

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

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*,

Debtors.

Case No. 12-12020 (MG)

(Jointly Administered)

MARION L. JENKINS AND SHARON
JENKINS,

Plaintiffs,

v.

Adv. Pro. Case No. 12-01935 (MG)

RESIDENTIAL FUNDING COMPANY,
LLC, *et al.*,

Defendants.

**ORDER DISMISSING PLAINTIFFS' AMENDED COMPLAINT
AND CLOSING CASE**

This adversary proceeding was filed on November 9, 2012. (ECF Doc. # 1.) A summons and notice of pre-trial conference was issued on November 14, 2012. (ECF Doc. # 5.) Service of the summons and complaint was required to be made by the Plaintiffs on each defendant pursuant to Fed. R. Bankr. P. 7004. Pursuant to Rule 7004(a)(1), Rule 4(m) of the Federal Rules of Civil Procedure applies to service of an adversary complaint. Rule 4(m) provides, in pertinent part, that a defendant must be served within 90 days after the complaint is filed. Prior to the 2015 amendment to this Rule, the Rule required that a defendant be served with the summons and complaint within 120 days after the complaint is filed. Local Bankruptcy Rule 9078-1 requires that a party serving a pleading must file a certificate of service within three days following service.

The plaintiffs in this adversary proceeding, Marion L. Jenkins and Sharon Jenkins



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(“Plaintiffs”), failed to serve the defendants with the summons, complaint, and amended complaint, as required by Fed. R. Bankr. P. 7004 and F. R. Civ. P. 4, within 120 days after filing a complaint. The Plaintiffs also failed to file a certificate of such service as required by Local Bankruptcy Rule 9078-1.

Following Plaintiffs’ failure to serve the summons, complaint, and amended complaint, the Court entered the Order to Show Cause Why this Case Should Not be Dismissed and Closed (ECF Doc. # 56), which provided “The Plaintiffs may file a written response to this Order to Show Cause on or before 5:00 p.m., January 17, 2019. In the absence of a written response from Plaintiffs, the Amended Complaint will be dismissed against defendants Mortgage Lenders Network, USA Inc., Shapiro & Swertferger, Jr., Gerald M. Shapiro, America’s Servicing Company, EMAX Financial Groups, LLC and Michele Morales, and the case will be closed without a hearing.” As of the date of this Order, Plaintiffs have failed to file a written response. Due to Plaintiffs’ failure to comply with the aforementioned rules and failure to respond to the Order to Show Cause, it is hereby **ORDERED** that

1. Plaintiffs’ Amended Complaint is dismissed, and
2. Plaintiffs’ case is closed.

IT IS SO ORDERED.

Dated: January 23, 2018
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

Notice Recipients

District/Off: 0208-1
Case: 12-01935-mg

User:
Form ID: pdf001

Date Created: 1/23/2019
Total: 22

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

dft Jack L. Swertfeger Jr.
dft Gerald M. Shapiro
dft America's Servicing Company
dft Mortgage Electronic Registration System
dft US Bank National As Trustee For RASC 2006-EMX 4
dft EMAX Financial Groups LLC
dft Michele Morales
dft Judy Faber, Vice President U.S. Bank National Association
dft Residential Funding Company, LLC

TOTAL: 9

Recipients of Notice of Electronic Filing:

aty Brian J. Grieco bgrieco@ackermanlevine.com
aty Christopher L. Hawkins chawkins@bradleyarant.com
aty James P. Watkins jwatkins@babco.com
aty Norman Scott Rosenbaum nrosenbaum@mofo.com
aty Stefan W. Engelhardt sengelhardt@mofo.com

TOTAL: 5

Recipients submitted to the BNC (Bankruptcy Noticing Center):

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pla Sharon Jenkins 405 Grant Park Place Atlanta, GA 30315
dft Residential Funding Company, LLC 8400 Normandale Lake Blvd. Suite 350 Minneapolis, MN 55437
dft Mortgage Lenders Network, USA Inc. Middlesex Corporate Center 213 Court Street 11th Floor Middletown, CT 06457
dft Shapiro & Swertfeger, LLP Buke Building Suite 100 2872 Woodcook Boulevard Atlanta, GA 30341
cna Kurtzman Carson Consultants LLC 2335 Alaska Avenue El Segundo, CA 90245
ust Office of the United States Trustee Eastern District of NY (Brooklyn Office) U.S. Federal Office Building 201 Varick Street, Suite 1006 New York, NY 10014
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TOTAL: 8