

Hearing Date: December 18, 2014 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: December 8, 2014 at 4:00 p.m. (Prevailing Eastern Time)

MORRISON & FOERSTER LLP
250 West 55th St.
New York, NY 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett

*Counsel for the ResCap Borrower Claims
Trust*

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

-----)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
-----)	

**RESCAP BORROWER CLAIMS TRUST'S JOINDER AND
SUPPLEMENTAL OBJECTION TO OCWEN LOAN
SERVICING LLC'S OBJECTION TO CLAIM OF ROBERT DE SIMONE**



**TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:**

The ResCap Borrower Claims Trust (the “Borrower Trust”), established pursuant to the terms of the Chapter 11 plan confirmed in the above captioned bankruptcy cases (the “Chapter 11 Cases”) [Docket No. 6065], as successor in interest to the above captioned debtors (collectively, the “Debtors”) with respect to Borrower Claims (as defined below), hereby submits this joinder and supplemental objection (the “Joinder and Supplemental Objection”) to the *Objection to Claim of Robert De Simone* filed by Ocwen Loan Servicing, LLC (“Ocwen”) [Docket No. 7539] (the “Ocwen Objection”), seeking to disallow and expunge, without leave to amend, proof of claim no. 3829 (the “Claim”) filed by Robert De Simone (the “Claimant”) against Debtor GMAC Mortgage, LLC for \$825,703.23, pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3007(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), on the grounds that the Claim fails to state a basis for liability against the Debtors.¹ The Borrower Trust seeks entry of an order substantially in the form annexed hereto as Exhibit 1 (the “Proposed Order”) granting the requested relief. In support of the Objection, the Borrower Trust submits the declaration of Kathy Priore, Associate Counsel for the ResCap Liquidating Trust (the “Priore Declaration”), attached hereto as Exhibit 2, and the declaration of Norman S. Rosenbaum of Morrison & Foerster LLP, counsel to the Borrower Trust (the “Rosenbaum Declaration”), attached hereto as Exhibit 3.

¹ The Borrower Trust reserves all of its rights to object on any other basis to the Claim not set forth in this Joinder and Supplemental Objection, and the Borrower Trust reserves all of its rights to amend this Joinder and Supplemental Objection should any further bases come to light.

PRELIMINARY STATEMENT

1. The Claim asserts two causes of action against GMAC Mortgage, LLC (“GMACM”). The first is a cause of action for rescission and the second is a cause of action under Mass. G.L. c. 93A (“Chapter 93A”). In the Ocwen Objection, Ocwen objects to the cause of action for rescission on the grounds that it is barred by the doctrine of res judicata. The Borrower Trust supports and joins in the Ocwen Objection; however, Ocwen does not specifically object to the cause of action under Chapter 93A.

2. Accordingly, in the interest of judicial economy, the Borrower Trust submits this Joinder and Supplemental Objection by which it adopts and incorporates by reference the Ocwen Objection and objects to the Claim on the basis that the alleged cause of action under Chapter 93A cannot be supported as a matter of law. Massachusetts law is clear that an assignee of a loan cannot be held liable for alleged wrongful conduct that occurred during the origination of the loan when the assignee had no involvement with the purported wrongful conduct. GMACM first became involved with the loan two years after its origination. Therefore, for the reasons discussed herein, it cannot be liable to the Claimant under Chapter 93A.

JURISDICTION, VENUE, AND STATUTORY PREDICATE

3. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007(a).

BACKGROUND

5. On May 14, 2012, each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

6. On May 16, 2012, the Court entered an order [Docket No. 96] appointing Kurtzman Carson Consultants LLC (“KCC”) as the notice and claims agent in these Chapter 11 Cases. Among other things, KCC is authorized to (a) receive, maintain, and record and otherwise administer the proofs of claim filed in these Chapter 11 Cases and (b) maintain the official claims register for the Debtors (the “Claims Register”).

7. On November 12, 2012, the Claimant filed the Claim.

8. On March 21, 2013, this Court entered an order approving procedures for the filing of objections to proofs of claim filed in these Chapter 11 Cases [Docket No. 3294] (the “Procedures Order”). The Procedures Order includes specific protections for Borrowers² and sets forth a process for the Debtors to follow before objecting to certain categories of Borrower Claims (the “Borrower Claim Procedures”).

9. On December 11, 2013, the Court entered the *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the “Confirmation Order”) approving the terms of the Chapter 11 plan, as amended (the “Plan”), filed in these Chapter 11 cases [Docket No. 6065]. On December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred [Docket No. 6137].

² As used herein, the terms “Borrower” and “Borrower Claims” have the meanings ascribed to them in the Plan (defined below).

10. The Plan provides for the creation and implementation of the Borrower Trust, which is established for the benefit of Borrowers who filed claims to the extent such claims are ultimately allowed either through settlement or pursuant to an Order of the Court. See Plan, Art. IV.F. The Borrower Trust was established to, among other things, “(i) direct the processing, liquidation and payment of the Allowed Borrower Claims in accordance with the Plan, and the distribution procedures established under the Borrower Claims Trust Agreement, and (ii) preserve, hold, and manage the assets of the Borrower Claims Trust for use in satisfying the Allowed Borrower Claims.” See id.

11. On September 15, 2014, Ocwen filed the Ocwen Objection.

RELIEF REQUESTED

12. The Borrower Trust files this Joinder and Supplemental Objection, pursuant to Bankruptcy Code section 502(b) and Bankruptcy Rule 3007, and seeks entry of an order, substantially in the form annexed hereto as Exhibit 1, disallowing and expunging the Claim with prejudice from the Claims Register.

13. Specifically, the Borrower Trust adopts in its entirety the Ocwen Objection. However, the Borrower Trust respectfully submits that pursuant to the Plan, the Confirmation Order and the Borrower Trust Agreement, only the Borrower Trust has standing to object to the Claim.³ Counsel to the Borrower Trust advised counsel to Ocwen

³ *See* The ResCap Borrower Claims Trust Trust Agreement [D.E. 6136 at 2.2(a) (“The Borrower Claims Trust is established for the purpose of directing the reconciliation, processing, liquidation and payment of the Allowed Borrower Claims”); *see also* 6.2(a) (“The Borrower Claims Trustee, or one or more of the Borrower Claims Trust Agents designated by the Borrower Claims Trustee if, and to the extent, authorized by the Trust Committee, shall be authorized to resolve, on behalf of the Borrower Claims Trust, all Disputed Borrower Claims without further Bankruptcy Court order ...”)]; *see also* Plan, Art. IV.F. (providing for the creation and implementation of the Borrower Trust, which will, among other things, “direct the processing, liquidation and payment of the Allowed (Cont.’d)

of its position, and Ocwen's counsel has no objection to the Borrower Trust prosecuting the objection to the Claim on the bases set forth in the Ocwen Objection and herein.

OBJECTION

14. A filed proof of claim is "deemed allowed, unless a party in interest ... objects." 11 U.S.C. §502(a). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." 11 U.S.C. 502(b)(1). Furthermore, the burden of persuasion once an objection refutes an essential allegation of the claim is on the holder of a proof of claim to establish a valid claim against a debtor by a preponderance of the evidence. Feinberg v. Bank of N.Y. (In re Feinberg), 442 B.R. 215, 220-22 (Bankr. S.D.N.Y. 2010).

Background Facts

15. Non-Debtor MortgageIT, Inc. ("MortgageIT") originated a loan to the Claimant on January 30, 2007. See Priore Declaration ¶ 6. An assignment of the mortgage was recorded from MERS to GMACM on October 2, 2009, and from GMACM to HSBC Bank, NA as Trustee on April 2, 2013. See id. GMACM serviced the loan from February 9, 2007 until servicing of the loan assigned to Ocwen on February 16, 2013. See id. No Debtor was involved in the origination of the loan. See id.

16. In 2010, the Claimant commenced an action in Middlesex County Superior Court in Massachusetts (the "Superior Court") against GMAC Mortgage, LLC

Borrower Claims in accordance with the Plan, and the distribution procedures established under the Borrower Claims Trust Agreement."

(“GMACM”) and other defendants. See Priore Declaration ¶ 7. A copy of the Complaint is attached to the Ocwen Objection as Exhibit A. GMACM filed for summary judgment on count I for rescission (the “Rescission Claim”) and count IV for violation of the Consumer Protection Statute Mass. G.L. c. 93A (the “93A Claim”), as they were the only counts asserted against GMACM. See id.

17. The Superior Court granted summary judgment in favor of GMACM on the Rescission Claim and the 93A Claim on May 22, 2012. See Priore Declaration ¶ 8. As a consequence of the filing of a notice of bankruptcy, the proceedings were stayed before the Superior Court entered a final judgment. See id. On September 10, 2012, the Superior Court permitted litigation to proceed as to the Rescission Claim, but not to the 93A Claim. See id. The Superior Court entered a final judgment dismissing the Rescission Claim on October 23, 2012 (the “Superior Court Decision”). See id.

18. The Claimant appealed the Superior Court Decision on November 21, 2012, and on February 25, 2014, the Massachusetts Appeals court affirmed the Superior Court Decision. See Prior Declaration ¶ 9.

The Rescission Claim

19. The Borrower Trust asserts that Ocwen sufficiently demonstrated that the Debtors are not liable for the Rescission Claim in the Ocwen Objection because that claim is barred by the doctrine of res judicata and adopts and incorporates by reference the Ocwen Objection. See Ocwen Objection at 4-5. As a result, the Borrower Trust will not address the Rescission Claim further.

The 93A Claim

20. In the Complaint, the Claimant alleges that MortgageIT purportedly provided an inaccurate disclosure on the truth in lending statement and provided Claimant with an unaffordable loan. See Complaint, ¶¶ 19-23. The Claimant also alleges that GMACM is liable for the actions of MortgageIT under Chapter 93A as an assignee of the loan. See Complaint, ¶¶ 34-35.

21. Massachusetts law is clear that an assignee of a mortgage loan that was not involved in the alleged wrongful conduct cannot be held liable under Chapter 93A. See McBride v. Am. Home Mortg. Servicing, Inc., Case No. 11-10998-RWZ, 2012 WL 931247, at 3-4 (D. Mass. Mar. 19, 2012) (assignee not “connected to the alleged improprieties during the loan’s origination” and a Chapter 93A claim “directed at the execution of the initial mortgage” failed as against assignee); Riga v. Deutsche Bank Nat’l Trust Co. (In re Riga), Adv. Proc. No. 10-1083, 2011 WL 1115084, at 1 (Bankr. D. Mass. Mar. 25, 2011) (“A claim under 93A against an assignee may not be predicated solely on conduct of the assignor”); McKensi v. Bank of Am., N.A., No. 09-11940-JGD, 2010 WL 3781841, at 3 (D. Mass. Sept. 22, 2010) (where wrongful conduct occurred before assignee involved, plaintiff failed to state a Chapter 93A claim against the assignee).

22. No Debtor was involved in the origination of the loan, nor had any affiliation with the loan until GMACM was assigned an interest in the mortgage more than two years after the purported wrongful acts occurred. Additionally, the Claimant does not proffer any factual allegations of wrongdoing against GMACM that are distinct from the allegations made against MortgageIT. Therefore, Claimant fails to adequately plead a cause

of action against GMACM under Chapter 93A and for the reasons stated, GMACM cannot be held liable for a violation of Chapter 93A.

NOTICE

23. The Borrower Trust has provided notice of this Objection in accordance with the Case Management Procedures Order, approved by this Court on May 23, 2012 [Docket No. 141] and the Procedures Order.

CONCLUSION

WHEREFORE, the Borrower Trust respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as this Court may deem proper.

Dated: November 17, 2014
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett
MORRISON & FOERSTER LLP
250 West 55th St.
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

Counsel for the ResCap Borrower Claims Trust

Hearing Date: December 18, 2014 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: December 8, 2014 at 4:00 p.m. (Prevailing Eastern Time)

MORRISON & FOERSTER LLP
250 W. 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett

*Counsel for the ResCap Borrower
Claims Trust*

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

-----)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
-----)	

**NOTICE OF RESCAP BORROWER CLAIMS TRUST'S JOINDER AND
SUPPLEMENTAL OBJECTION TO OCWEN LOAN SERVICING LLC'S
OBJECTION TO CLAIM OF ROBERT DE SIMONE**

PLEASE TAKE NOTICE that the undersigned has filed the attached *ResCap Borrower Claims Trust's Joinder and Supplemental Objection to Ocwen Loan Servicing LLC's Objection to Claim of Robert De Simone* (the "**Objection**").

PLEASE TAKE FURTHER NOTICE that a hearing on the Objection will take place on **December 18, 2014 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501 (the "**Bankruptcy Court**").

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Objection must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141] and the Claims Procedures Order [Docket No. 3294], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **December 8, 2014 at 4:00 p.m. (Prevailing Eastern Time)**, upon (a) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408; (b) counsel to the ResCap Borrower Claims Trust, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attention: Norman S. Rosenbaum, Jordan A. Wishnew and Jessica J. Arett); (c) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Linda A. Riffkin and Brian S. Masumoto); (d) The ResCap Liquidating Trust, Quest Turnaround Advisors, 800 Westchester Avenue, Suite S-520, Rye Brook, NY 10573 (Attention: Jeffrey Brodsky); (e) The ResCap Borrower Claims Trust, Polsinelli PC, 900 Third Avenue, 21st Floor, New York, NY 10022 (Attention: Daniel J. Flanigan); and (f) counsel to Robert R. De Simone, Laird J. Heal, Esq., 120 Chandler Street, Suite 2R, Worcester, MA 01609.

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written response to the relief requested in the Objection, the Bankruptcy Court may deem

any opposition waived, treat the Objection as conceded, and enter an order granting the relief requested in the Objection without further notice or hearing.

Dated: November 17, 2014
New York, New York

/s/ Norman S. Rosenbaum
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

*Counsel for The ResCap Borrower
Claims Trust*

Exhibit 1

Proposed Order

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

-----)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
-----)	

**ORDER GRANTING THE RESCAP BORROWER CLAIMS TRUST’S JOINDER
AND SUPPLEMENTAL OBJECTION TO OCWEN LOAN SERVICING LLC’S
OBJECTION TO CLAIM OF ROBERT DE SIMONE INCORPORATED THEREIN**

Upon *Ocwen Loan Servicing LLC’s Objection to Claim of Robert De Simone* (the “Ocwen Objection”) of Ocwen Loan Servicing LLC (“Ocwen”) and the *ResCap Borrower Claims Trust’s Joinder and Supplemental Objection to Ocwen Loan Servicing LLC’s Objection to Claim of Robert De Simone* (the “Joinder and Supplemental Objection,” together with the Ocwen Objection, the “Claim Objection”) of the ResCap Borrower Claims Trust (the “Borrower Trust”) as successor to Residential Capital, LLC, and its affiliated debtors and debtors in possession (collectively, the “Debtors”) with respect to Borrower Claims, seeking entry of an order, pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure, and this Court’s order approving procedures for the filing of objections to proofs of claim [Docket No. 3294] (the “Procedures Order”), disallowing and expunging the proof of claim no. 3829 (the “Claim”) on the basis that the Debtors have no liability with respect to the Claim; and it appearing that this Court has jurisdiction to consider the Claim Objection pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Claim Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Claim Objection having been provided, and

it appearing that no other or further notice need be provided; and upon consideration of the Claim Objection, as well as the *Declaration of Kathy Priore in Support of The ResCap Borrower Claims Trust's Joinder and Supplemental Objection to Ocwen Loan Servicing LLC's Objection to Claim of Robert De Simone* annexed thereto as Exhibit 2; and the Court having found and determined that the relief collectively sought in the Claim Objection is in the best interests of the Borrower Trust, the Borrower Trust's beneficiaries, the Debtors, and all parties in interest and that the legal and factual bases collectively set forth in the Claim Objection establish just cause for the relief granted herein; and the Court having determined that the Claim Objection complies with the Borrower Claims Procedures set forth in the Procedures Order; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Claim Objection is granted to the extent provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Claim is hereby disallowed and expunged in its entirety with prejudice; and it is further

ORDERED that Kurtzman Carson Consultants LLC, the Debtors' claims and noticing agent, is directed to disallow and expunge the Claim so that it is no longer maintained on the Debtors' Claims Register; and it is further

ORDERED that the Borrower Trust is authorized and empowered to take all actions as may be necessary and appropriate to implement the terms of this Order; and it is further

ORDERED that notice of the Ocwen Objection and the Joinder and Supplemental Objection as provided therein shall be deemed good and sufficient notice of such objection, and the requirements of Bankruptcy Rule 3007(a), the Case Management Procedures entered on May

23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy Rules of this Court are satisfied by such notice; and it is further

ORDERED that this Order shall be a final order with respect to the Claim; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____, 2014
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 2

Priore Declaration

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

-----)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
-----)	

**DECLARATION OF KATHY PRIORE
IN SUPPORT OF RESCAP BORROWER CLAIMS TRUST'S
JOINDER AND SUPPLEMENTAL OBJECTION TO OCWEN LOAN
SERVICING LLC'S OBJECTION TO CLAIM OF ROBERT DE SIMONE**

I, Kathy Priore, hereby declare as follows:

1. I serve as Associate Counsel for the ResCap Liquidating Trust (the "Liquidating Trust"), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 6030] confirmed in the above-captioned Chapter 11 Cases. During the Chapter 11 Cases, I served as Associate Counsel in the legal department of Residential Capital, LLC ("ResCap"), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the "Debtors"). On May 1, 2008, I began as in-house litigation counsel at ResCap. Prior to my in-house litigation counsel position, I held various roles within the legal department at ResCap.

2. In my role as Associate Counsel at ResCap, I was responsible for the management of mortgage-related litigation. In connection with ResCap's chapter 11 filing, I also assisted the Debtors and their professional advisors in connection with the administration of the chapter 11 cases, including the borrower litigation matters pending before this Court. In my current position as Associate Counsel to the Liquidating Trust, among my other duties, I

continue to assist the Liquidating Trust and the Borrower Claims Trust (the “Borrower Trust”) in connection with the claims reconciliation process.¹ I am authorized to submit this declaration (the “Declaration”) in support of the *Rescap Borrower Claims Trust’s Joinder and Supplemental Objection to Ocwen Loan Servicing LLC’s Objection to Claim of Robert D. Simone* (the “Joinder and Supplemental Objection”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations, information learned from my review of relevant documents and information I have received through my discussions with other former members of the Debtors’ management or other former employees of the Debtors, the Liquidating Trust, and the Borrower Trust’s professionals and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth in the Joinder and Supplemental Objection on that basis.

4. In my current and former capacities as Associate Counsel to the Liquidating Trust and ResCap, I am intimately familiar with the Debtors’ claims reconciliation process. Except as otherwise indicated, all statements in this Declaration are based upon my familiarity with the Debtors’ Books and Records (the “Books and Records”), as well as the Debtors’ schedules of assets and liabilities and statements of financial affairs filed in these Chapter 11 Cases (collectively, the “Schedules”), my review and reconciliation of claims, and/or my review of relevant documents. I or other Liquidating Trust personnel have reviewed and analyzed the proof of claim form and supporting documentation filed by the Claimant and the Ocwen Objection. Since the Plan went effective and the Borrower Trust was established, I,

¹ The ResCap Liquidating Trust and the ResCap Borrower Claims Trust are parties to an Access and Cooperation Agreement, dated as December 17, 2013, which, among other things, provides the Borrower Trust with access to the books and records held by the Liquidating Trust and Liquidating Trust’s personnel to assist the Borrower Trust in performing its obligations.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Reply.

along with other members of the Liquidating Trust have consulted with the Borrower Trust to continue the claims reconciliation process, analyze claims, and determine the appropriate treatment of the same. In connection with such review and analysis, where applicable, I or other Liquidating Trust personnel, together with professional advisors, have reviewed (i) information supplied or verified by former personnel in departments within the Debtors' various business units, (ii) the Books and Records, (iii) the Schedules, (iv) other filed proofs of claim, and/or (vi) the official claims register maintained in the Debtors' Chapter 11 Cases.

5. The Debtors have taken steps in these Chapter 11 Cases to afford Borrowers who have filed proofs of claim additional protections, as set forth in the Borrower Claim Procedures approved by the Procedures Order. A Request Letter was sent to the Claimant on June 21, 2013. The Debtors did not receive a response from the Claimant.

6. Non-Debtor MortgageIT Inc. ("MortgageIT") originated a loan to the Claimant on January 30, 2007. The Note was endorsed by MortgageIT to blank, and is attached hereto as Exhibit A. An assignment of the mortgage was recorded from MERS to GMAC Mortgage, LLC ("GMACM") on October 2, 2009 and then from GMACM to HSBC Bank, NA, as Trustee on April 2, 2013. These assignments are attached hereto as Exhibit B. GMACM serviced the loan from February 9, 2007 until servicing of the loan was transferred to Ocwen on February 16, 2013. No Debtor was involved in the origination of the loan.

7. In 2010, the Claimant commenced an action in Middlesex County Superior Court in Massachusetts (the "Superior Court") against GMAC Mortgage, LLC ("GMACM") and other defendants. A copy of the Complaint is attached to *Ocwen Loan Servicing LLC's Objection to Claim of Robert De Simone* [Docket No. 7539] (the "Ocwen Objection") as Exhibit A. GMACM filed for summary judgment on count I for rescission (the

“Rescission Claim”) and count IV for violation of the Consumer Protection Statute Mass. G.L. c. 93A (the “93A Claim”), as they were the only counts asserted against GMACM.

8. The Superior Court granted summary judgment in favor of GMACM on the Rescission Claim and the 93A Claim on May 22, 2012. A copy of the Superior Court’s order granting summary judgment is attached to the Ocwen Objection as Exhibit B. As a consequence of the filing of a notice of bankruptcy, the proceedings were stayed before the Superior Court entered a final judgment. On September 10, 2012, the Superior Court permitted litigation to proceed as to the Rescission Claim, but not to the 93A Claim. The Superior Court entered a final judgment dismissing the Rescission Claim on October 23, 2012 (the “Superior Court Decision”). A copy of the Superior Court Decision is attached hereto as Exhibit C.

9. The Claimant appealed the Superior Court Decision on November 21, 2012, and on February 25, 2014, the Massachusetts Appeals Court affirmed the Superior Court Decision. A copy of the Appeals Court decision is attached to the Ocwen Objection as Exhibit D.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 17, 2014

/s/ Kathy Priore
Kathy Priore
Associate Counsel for ResCap Liquidating
Trust

Exhibit A

SEE "PREPAYMENT PENALTY ADDENDUM TO NOTE" ATTACHED HERETO AND MADE A PART HEREOF.

LOAN NO.: 0063

ADJUSTABLE RATE NOTE

MIN: 100112065737261798
MERS Phone: 1-888-679-6377

LOAN NO.: 0063

ADJUSTABLE RATE NOTE

MIN: 100112065737261798
MERS Phone: 1-888-679-6377

(MTA - Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

JANUARY 30, 2007

[Date]

WARWICK

[City]

RHODE ISLAND

[State]

11 OLD VILLAGE ROAD, ACTON, MA 01720

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 770,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed ONE HUNDRED FIFTEEN AND 000/1000THS (115.000 %) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is MORTGAGEIT, INC.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1st day of MARCH, 2007, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 275/1000THS percentage point(s) (3.275 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

Initials

3. PAYMENTS

(A) Time and Place of Payments

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the 1st day of each month beginning on MARCH, 2007.

I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on FEBRUARY 01, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at GMAC MORTGAGE LLC
P.O. BOX 780, WATERLOO, IA 50704-0780
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 2,476.62 unless adjusted under Section 3(F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1st day of MARCH, 2008, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount the Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN AND 000/1000THS percent (115.000 %) of the Principal amount I originally borrowed. My unpaid principal could exceed that Maximum Limit due to

Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

- (i) Interest Only Payment: the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.
- (ii) Fully Amortized Payment: the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.
- (iii) 15 Year Amortized Payment: the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 3.000 % of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:


Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


 ROBERT DESIMONE

(Seal)
 -Borrower

(Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

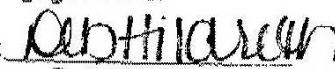
 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

Pay to the order of:

Without Recourse
 MortgageIT, Inc.

By: 
 Name: Deb Hildreth
 Its: Assistant Secretary

LOAN #: 4063
PROPERTY ADDRESS: 11 OLD VILLAGE ROAD, ACTON, MA, 01720

PREPAYMENT PENALTY ADDENDUM TO NOTE
(Massachusetts)

This "PREPAYMENT PENALTY ADDENDUM TO NOTE" (hereinafter "Addendum") is made this 30th day of January, 2007, and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") of the same date made by the undersigned (the "Borrower") to evidence indebtedness to

MortgageIT, Inc.

(the "Lender"), which debt is secured by a Mortgage or Deed of Trust or comparable security instrument (the "Security Instrument") of the same date and covering the property described in the Security Instrument and located at

11 OLD VILLAGE ROAD, ACTON, MA, 01720
(the "Property").

Additional Covenants. Notwithstanding anything to the contrary set forth in the Note or Security Instrument, Borrower and Lender covenant, and agree, that the provisions of the section of the Note entitled "BORROWER'S RIGHT TO PREPAY" are amended to read as follows:

Subject to the prepayment penalty provided below, I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." A "full prepayment" is the prepayment of the entire unpaid principal due under the Note. A payment of only part of the unpaid principal is known as a "partial prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payments due under the Note.

1. If the loan is prepaid in full during the first year, the maximum prepayment penalty may not exceed the lesser of 3 months' interest or the balance of the first year's interest.
2. If the loan is prepaid within three years for the purpose of refinancing the loan with another financial institution, then an additional payment not in excess of 3 months' interest may also be imposed.
3. No prepayment penalty is imposed on partial prepayments.

I will not be required to pay a Prepayment charge or additional penalty if the Note is paid in full after Twelve (12) months from the date of the Note.

Notwithstanding the foregoing, in the event of a full prepayment concurrent with a bona fide sale of the Property to an unrelated third party after the first TWELVE (12) months of the term of the Note, no prepayment penalty will be assessed. In that event, I agree to provide the Note Holder with evidence acceptable to the Note Holder of such sale.

X Initials R.R.D.

The Note Holder will apply all prepayments to reduce the amount of principal that I owe under the Note. However, the Note Holder may apply my prepayment to the accrued and unpaid interest on the prepayment amount, before applying my prepayment to reduce the principal amount of the Note. If I make a partial prepayment, there will be no change in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes.

If my Note is an Adjustable Rate Note, partial prepayments may reduce the amount of my monthly payment after the first interest rate Change Date following the partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

The Note Holder's failure to collect a prepayment charge at the time a prepayment is received shall not be deemed a waiver of such charge. Any prepayment charge not collected at the time the prepayment is received shall be payable on demand.

All other provisions of the Note are unchanged and remain in full force and effect.

NOTICE TO BORROWER

Do not sign this Addendum before you read it. This Addendum provides for the payment of a prepayment charge if you wish to repay the loan prior to the date provided for repayment in the Note.

ACKNOWLEDGMENT: I/we hereby acknowledge receiving this Addendum.


 _____ ROBERT DESIMONE	(Seal) Borrower	<u>11/22/07</u> _____ Date
_____	(Seal) Borrower	_____ Date
_____	(Seal) Borrower	_____ Date
_____	(Seal) Borrower	_____ Date

Exhibit B



2009 00183362
Bk: 53828 Pg: 284 Doc: ASM
Page: 1 of 2 10/02/2009 10:28 AM

ASSIGNMENT

Mortgage Electronic Registration Systems, Inc.

holder of mortgage from

Robert Desimone

to Mortgage Electronic Registration Systems, Inc.

dated January 30, 2007

recorded with Middlesex County (Southern District) Registry of Deeds
Book 48997, Page 1. assigns said mortgage and the note and claim

Secured thereby to GMAC Mortgage, LLC, 1100 Virginia Drive, Fort Washington, PA 19034

In witness whereof the said Mortgage Electronic Registration Systems, Inc.

Has caused its corporate seal to be hereto affixed and these presents to be signed, in its name and
behalf by

Jeffrey Stephan
Vice President

its

Mortgage Electronic Registration Systems,
Inc.

BY:

Orlans Moran, PLLC
P.O. Box 962169
Boston, MA 02196

Jeffrey Stephan
Vice President

STATE OF
COUNTY OF

Montgomery

Aug. 25, 2009

Middlesex South Registry of Deeds
Electronically Recorded Document
Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number	: 71298
Document Type	: ASM
Recorded Date	: April 02, 2013
Recorded Time	: 09:19:40 AM
Recorded Book and Page	: 61524 / 28
Number of Pages(including cover sheet)	: 2
Receipt Number	: 1551919
Recording Fee	: \$75.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.cambridgedeeds.com

When Recorded Return To:
Indecomm Global Services
2025 Country Drive
St. Paul, MN 55117



4597

ASSIGNMENT

GMAC Mortgage, LLC

Mortgagee of the mortgage from

Robert Desimone to Mortgage Electronic Registration Systems, Inc. as nominee for MortgageIt Inc. its successors and assigns
dated January 30, 2007 recorded with Middlesex County (Southern District) Registry of Deeds in Book 48997, Page 1 Document 2007 00030355 assigns said mortgage to HSBC Bank USA, National Association as Trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Series 2007-OA5, c/o Ocwen Loan Servicing LLC, 3451 Hammond Ave, Waterloo, IA 50702

In witness whereof the said GMAC Mortgage, LLC has caused these presents to be signed, in its name and behalf by

William Long (name) its Authorized Officer (title) on this
day, the 25th of March, 2013,

GMAC Mortgage, LLC

BY: William Long

Name: William Long

Title: Authorized Officer

STATE OF Pennsylvania

COUNTY OF Montgomery

March 25, 2013

On this 25th day of March, 2013, before me, the undersigned notary public, personally appeared William Long as Authorized Officer, of GMAC Mortgage, LLC, of whom I have personal knowledge of identity, to be the person whose name is signed on the proceeding or attached document, and who acknowledged to me that he/she signed it voluntarily for its stated purpose as

Authorized Officer

(title) for GMAC Mortgage, LLC

Mary Jo McDermott
Official Signature and Seal of Notary
My Commission Expires: October 21, 2015

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

MARY JO McDERMOTT, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 21, 2015

File No. 618.0171



+U03686942+

10301 3/28/2013 78544597/1

RE: 11 Old Village Road, Acton, MA 01720

Exhibit C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

69
/

SUPERIOR COURT
CIVIL ACTION
NO. 10-1074

ROBERT DE SIMONE AND MATINA DE SIMONE

vs.

GMAC MORTGAGE, LLC, and others

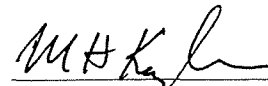
ORDERS

On October 22, 2012, this case came before the court for hearing on defendant, GMAC Mortgage, LLC's, motion to dismiss a complaint for contempt and motion to dissolve an injunction. At this hearing, the court also considered the plaintiffs, Robert and Matina DeSimone's motion to reconsider an order issued on September 10, 2012, that vacated a stay entered in this court after GMAC filed a bankruptcy petition. The facts of this case are set out in the court's prior memoranda of decisions and orders on the defendants' motions for summary judgment. After consideration of the parties' pleadings and argument, the court enters the following orders.

1. The DeSimones' motion to reconsider the September 10, 2012 order is DENIED. By order dated July 13, 2012, the Bankruptcy Court for the Southern District of New York issued an order which, among other things, provided relief from the automatic stay of actions pending in state court with respect to "actions initiated by . . . a borrower" in those states providing for non-judicial foreclosures, of which Massachusetts is one, "relating exclusively to the property that is the subject of the loan owned or serviced by [GMAC] for the purposes of . . . enjoining or precluding any foreclosure." This case is, in part, such a case. See Count I.

2. GMAC's motion to dissolve the injunction is ALLOWED. At the outset of this case a temporary restraining order issued enjoining GMAC from foreclosing on the DeSimone's home. On July 27, 2010, the court entered an order stating that the TRO would remain in effect until further order of the court. However, on May 22, 2012, the court issued a memorandum of decision and order which allowed GMAC's motion for summary judgment on the two counts that asserted claims against it. The order did not expressly state that the TRO was dissolved. Nonetheless, having found that the two counts asserting claims against GMAC must be dismissed as a matter of law, there is no basis for continuing injunctive relief. The court therefore orders that the restraining order be dissolved.⁴ In order to provide the DeSimones with the opportunity to appeal the decision on summary judgment dismissing their claim for rescission (the claim on which the injunction was based), the court also orders that final judgment enter as to Count I of the complaint as to all parties. (It cannot do the same as to Count IV, as that count asks for monetary relief and therefore the Bankruptcy Court's motion providing relief from stay does not apply to that count.)
3. GMAC's motion to dismiss the complaint for contempt is also ALLOWED. In that complaint for contempt the DeSimones allege that GMAC noticed a foreclosure sale of the mortgaged property on August 1, 2012 and this conduct violated the restraining order which was still in effect. Whether that restraining order continued in effect after GMAC's motion for summary judgment was allowed is a close question. Certainly, it would have been better practice for GMAC specifically to have moved for an order dissolving the restraining order before it began the steps necessary to foreclose on the mortgaged property. However, before there is a finding of civil

contempt against a party there "must be a clear and unequivocal command and an equally clear and undoubted disobedience." In light of the allowance of GMAC's motion for summary judgment, the court concludes that the DeSimones cannot prove an act of civil contempt by GMAC. The complaint for contempt therefore must be dismissed.



Mitchell H. Kaplan
Justice of the Superior Court

Dated: October 22, 2012

Entered: October 23, 2012

Exhibit 3

Rosenbaum Declaration

MORRISON & FOERSTER LLP
250 West 55th St.
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Norman S. Rosenbaum
Jordan A. Wishnew
Jessica J. Arett

Counsel for The ResCap Borrower Claims Trust

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

_____)	
In re:	)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u>,	)	Chapter 11
)	
Debtors.	)	Jointly Administered
_____)	

**DECLARATION OF NORMAN S. ROSENBAUM IN SUPPORT OF
THE RESCAP BORROWER CLAIMS TRUST’S JOINDER AND SUPPLEMENTAL
DECLARATION TO OCWEN LOAN SERVICING LLC’S OBJECTION TO CLAIM OF
ROBERT DE SIMONE**

Norman S. Rosenbaum, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury:

1. I am a partner in the law firm of Morrison & Foerster LLP (“M&F”). M&F maintains offices for the practice of law, among other locations in the United States and worldwide, at 250 West 55th Street, New York, New York 10019. I am an attorney duly admitted to practice before this Court and the courts of the State of New York. By this Court’s Order entered on July 16, 2012, M&F was retained as counsel to Debtors,¹ and subsequent to the effectiveness of the confirmed Plan, M&F has been engaged by the Borrower Trust.

2. I submit this declaration (the “Declaration”) in support of the *ResCap Borrower*

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms as set forth in the Joinder and Supplemental Objection.

Claims Trust's Joinder and Supplemental Objection to Ocwen Loan Servicing LLC's Objection to Claim of Robert De Simone (the "Joinder and Supplemental Objection") and in compliance with this Court's Order entered on March 21, 2013, pursuant to section 105(a) of Title 11, United States Code (the "Bankruptcy Code") and Rules 1009, 3007 and 9019(b) of the Federal Rules of Bankruptcy Procedure approving: (i) Claim Objection Procedures; (ii) Borrower Claim Procedures; (iii) Settlement Procedures; and (iv) Schedule Amendment Procedures [Docket No. 3294] (the "Claims Objection Procedures Order").

3. It is my understanding that in connection with the filing of the Joinder and Supplemental Objection, prior to the Effective Date of the Plan, the Debtors complied with the Borrower Claim Procedures. I have been advised by M&F attorneys under my supervision that, prior to the Plan's Effective Date, in accordance with the Claims Objection Procedures Order, the Debtors' personnel mailed a request letter to Robert De Simone ("De Simone") to request additional supporting documentation and explanation in support of claim number 3892 (the "De Simone Claim"). I am further advised that the Debtors conferred with SilvermanAcampora LLP then acting as Special Counsel to the Creditors' Committee for Borrower Issues ("Special Counsel") in drafting the request letter and provided Special Counsel with copies of the request letter sent to De Simone.

4. Except as otherwise set forth herein, to the best of my knowledge, prior to the filing of the Joinder and Supplemental Objection, the Debtors and the Borrower Trust fully complied with all other relevant terms of the Claims Objection Procedures.²

² The Joinder and Supplemental Objection deviates from the Borrower Claim Procedures in that it is not supported by a declaration from Special Counsel. As of the Effective Date of the Plan, the Creditors' Committee was dissolved (see Plan at Art.XIII.D.). Because the Creditors' Committee was dissolved as of the Plan Effective Date (with the exception of certain limited duties provided for in the Plan), the Borrower Trust did not consult with Special Counsel prior to filing the Joinder and Supplemental Objection.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on November 17, 2014

/s/ Norman S. Rosenbaum
Norman S. Rosenbaum