- is there any
17 inconsistency between the obligation in 3.04 and that in
18 section 5.1. And as we've written in our briefs, Your Honor,
19 we don't believe that there is. These are two totally
20 different things. And the Court can conclude as a matter of
21 law that ResCap has that obligation. It is not inconsistent
22 with 3.04.

23 THE COURT: Yeah, I'm going to -- when you finish, I
24 want Ms. Levitt to address the issue of whether this statement
25 of work is inconsistent with the provisions of the STA or TSA.

1 MR. SALTARELLI: I would just point --

2 THE COURT: It didn't seem to me that the three
3 documents are inconsistent. But go ahead.

4 MR. SALTARELLI: Your Honor, I agree with you,
5 obviously. I don't believe that those --

6 THE COURT: I'm not making a decision yet, but I'm
7 just --

8 MR. SALTARELLI: Yes, I understand.

9 THE COURT: -- that was my initial reaction.

10 MR. SALTARELLI: I understand. I don't believe -- I
11 believe a fair and reasonable reading of fairly unambiguous
12 text in both of those provisions shows that they're not
13 mutually exclusive obligations and not inconsistent.

14 THE COURT: What about Ms. Levitt's argument about
15 who's described as the supplier?

16 MR. SALTARELLI: Well, Your Honor, this goes back to
17 the question of the -- there's only one RM SOW. And there's
18 two schedules. And one is a schedule of the TSA. The TSA is
19 not simply services and obligations going one way. The TSA has
20 two schedules. The first schedule refers to various statements
21 of work that pertain to services from ResCap to Ocwen.
22 Schedule A(2) refers to services to be provided under
23 statements of work from Ocwen to ResCap. But there's only one
24 RM SOW, and that RM SOW is referenced in both of those
25 provisions.

1 So the argument that it is purely one-way, that if you
2 viewed Section 5.1 as a service to be provided for the benefit
3 of Ocwen can't be right, because it's only a one-way service
4 from Ocwen to ResCap, is belied by the schedules themselves and
5 the description and incorporation of just the one RM SOW.

6 I would point out again -- I believe I mentioned it
7 earlier -- in Schedule A(1), which refers to the ResCap to
8 Ocwen services, there's an asterisk next to the records
9 management category of services, and it refers to cost
10 reimbursement. That is important for another reason as well,
11 Your Honor. And it links to a question you asked of Ms.
12 Levitt: didn't you originally agree that you were obligated to
13 pay these costs.

14 And I think the record is clear that what happened
15 here, and Ms. Levitt essentially acknowledges it -- there was
16 sticker shock. There was a change of position based on the
17 estimate.

18 THE COURT: She didn't acknowledge -- certainly didn't
19 acknowledge that. But go ahead.

20 MR. SALTARELLI: Well, but if you go to Ms. Tammy
21 Hamzhepour's letter, which is the final Exhibit G in the
22 record, and you go to the top of page 4, she is referring
23 specifically to the obligation in section 5.1.

24 And she says, "The obligation set forth in this
25 provision is clearly imposed on Ocwen subject to expense

1 reimbursement by the estate." Now, to me that's a fairly clear
2 statement that if your position is going to be Ocwen shall,
3 within eighteen months, go and direct the vendor to do
4 something -- and when it says "at ResCap's cost" -- their
5 position is -- and then you come back to us and say listen,
6 Iron Mountain charged us seven million dollars, you a have to
7 reimburse us -- the estate does -- that's exactly what Ms.
8 Hamzhepour is saying.

9 I'm not sure there is any difference between that and
10 our position, which is ResCap is liable for the vendor's cost
11 to segregate, deliver, and relocate the records.

12 THE COURT: So isn't the circumstance that Iron
13 Mountain is continuing to charge 100,000 dollars a month for
14 the records that are in storage?

15 MR. SALTARELLI: I believe that is the case, Your
16 Honor.

17 THE COURT: Okay. And has Iron Mountain been getting
18 paid by someone?

19 MR. SALTARELLI: I believe ResCap has been paying Iron
20 Mountain. They --

21 THE COURT: So the issue is reimbursement?

22 MR. SALTARELLI: Well, on that part. But those are --
23 that's a different issue, Your Honor. Because that's for
24 storage. That's for storage.

25 In Tammy Hamzhepour's letter, if you read it, she is

1 discussing both section 3.04, which is their position here, but
2 she is referring to the section 5.1 obligation which calls for
3 segregation and removal of the files. That's not the storage
4 fees alone, per se. That is the segregation -- taking the
5 files out, as you've described, repackaging them, and getting
6 them to a different location, she says in her letter to Ocwen,
7 that is something that Ocwen must do, subject to expense
8 reimbursement from the estate, which in my mind, Your Honor,
9 can only mean the cost for that, which is referring to at
10 ResCap's cost in the provision, is something that must be
11 reimbursed by the estate after Ocwen, for example, I guess,
12 pays Iron Mountain first.

13 But there's no material difference there in terms of
14 the liability for --

15 THE COURT: Okay.

16 MR. SALTARELLI: -- the expense, Your Honor. Thank
17 you, Your Honor.

18 THE COURT: Thank you very much.

19 MS. LEVITT: Your Honor, did you have a question of
20 me? Or otherwise, I can respond.

21 THE COURT: No, go ahead.

22 MS. LEVITT: I think just starting in the reverse
23 order with respect to Ms. Hamzhepour's letter. Your Honor has
24 it. It's behind tab G. Ms. Hamzhepour could not be clearer,
25 over and over, that she doesn't believe that this is an

1 obligation. If it were, of course, the section of the SOW says
2 we'd pay for it. But she calls their argument specious and
3 doesn't believe there's any obligation on ResCap to incur these
4 sorts of costs.

5 I wanted to point out -- I think you had asked -- I
6 think the question you had asked of me is do I think these
7 coexist or -- and yes, we do.

8 Again, this all comes out of the asset purchase
9 agreement. But I just wanted to reiterate that the language of
10 the two agreements at issue, the STA and the TSA, are very
11 clear. The STA, as paragraph 12 of our stipulation
12 acknowledges, governs all aspects of the transfer of the
13 servicing, what will have to be done to transfer. And that's
14 what we're talking about is transfer of loan files.

15 Paragraph 13 of the stipulation and then the attached
16 TSA, says that there are certain transition services that have
17 to be provided. And as was just stated, there are many
18 statements of work. Some ResCap is supplier, and some where
19 Ocwen is supplier.

20 In this one at issue, Ocwen is the supplier. That's
21 the fundamental problem with their argument. Ocwen is the
22 supplier. Therefore it can't be that ResCap took on an
23 obligation. And I think it's also important to note that in
24 this SOW that we're talking about and in the provision,
25 provision 5.1, as was noted earlier, this is under the

1 assumptions and dependencies. This is an assumption.

2 There is no obligation. There's no service attached
3 to it. There's no service in the schedule attached to it.
4 Maybe the parties -- since this predated the STA -- assumed
5 that perhaps they would negotiate something and they didn't.
6 But this does not create any obligation on ResCap. The
7 schedules, again, are very clear. Schedule A(1) only talks
8 about service -- excuse me -- storage, and again, subject to
9 their reimbursement of our storage cost. And then Schedule
10 A(2) covers all -- everything in their services.

11 We continue not to see how -- reading these all
12 integrated and together, how anything other than the 3.04 under
13 the STA governs the transfer obligations, Your Honor.

14 THE COURT: Okay. All right. I'm going to take it
15 under submission. Thank you very much.

16 MS. LEVITT: Thank you, Your Honor.

17 MR. SALTARELLI: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded at 2:50 PM)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

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