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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matters of:
RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg
Debtors.

- - - - -x

WENDY ALISON NORA,
Plaintiff, Adv. No. 13-01208-mg
- against -

RESIDENTIAL CAPITAL, LLC, et al.,
Defendants.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

October 9, 2013
1:58 PM

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

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Adversary proceeding Nora v. Residential Capital, LLC a
Delaware limited liability.
Adjourned pre-trial conference

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1 MR. GALANTE: Good afternoon, Your Honor. Paul
2 Galante from Morrison & Foerster, on behalf of the debtors.

3 The final item on the agenda is the pre-trial
4 conference in the adversary proceeding number 13-01208 --

5 THE COURT: Ms. Nora's case.

6 MR. GALANTE: -- filed by Ms. Nora against the debtors
7 and various other defendants.

8 THE COURT: All right.

9 MR. GALANTE: I can briefly kind of summarize where we
10 are for you.

11 THE COURT: I read the status report.

12 MR. GALANTE: And --

13 THE COURT: Is there anything to add to that?

14 MR. GALANTE: There's not much to add. We had the
15 initial conference as per the procedures. There have been some
16 continued discussions since then. And the debtors are planning
17 to file a motion to dismiss within thirty days, as per the
18 procedures you entered.

19 THE COURT: Ms. Nora, do you want to be heard?

20 MS. NORA: Absolutely, Your Honor. I would ask the
21 Court to conduct a status conference, pursuant to Federal Rules
22 of Civil Procedure 26(f) and Federal Rules of Civil Procedure
23 16(b).

24 THE COURT: That's what I'm doing right now, Ms. Nora.

25 MS. NORA: Thank you, Your Honor. I would like the

1 deadlines to be set by -- for when all parties -- because the
2 debtors are not the only parties in this, and that they should
3 be notified of the Court's order, and they evidently have
4 chosen not to appear because they are in the loop, but I'm
5 really not --

6 THE COURT: Have you served everybody? Oh, I see
7 people jumping up in the back of the room, Ms. Nora. Come on
8 up -- anybody appearing in this matter, come on up. Let me get
9 all the appearances.

10 MS. NORA: All right.

11 THE COURT: Who else is appearing?

12 MR. NOREN: Good morning, Your Honor. Benjamin Noren,
13 Hinshaw & Culbertson, representing Gray & Associates, Duncan
14 Delhey, Jay Pitner, Michael Riley, and William Foshag.

15 THE COURT: Okay. Other appearances?

16 MS. WEBB: Good afternoon, Your Honor. Julia Webb,
17 representing RFC Trust; GMAC Mortgage Group, LLC; GMAC
18 Financial Services; Cerberus Capital Management; MERS; MERSCORP
19 Holdings; Stephen Feinberg; Kenneth Urgwuadu; Manish Verma;
20 Judy Faber; and Amy Nelson.

21 THE COURT: All right.

22 MR. CHELNEY: Your Honor, Stan Chelney from Bracewell
23 & Giuliani appearing for Lender Processing Services, Inc.

24 THE COURT: All right. Ms. Nora, you were speaking.
25 Come on back up.

1 MR. NEWMAN: Your Honor, there's an appearance on the
2 phone. Kevin Newman, Menter, Rudin & Trivelpiece, P.C. for
3 defendants Bass & Moglowsky, Arthur Moglowsky, David Potteiger,
4 and Penny Gentges.

5 THE COURT: Okay.

6 MR. ISENBERG: And Your Honor, and another. Adam
7 Isenberg of Saul Ewing on behalf of defendant Jeffrey Stephan.

8 THE COURT: Anybody else?

9 All right. Ms. Nora, you were speaking. Come on up.

10 MS. NORA: Yes, Your Honor. I believe that that would
11 be at least the majority of the defendants. And as far as
12 service goes, I mean, they've all made notices of appearance
13 and they have had access to PACER, so I believe that
14 effectively --

15 THE COURT: That isn't effective service, so I don't
16 know whether anybody's contesting service or not.

17 MS. NORA: Oh, you're talking about service to bring
18 them before the Court?

19 THE COURT: Yes. Yes.

20 MS. NORA: Oh, absolutely, personal service and the
21 affidavits of service --

22 THE COURT: Okay.

23 MS. NORA: -- personal service are on file with the
24 Court.

25 THE COURT: All right.

1 MS. NORA: What I'm not hearing, though, is any
2 appearance from MERS.

3 THE COURT: You did.

4 MS. WEBB: I represent MERS.

5 MS. NORA: Hi. Nice to meet you.

6 Okay, so I mean, I think we need deadlines for
7 whatever responses there are to the complaint. However, since
8 we've been postponed for this extended period of time, and I
9 believe that under the standards of Ashcroft v. Iqbal I can
10 establish a plausible claim for racketeering as to the
11 enterprise, consisting of these defendants and their employees,
12 the duration with two or more predicate actions, in violation
13 of wire fraud, mail fraud, and I have now discovered identity
14 theft as being a part of the racketeering enterprise. I would
15 ask that since I was postponed and not able to bring to this
16 Court a motion for leave to amend, that the first thing that be
17 scheduled is my opportunity for amendment. Additionally, I
18 have other parties who want to appear as co-plaintiffs, twelve
19 to be exact, and they would like to intervene by supplemental
20 procedures under Federal Rules of Civil Procedure 15 and under
21 Federal Civil Procedure 19, because the issues I have raised
22 may in fact collaterally estop them in their defense of their
23 rights.

24 THE COURT: Are you seeking to join them as additional
25 parties plaintiff, or are you --

1 MS. NORA: Yes, Your Honor, and in fact I do have
2 counsel who would take over and represent the entire group, and
3 I would become simply one of the plaintiffs.

4 THE COURT: Okay. Let me hear from -- I mean, I've
5 heard from the debtors that they would like to file a motion to
6 dismiss. I'd like to hear from any of the other nondebtor
7 defendants as to whether they contemplate motions to dismiss,
8 and if so, on what basis. I mean, one of the issues, Ms. Nora,
9 may be whether the Court has subject matter jurisdiction of the
10 claims you're asserting against nondebtor defendants.

11 MS. NORA: I think that's an excellent thing to
12 consider. Thank you.

13 THE COURT: But let me hear from other counsel as
14 to -- just before you speak, my inclination would be to set a
15 deadline for the plaintiffs to file an amended complaint,
16 rather than having motions to dismiss and then them seeking to
17 file an amended complaint thereafter. Let's get before the
18 Court the operative complaint. My standard case management
19 order generally provides a period for the parties to file
20 amended pleadings. Ms. Nora has indicated an intention to file
21 an amended complaint. I'll listen to counsel, but I think the
22 most sensible thing is to set a deadline -- and I'll ask her
23 when she thought she'd be able to do that -- to file an amended
24 complaint and set a response date based on the filing of the
25 amended complaint. But let me -- based on what's on file now,

1 let me hear from the defendant, because when I read what's on
2 file, the issue of subject matter jurisdiction as to nondebtor
3 defendants was something that seemed to me to be an issue.

4 MS. WEBB: It jumped off the page.

5 THE COURT: It jumped off the page, Ms. Nora.

6 You have to identify yourself each time you speak,
7 okay?

8 MS. WEBB: Julie Webb on behalf of -- should I read
9 the list again?

10 THE COURT: Yeah, why don't you read the list again?

11 MS. WEBB: Okay. RFC Trust; GMAC Mortgage Group;
12 GMAC Financial Services; Cerberus Capital Management;
13 MERS; MERSCORP Holdings; Stephen Feinberg; Kenneth
14 Urgwuadu; Manish Verma; Judy Faber; and Amy Nelson.

15 THE COURT: May I ask you this question? Did any of
16 your clients file proofs of claim against the debtors for
17 indemnification or contribution in connection with the
18 complaint that's on file?

19 MS. WEBB: I do not believe so.

20 THE COURT: Okay. Go ahead with your --

21 MS. WEBB: Okay. So Your Honor's correct to identify
22 subject matter jurisdiction as a potential problem. There may
23 also be a second subject matter jurisdiction problem, which is
24 that Ms. Nora has already brought nearly identical claims
25 against all of my clients, for sure, and most of the clients in

1 the adversary action in the Western District of Wisconsin.
2 That case was dismissed based on Rooker-Feldman. It's up on
3 appeal in the Seventh Circuit.

4 THE COURT: What was the case on which they decided
5 Rooker-Feldman?

6 MS. WEBB: Her Western District of Wisconsin lawsuit,
7 as well as this lawsuit, seek to overturn the state court
8 foreclosure judgment. So the Seventh Circuit appeal has been
9 fully briefed. No oral argument date has been set.

10 THE COURT: Okay.

11 MS. WEBB: But that would be another subject matter
12 jurisdiction issue, and it would also raise some res judicata
13 problems.

14 As Your Honor noted, we are considering whether or not
15 to raise some service problems as well. We have some issues
16 with the way service was attempted to be accomplished in this
17 adversary action.

18 THE COURT: I mean, I'll let you make whatever
19 arguments you want about it, but they'll find your clients.

20 MS. WEBB: It's not the crux of the problem.

21 THE COURT: They'll find your -- if it wasn't done
22 right until now, they'll find -- she'll find your clients. So
23 I mean, I'm not telling you don't proceed on that basis, but
24 I'm not sure what you really accomplish if you do.

25 MS. WEBB: That's why we're simply considering it at

1 the moment.

2 THE COURT: Okay.

3 MS. WEBB: Just making you aware of it. I would say
4 with regard to the request to file an amended complaint, this
5 would be a second amended adversary complaint, so there may be
6 some merit to potentially considering whether leave to file the
7 complaint should be given after having seen the complaint
8 first. But I understand you want to do whatever
9 procedurally --

10 THE COURT: I don't have any motions to dismiss, so
11 she's not filing an amended complaint -- she or new counsel,
12 whoever is going to do it, is not filing an amended
13 complaint -- a second amended complaint because they saw the
14 motions to dismiss --

15 MS. WEBB: Right.

16 THE COURT: -- and now they're trying something else.
17 There haven't been -- the only thing on file is the complaint
18 that I have before me today, and --

19 MS. WEBB: Correct. And you know, my only concern
20 would be, having not seen the proposed amended complaint, I'm
21 not quite sure how they all arise from the same set of facts
22 and circumstances.

23 THE COURT: Okay. All right.

24 MS. WEBB: Anyway, I agree with you in terms of
25 proceeding first with seeing the complaint and then following

1 it with motions to dismiss. I would ask that as we move
2 forward we consider staying discovery while motions to dismiss
3 are pending, since that would be quite burdensome and --

4 THE COURT: Okay. Let me hear from the other
5 defendants.

6 MS. WEBB: Thank you, Your Honor.

7 THE COURT: Thank you very much.

8 MR. NOREN: Good morning, Your Honor.

9 THE COURT: It's afternoon already.

10 MR. NOREN: Benjamin Noren, Hinshaw & Culbertson. I'm
11 sorry?

12 THE COURT: It's afternoon already.

13 MR. NOREN: Again, I represent Gray & Associates,
14 Duncan Delhey, Jay Pitner, Michael Riley, and William Foshag.
15 And we are also --

16 THE COURT: What did they do?

17 MR. NOREN: Gray & Associates -- and the individuals
18 are basically the associates -- represented the lender in the
19 state foreclosure action.

20 THE COURT: Who was the lender?

21 MR. NOREN: Residential Funding Company.

22 MS. NORA: No, Your Honor; Aegis Mortgage Corporation.

23 THE COURT: Well, we'll see. Okay.

24 MR. NOREN: Regardless, the Gray & Associates plan on
25 making a motion to dismiss based on Rooker-Feldman, claim

1 collusion, and some of her actions are time barred against Gray
2 & Associates.

3 THE COURT: Is there subject matter jurisdiction on
4 the claims against your clients?

5 MR. NOREN: No.

6 THE COURT: Okay.

7 MR. NOREN: Thank you, Your Honor.

8 THE COURT: Next?

9 MR. CHELNEY: Your Honor, Stan Chelney on behalf of
10 Lender Processing Services.

11 We do also intend to move to dismiss. And in addition
12 to some of the potential reasons you've heard already, with
13 respect to our client the complaint is entirely bare of any
14 assertions as to what our client did or what acts our client
15 took that would support any of the claims.

16 THE COURT: Did your client file a claim for
17 indemnification or contribution?

18 MR. CHELNEY: No, Your Honor.

19 THE COURT: Is there a basic for subject matter
20 jurisdiction on the claims against your client?

21 MR. CHELNEY: We're still investigating that, but it's
22 not apparent --

23 THE COURT: Okay.

24 MR. CHELNEY: -- from the complaint, Your Honor.

25 THE COURT: So when I consider motions to dismiss, I

1 mean, I have to -- before -- I mean, I think that before I move
2 on, to determine whether it states a claim, I've got to
3 evaluate whether there's subject matter jurisdiction. I mean,
4 you'll move on all grounds that you believe appropriate, but --

5 MR. CHELNEY: Yes, Your Honor.

6 THE COURT: All right. Thank you.

7 MR. CHELNEY: Thank you.

8 THE COURT: Anybody else want to be heard?

9 Anybody on the phone?

10 MR. NEWMAN: Yes, Your Honor. Kevin Newman for Bass &
11 Moglowsky, S.C., Arthur Moglowsky and David Potteiger, and
12 Penny Gentges. We too -- they represented one of the lenders
13 here as well. And we --

14 THE COURT: Which lender? Which lender?

15 MR. NEWMAN: I'm checking the complaint, Your Honor.
16 Your Honor, I believe it's set forth in the complaint, but it
17 may be Ally Financial.

18 THE COURT: Okay. All right. Go ahead.

19 MR. NEWMAN: I would have to check on that, Your
20 Honor.

21 THE COURT: I'm sorry --

22 MR. NEWMAN: But in any event, as to the substance of
23 the complaint, we too do not believe that there's subject
24 matter jurisdiction. We believe that the decisions that have
25 already been issued by the federal and state courts have res

1 judicata and collateral estoppel effect. We believe the
2 Rooker-Feldman doctrine applies, and we will be making a motion
3 to dismiss.

4 THE COURT: All right. Anybody else on the phone wish
5 to be heard?

6 MR. ISENBERG: Your Honor, very briefly. Again, Adam
7 Isenberg of Saul Ewing, on behalf of Jeffrey Stephan. I expect
8 that we will be filing a motion to dismiss as well. We would
9 support the idea of the amended complaint, I should say, being
10 filed before motions to dismiss. And we think the idea of
11 holding off discovery until a disposition of motions to
12 dismiss, we think that does make sense.

13 THE COURT: What was your client's role in connection
14 with this?

15 MR. ISENBERG: Oh, I'm sorry, Your Honor. My client,
16 as I understand it, is an employee of GMAC.

17 THE COURT: All right. Thank you. Did your client
18 file a claim for indemnification contribution?

19 MR. ISENBERG: I'm aware that my client did file a
20 claim, Your Honor. I would have to look at it again to recall
21 whether it was for indemnification or for something else.

22 THE COURT: All right. Anybody else on the phone wish
23 to be heard?

24 All right. Ms. Nora, when will you be in a position
25 to file an amended complaint, because I -- let me just say,

1 because this is already -- this is the second complaint
2 already, I am going to give you an opportunity, and you
3 indicated there may be more plaintiffs that are added. There
4 may be -- I don't know whether there are going to be other
5 causes of action, but so there's no mistake, I'm going to
6 permit one new complaint to be filed, and then we'll proceed
7 with motions to dismiss. And you'll have a chance, obviously
8 to respond to that, you or your -- if new counsel is coming in
9 . Have you selected counsel?

10 Could you come up to the microphone?

11 MS. NORA: Thank you, Your Honor. Yes, actually, I
12 believe that there will be several attorneys acting --

13 THE COURT: Okay.

14 MS. NORA: -- as co-counsel.

15 THE COURT: All right.

16 MS. NORA: And what I was going to indicate to the
17 Court is that because of the complexity of the matter, the
18 multiple parties involved, this would be a -- I think we need
19 to take a careful look at this subject matter jurisdiction, as
20 it applies to bringing the case before this Court.

21 There is a background that does require, I believe, it
22 to be brought before this Court, which obviously is why I'm
23 here. I would really appreciate forty-five days because of the
24 complexity of the case. And it's been sitting, properly filed
25 before this Court, since February. And it's the debtors'

1 special order that has prevented us from being able to go
2 forward in any way, which is exactly what happened in the
3 Western District of Wisconsin, in the sense that the bankruptcy
4 filing stayed any ability I would have had to amend, to make
5 more clear my position with respect to the underlying state
6 court matters, and when I discovered that forged documents were
7 being used to confiscate my home, which was after judgment was
8 entered. So I would like forty-five days.

9 And I would probably remain as co-counsel for myself,
10 to the extent that I'm one of the plaintiffs.

11 THE COURT: Let me ask -- it's maybe a little hard for
12 the defendants' counsel to specifically respond to this, but
13 how much time -- once the amended complaint is filed, how much
14 time do you think you want, to prepare your motions to dismiss?

15 MS. WEBB: Your Honor, my inclination would be to say
16 perhaps forty-five days to consider what's in there and perhaps
17 try to coordinate briefing amongst ourselves, if that ends up
18 being possible.

19 THE COURT: Yeah. To the extent -- I'm fully in favor
20 of that, to the extent there are similar -- you know, there --
21 the summary judgment jurisdiction argument is -- at least as I
22 think will arise, will be as to the nondebtor defendants,
23 because it's a dispute wholly between nondebtors. And I think,
24 actually, the law is fairly well established as to what is
25 required to establish subject matter jurisdiction in those

1 circumstances. But to the extent people can join in a single
2 moving brief, that's better.

3 What I'm going to do is this. Ms. Nora, because of
4 both Thanksgiving and then the Christmas holidays, I'm going to
5 set a deadline for an amended complaint, of January 15th, 2014.
6 If you get it in earlier, that's fine. Okay? But I'm setting
7 the deadline as January 15th, 2014. Motions to dismiss, I'll
8 set the date now as forty-five days from service of the amended
9 complaint. If somehow they rush and get the complaint before
10 the holidays, I'll certainly look at -- you know, if they don't
11 wait until -- I'm going to use that same holiday theory. It
12 may be that I'll give you, you know, if you raise it. What I
13 would suggest, in the first instance, raise it with Ms. Nora
14 and whoever new counsel comes in with her. To the extent
15 you're -- you know, absent a stipulation that's approved by the
16 Court, I'm ordering that an amended complaint be filed by
17 January 15th; motions to dismiss forty-five days thereafter.

18 MS. NORA: Briefs and responses --

19 THE COURT: I'm going to set a date for reply -- a
20 period for reply. Fourteen days for reply. I ordinarily only
21 allow seven days, but I'm going to allow fourteen days for a
22 reply. If counsel work out another schedule that doesn't
23 inordinately drag out this schedule, put it in the form of a
24 proposed stipulation and order. So I frequently try to rely on
25 counsel to work out a schedule that they think works for them.

1 But in the absence of some other agreement, which would have to
2 be approved by the Court, I'm setting the dates that I've given
3 you: January 15th for the amended complaint; forty-five days
4 thereafter -- forty-five days after the service of the amended
5 complaint for motion to dismiss. Reply, fourteen days after
6 service of the motion to dismiss. Discovery is stayed, pending
7 the motion to dismiss. After getting the briefing, I will set
8 a hearing date on the motions. I'm not going to set a hearing
9 date now, because it may be a little unclear when all the
10 briefing is completed. But I generally schedule argument
11 reasonably promptly after the last brief is filed.

12 Ms. Nora, you wanted to be heard again?

13 MS. NORA: Yes, Your Honor, thank you. I do engage in
14 a lot of complex litigation, and I just wanted to be clear that
15 is the debtors' motions to dismiss to which I would be
16 responding.

17 THE COURT: Oh, I know -- not only the debtors, but
18 every other defendant that's indicated it intends to make a
19 motion to dismiss.

20 MS. NORA: Well, the debtor/defendants, okay. So the
21 response would be generally under the Federal Rules of Civil
22 Procedure of fourteen days. And then the debtors would be --
23 and the other defendants would be replying. Am I missing
24 something?

25 THE COURT: You are. You're filing a complaint. All

1 of them are going to file a motion to dismiss.

2 MS. NORA: Right.

3 THE COURT: You're going to file a response to the
4 motion to dismiss -- you're right, they get to do the reply.

5 MS. NORA: That's -- yeah --

6 THE COURT: So they have fourteen --

7 MS. NORA: -- that's what I thought.

8 THE COURT: Yes, you're absolutely right. They get
9 fourteen days to do a reply after you file your response to the
10 motion.

11 MS. NORA: Then I would -- because of the complexity
12 of the case, I would like thirty days to respond. If we're
13 having forty-five days for them to even put their briefs
14 together, you can imagine -- unless I concede --

15 THE COURT: You're right.

16 MS. NORA: -- the subject matter jurisdiction, as
17 you've indicated, Your Honor, that in this district that may be
18 clear, then we probably won't have a problem. But I am here
19 because of the Rooker-Feldman dismissal in the Western District
20 of Wisconsin, which is on appeal to the Seventh Circuit. And
21 with respect to the debtors' assertion that I failed to file my
22 reply, a reply is not required --

23 THE COURT: Okay.

24 MS. NORA: -- as the Court well knows.

25 THE COURT: I stand corrected; you're absolutely

1 correct. The amended complaint is due January 15th. The
2 defendants have forty-five days to file motions to dismiss.
3 I'm going to give the plaintiffs forty-five days to respond to
4 the motions to dismiss. And I'm going to give the defendants
5 fourteen days to do a reply thereafter. I'll come back --
6 you're absolutely correct; I appreciate that, Ms. Nora.

7 To the extent that you all confer and want to adjust
8 this schedule and can agree upon that, put it in the form of a
9 stipulation and order, submit it to the Court, and unless it
10 inordinately drag -- this is already a long schedule, but there
11 are a lot of issues, I think, that would be raised -- I'll
12 consider it.

13 Discovery is stayed pending the Court's consideration
14 of the motions to dismiss. And as I said, I ordinarily
15 schedule a hearing on motions fairly promptly after all the
16 briefing is done. Okay?

17 MS. NORA: Your Honor, with respect to a possible
18 motion to remove the reference, when would you want that to be
19 filed?

20 THE COURT: Ms. Nora, I don't deal with motions to
21 withdraw the reference; the district court does.

22 MS. NORA: So that is not covered by this scheduling
23 order --

24 THE COURT: I don't --

25 MS. NORA: -- because it does certainly address the

1 subject matter issue.

2 THE COURT: I don't deal with motions to withdraw the
3 reference under --

4 MS. NORA: I know. It's the --

5 THE COURT: -- the judicial code --

6 MS. NORA: -- district court.

7 THE COURT: -- it's for the district court to deal
8 with.

9 MS. NORA: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. WISHNEW: Your Honor, Jordan Wishnew, Morrison &
12 Foerster. I believe that brings us to the end of today's
13 agenda. Debtors sincerely appreciate Your Honor's time and
14 patience throughout the day.

15 THE COURT: Okay. We're adjourned.

16 (Whereupon these proceedings were concluded at 2:22 p.m.)
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I N D E X

RULINGS

	Page	Line
Amended complaint is due January 15th	27	1
Defendants have forty-five days to	27	1
file motions to dismiss		
Plaintiffs have forty-five days to	27	3
respond to the motions to dismiss		
Defendants have fourteen days to reply	27	4
Discovery is stayed pending the Court's	23	13
consideration of the motions to dismiss		

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

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

Sharona Shapiro

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET**D 492

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Date: October 11, 2013