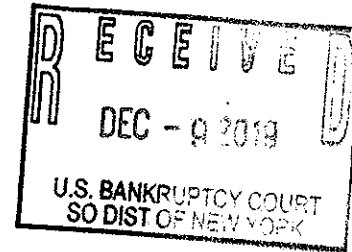


Alberto Rodriguez, Sui Juris/Registered Agent for the
ALBERTO RODRIGUEZ, REGISTERED ORGANIZATION
Maria Rodriguez Registered Agent for the
MARIA RODRIGUEZ, REGISTERED ORGANIZATION
1232 Wissmann Drive
Ballwin, Missouri republic
near [63011]
Located outside the District of Columbia



IN THE US BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | | |
|---------------------------------------|---|---------------------------------|
| In re: Residential Capital, LLC, |) | |
| Debtor |) | Case No.: 12-12020mg |
| |) | |
| |) | |
| |) | Adversarial Proceeding Case No. |
| |) | |
| |) | <u>19-01320 (MG)</u> |
| Alberto Rodriguez and Maria Rodriguez |) | |
| Plaintiffs, Claimants at law, |) | MEMORANDUM OF LAW IN |
| Aggrieved Parties |) | SUPPORT OF MOTION |
| |) | FOR LEAVE TO |
| |) | AMEND THE ADVERSARY |
| |) | PROCEEDING |
| v. |) | |
| |) | |
| Residential Capital, LLC, Homecomings |) | |
| Financial, LLC, FKA Homecomings |) | |
| Financial Network, Inc., OCWEN LOAN |) | |
| SERVICING, LLC, DOES 1 through 15, |) | |
| inclusive, |) | |
| Defendants |) | |

1. I, Alberto Rodriguez, hereby supply this Memorandum of Law in Support of the
Motion For Leave to Amend the Adversary Complaint.



**A. THE GOVERNING LAW FOR ADVERSARY PROCEEDINGS
MANDATES THE LITIGATION OF A THE VALIDITY OR EXTENT OF
A LIEN.**

2. There is a current assignment recorded in the county real estate records in St Louis County, but it is signed about one year after Homecomings Financial, LLC and their parent company filed a bankruptcy petition. This violates the Federal Rules of Bankruptcy, wherein assets of a bankruptcy estate cannot be assigned or sold when there is a bankruptcy in process. In addition, it appears that the Deed of Trust was Assigned to Freddie Mac based upon the claims to ownership of the Rodriguez loan is on their website. THE ABOVE ASSIGNMENT WAS MADE IN VIOLATION OF THE FEDERAL RULES OF BANKRUPTCY AND It is important to note that the Rodriguez Note and Deed of Trust, is an asset of the bankruptcy estate of Residential Funding Company, LLC, the Parent Company of the original lender, and said loan cannot be assigned without permission from the bankruptcy Judge. Any claim that we do not have a right to litigate this matter is a violation of the due process clause of the Fourteenth Amendment. Given the level of controversy regarding the actual identity of the creditor we clearly have a right to seek resolution of these issues under the law that governs adversary proceedings, see Federal Rules Of Bankruptcy Procedure Rule 7001, Subsections (2), (3), and (9).

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;
or

**B. FEDERAL AND STATE LAW MANDATES A WRITTEN AND
RECORDED ASSIGNMENT OF DEED OF TRUST RECORDED IN THE
COUNTY REAL ESTATE RECORDS.**

3. In Missouri, State law requires the original lender to assign and record an Assignment of Deed of Trust, see Missouri Revised Statutes 443.035 Recording of Instrument Required- failure to record -effects on persons subsequently obtaining interest or lien.

4. In addition, Federal law requires the Assignment of the Deed of Trust to be recorded in the County Records, see Title 15 US Code, § 1641(f) and 1641(g).

Title 15 US Code, § 1641(f) states as follows:

(f) Treatment of servicer

(1) In general

A servicer of a consumer obligation arising from a consumer credit transaction **shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.**

(2) Servicer not treated as owner on basis of assignment for administrative convenience

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) "Servicer" defined

For purposes of this subsection, the term "servicer" has the same meaning as in section 2605 (i)(2) of title 12.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

5. Title 15 US Code § 1641(g) requires the assignment to be recorded and states as follows:

(g) Notice of new creditor

(1) In general

In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

(A) the identity, address, telephone number of the new creditor;

(B) the date of transfer;

(C) how to reach an agent or party having authority to act on behalf of the new creditor;

(D) the location of the place where transfer of ownership of the debt is recorded; and

(E) any other relevant information regarding the new creditor.

(2) Definition

As used in this subsection, the term “mortgage loan” means any consumer credit transaction that is secured by the principal dwelling of a consumer.

[Emphasis added.]

C. THE PLAINTIFF’S CANNOT BE LEFT WITHOUT A REMEDY.

6. In the momentous 1803 case *Marbury v. Madison*, 5 US 137, Chief Justice Marshall observed that the “**very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury**” and warned that a government cannot be called a “**government of laws, and not of men if the laws furnish no remedy for the violation of a vested legal right.**”

[Emphasis added.]

7. When the government itself violates individuals' rights, it is especially important for courts to furnish a remedy. To be sure, providing remedies to the victims of unconstitutional conduct after the fact is often at best an imperfect solution. While money plausibly provides full compensation to, say, a government worker denied income while suspended for engaging in First Amendment-protected activity, it may be far less effective in a case involving an unconstitutional strip search: Can money really restore the sense of security that the victim has lost? If not, perhaps it can at least enable them to begin rebuilding their life.

8. Ideally, backward-looking remedies can deter future violations. If government officials or agencies know that they will be held to account, they will be less likely to commit violations in the first place. And injunctive remedies—judicial orders either to stop engaging in a particular practice (for example, racial profiling of motorists) or to start doing something the government has so far failed to do (for example, issuing marriage licenses to same-sex couples)—have been critical to enforcing civil rights and civil liberties.

9. More broadly, judicial remedies perform an important expressive function: they drive home to the public that the law takes constitutional violations seriously. This can galvanize popular movements to vindicate constitutional values

even more fully. For example, the Supreme Court's decisions in *Brown v. Board of Education* (1954–55), held that purposeful racial segregation of public schools violated the Fourteenth Amendment's equal protection clause and ordered that school boards dismantle their dual school systems.

10. The *Brown* decisions by themselves achieved very little actual integration, but the Court's condemnation of segregation provided critical support to a mass movement that culminated in statutes such as the Civil Rights Act of 1964, which crafted more effective tools for dismantling Jim Crow in schools, public accommodation, employment, and housing.

**D. THE ASSIGNMENT OF THE SERVICING RIGHTS BY GMAC
DID NOT TRANSFER A PROPERTY INTEREST IN THE NOTE AND
DEED OF TRUST.**

11. Assignment of the Servicing Rights by GMAC Mortgage, LLC to OCWEN LOAN SERVICING, LLC did not involve transfer of the note and deed of trust, which was owned by the loan originator, Homecomings Financial, LLC and can only be sold to Freddie Mac by Homecomings Financial, LLC. The loan originator did not sell or assign the note and deed of trust before the bankruptcy case was filed by RESIDENTIAL CAPITAL, LLC, and they never assigned the Note and Deed of Trust after the bankruptcy was filed. Furthermore, GMAC

Mortgage, LLC did not own the Note and Deed of Trust and could not assign the note and Deed of Trust because they did not own the note and deed of trust. Only Homecomings Financial, LLC has ever had the powers to sell or assign the note and Deed of Trust.

Respectfully Submitted,

DATED: 12-06-2019

ALBERTO RODRIGUEZ,
REGISTERED ORGANIZATION
Not an accommodation UCC 3-419

By Alberto Rodriguez

Alberto Rodriguez, Sui Juris/Registered Agent
Missouri national in the geographic region known as
one of the several states of the American Union

DATED: 12-06-2019

MARIA RODRIGUEZ,
REGISTERED ORGANIZATION
Not an accommodation UCC 3-419

By Maria Rodriguez

Maria Rodriguez, Sui Juris/Registered Agent
Missouri national in the geographic region known as
one of the several states of the American Union

PROOF OF SERVICE BY MAIL

I David Lopez, now certify that I am domiciled in the Saint Louis-county. I am over the age of eighteen years and I did in fact serve as follows: On the 06th of December, 2019 date, I served by mail a true copy of **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO AMEND THE ADVERSARY PROCEEDING**, by placing said document in an envelope postage prepaid and placing the envelope in the US mail for Case No. 19-01320 (MG) in The US BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, upon the agent of the Defendants RESIDENTIAL CAPITAL, LLC AND HOMECOMINGS FINANCIAL, LLC, located at;

MORRISON & FOERSTER, LLC
250 WEST 55TH Street
New York, New York 10019

7019 0160 0000 6299 5144

My mailing location is:

733 Ridewood Drive, Hazelwood Missouri 63042

VERIFICATION

I hereby affirm all facts stated in this Proof of Service are true of my own knowledge except for those facts, which are stated upon information and belief, and as to those such matters, I believe them to be also true. On the 06th of December, 2019 (date).

David Lopez

NOTICE TO THE AGENT IS NOTICE TO THE PRINCIPAL NOTICE TO THE PRINCIPAL IS
NOTICE TO THE AGENT

PROOF OF SERVICE BY MAIL

I David Lopez, now certify that I am domiciled in the Saint Louis-county, I am over the age of eighteen years and I did in fact serve as follows: On the 06th of December, 2019 date, I served by mail a true copy of **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO AMEND THE ADVERSARY PROCEEDING**, by placing said document in an envelope postage prepaid and placing the envelope in the US mail for Case No. 19-01320 (MG) in The US BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, upon the agent of the Defendants OCWEN LOAN SERVICING, LLC, located at;

OCWEN LOAN SERVICING, LLC

1661 Worthington Road

West Palm Beach, Florida

33409

7019 0160 0000 6299 5199

My mailing location is:

733 Riderwood Drive, Hazelwood Missouri 63042

VERIFICATION

I hereby affirm all facts stated in this Proof of Service are true of my own knowledge except for those facts, which are stated upon information and belief, and as to those such matters, I believe them to be also true. On the 06th of December, 2019 (date).

David Lopez

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