

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

*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 REPLY IN SUPPORT
OF OBJECTION TO PROOF OF CLAIM NO. 2536 FILED BY STEPHANIE HARRIS**



**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 [Docket No. 6065], as successor in interest to the above captioned debtors (collectively, the “**Debtors**”) with respect to Borrower Claims,¹ hereby submits this reply (the “**Reply**”) to the response (the “**Response**”) [Docket No. 7818]² of Stephanie Harris (“**Claimant**”) to the *ResCap Borrower Claims Trust’s Objection to Proof of Claim No. 2536 Filed by Stephanie Harris* (the “**Objection**”) [Docket No. 7666]. In further support of the Objection, the Borrower Trust submits the *Supplemental Declaration of Kathy Priore in Support of the ResCap Borrower Claims Trust’s Objection to Proof of Claim No. 2536 Filed by Stephanie Harris* (the “**Supplemental Priore Declaration**”), attached hereto as Exhibit 2, respectfully represents as follows:

REPLY

I. CLAIMANT’S ALLEGATIONS REGARDING STANDING TO FORECLOSE ARE RAISED IN AN IMPROPER FORUM AND ARE INCORRECT AS A MATTER OF LAW

1. Claimant, apparently conceding that she does not have a claim for wrongful foreclosure (see Response ¶ 4 (“[t]here has been no wrongful foreclosure . . . ”)), now appears to assert that no entity has standing to bring a foreclosure action against her due to the inadvertent assignment of the Mortgage to Deutsche Bank, as Trustee. Aside from the fact that this is not the appropriate forum in which to contest the standing of a party to a foreclosure proceeding – which

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection (defined below).

² The Borrower Trust understands that Claimant requested an extension of her Response deadline claiming that, despite the Borrower Trust’s filing and serving Objection on October 20, 2014, she did not received a copy of the Objection until sometime in November. To the contrary, Ms. Harris not only received service of the Objection by email on October 20, 2014, but within twelve hours of her receipt, she sent a responsive email to counsel for the Borrower Trust, attached hereto as Exhibit 1, and she also left a voicemail message on October 21, 2014.

should be done in connection with the foreclosure proceeding – Claimant’s allegations are also incorrect as a matter of law.

2. Under Florida law, “possession of the note determines standing to foreclose.” Everhome Mortg. Co. v. Janssen, 100 So. 3d 1239, 1240 (Fla. Dist. Ct. App. 2012). “[O]wnership of the mortgage follow[s] the note,” Taylor v. Bayview Loan Servicing, LLC, 74 So. 3d 1115, 1117-18 (Fla. Dist. Ct. App. 2011) (quoting Johns v. Gillian, 134 Fla. 575, 184 So. 140, 143 (1938)). Indeed, “[A] mortgage is but an incident to the debt, the payment of which it secures, and its ownership follows the assignment of the debt. If the note or other debt secured by a mortgage be transferred without any formal assignment of the mortgage, or even a delivery of it, the mortgage in equity passes as an incident to the debt” Everhome Mortg. Co. v. Janssen, 100 So. 3d at 1240 (alteration in original). As a result, “standing may be established from a plaintiff’s status as the note holder, regardless of any recorded assignments.” McLean v. JP Morgan Chase Bank Nat’l Ass’n, 79 So. 3d 170, 173 (Fla. Dist. Ct. App. 2012).

3. The sole case cited by Claimant does not contradict these points of law. See Response at 1-2. In Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619 (Mo. Ct. App. 2009), cited by Claimant, the Court concluded that an assignment of a security interest in real property separate from the note was of no force. Id. at 623-24. In that case, Bellistri, the purchaser of a property at a tax sale, sought to quiet title to the purchased property. Id. at 621. Ocwen Loan Servicing, LLC (“**Ocwen**”) contested the action on the basis that it had been assigned a deed of trust by Mortgage Electronic Registration System, Inc., as nominee for BNC Mortgage Inc. Id. The court concluded that Ocwen lacked standing to contest the quiet title action. Id. at 624. The court explained that the “note and the deed of trust are inseparable” and, therefore, the holder of the note or a transferee of the note held “all the interest, rights, powers

and security conferred by the deed of trust upon the beneficiary of therein.” Id. at 623 (citing St. Louis Mut. Life Ins. Co. v. Walter, 46 S.W.2d 166, 170 (1931)). The record, however, included no evidence that Ocwen was the holder of the note. Id. at 623-24. Consequently, evidence of the assignment of the deed of trust, separate and apart from the note was of “no force” and the holder of the note, whoever that may have been, remained the beneficiary under the deed of trust. Id.

4. Here, the Note was assigned to LaSalle Bank, N.A., by special endorsement and is currently held by U.S. Bank, N.A., as Trustee. See Priore Decl. ¶ 6 & ¶ 6 n.6. Under the ruling in Bellistri, U.S. Bank also holds the Mortgage associated with the Note, regardless of the mistaken assignment of the Mortgage to Deutsche Bank Trust Company Americas, as Trustee. Moreover, under Florida law, U.S. Bank, N.A., as Trustee, as the Note’s holder, has standing to foreclose “regardless of any recorded assignments.” McLean, 79 So. 3d at 173. To the best of the Borrower Trust’s knowledge, Claimant remains delinquent on her April 1, 2008 and subsequent payments (see Priore Decl. ¶ 25) and, consequently, upon the lifting of the automatic stay that arose as a result of Claimant’s 2014 bankruptcy case, appropriate steps may be taken to substitute U.S. Bank, as Trustee (or a subsequent holder of the Note, if any), as the plaintiff in the 2012 Foreclosure Proceeding.³

³ Claimant further objects to the Borrower Trust’s redaction of certain entries in Exhibit 2-E to the Priore Declaration, which contains excerpts of the Debtors’ internal Servicing Notes for the Loan. See Response at ¶ 1. These Servicing Notes were provided to affirmatively support contentions in the Objection, not as part of any discovery process, and the redacted portions were not cited as support for any statements contained in the Objection. Additionally, nearly all of the entries relate to confidential communications among outside counsel and the Debtors made during the course of providing legal advice to the Debtors and, therefore, are subject to the attorney-client privilege. See United States v. Mejia, 655 F.3d 126, 135 (2d Cir. 2011) (“The attorney-client privilege protects communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice.”). The Borrower Trust also believes that each of these communications is entirely irrelevant to the merits of the Proof of Claim, especially given that the Borrower Trust concedes the fundamental factual predicate that Claimant appears to allege – that the foreclosure proceedings were inadvertently initiated in the name of the wrong entity. Moreover, the Court was provided with an unredacted copy of the excerpts of the Servicing Notes with its courtesy copy of the Objection so that it may review the Servicing Notes in camera.

II. THE RESPONSE IS PREDICATED ON NUMEROUS OTHER INCORRECT AND INACCURATE FACTUAL STATEMENTS

5. Claimant's Response is also predicated on numerous other inaccurate factual statements that she contends supports the validity of her Proof of Claim. While the Borrower Trust will not address each such statement, two of the misstatements are particularly worth noting.

6. First and foremost, Claimant makes numerous allegations regarding the alleged involvement and conspiratorial dealings of Florida attorney, David Stern, and his law firm in connection with her Loan. In fact, no matters relating to Claimant's Loan were ever referred to David Stern or his law firm and, as far as the Borrower Trust is aware, neither David Stern nor his law firm were ever involved in any way with Claimant's Loan. See Supp. Priore Decl. ¶ 5.

7. Additionally, Claimant makes a number of statements regarding the Debtors' alleged "failure to pay the Federal Reserve," and asserts that this fact, alone, caused Claimant's damages because she would have been able to obtain a loan modification if the Federal Reserve were paid. See Response at ¶ 4.h.d); see also Response ¶¶ 4.e., 4.f., 4.g., 4.h.e), and p. 4. Presumably, Claimant is referring to a payment to the Federal Reserve in connection with the FRB Foreclosure Review process.⁴ As this Court is aware, the Debtors settled with the Federal Reserve and, pursuant to a settlement agreement approved by this Court, paid approximately \$230 million in full and final satisfaction of the Debtors' FRB Foreclosure Review obligations. *See* Docket No. 4365. Consequently, to the extent that the Response alleges that Claimant was damaged or continues to be damaged as a result of the Debtors' "failure to pay the Federal Reserve," such claims are based entirely on a factually inaccurate premise.

⁴ For a description of the FRB Foreclosure Review process, see *Debtors' Motion Pursuant to Bankruptcy Rule 3013 and Bankruptcy Code Section 362(a) for a Determination That (I) GMAC Mortgage's FRB Foreclosure Review Obligation Is a General Unsecured Claim and (II) The Automatic Stay Prevents Enforcement of the FRB Foreclosure Review Obligation* [Docket No. 3055], at ¶ 11-16.

**III. CLAIMANT IS NOT ENTITLED TO A CLAIM AGAINST THE DEBTORS
RELATED TO ACTIONS RELATING TO HER LOAN TAKEN AFTER
FEBRUARY 15, 2013**

8. Claimant also alleges ongoing damages resulting from actions taken during the course of her 2014 bankruptcy case on behalf of La Salle Bank. See Response at ¶¶ 4.h. & 4.h.b). However, as set forth in the Objection, the servicing rights related to the Loan were transferred to Ocwen on February 15, 2013 in connection with the Debtors' sale of their mortgage servicing platform, and the Debtors and Borrower Trust have not been involved with the servicing of the Loan since that time. See Priore Decl. ¶ 24; accord Response ¶ 4.h. (referencing Claimant's expectation that Ocwen may file a proof of claim in her 2014 bankruptcy case). Neither the Debtors nor the Borrower Trust is liable for any actions taken independently by Ocwen or La Salle Bank in connection with the Loan after the February 15, 2013 transfer of servicing.

IV. RESERVATION OF RIGHTS

9. The Borrower Trust has been unable to interpret the allegations set forth in paragraphs 5-7 of the Response or decipher how such statements relate to the Loan. William Wohlsifer appears to be the Florida Attorney General, DBPR appears to refer to the Florida Department of Business and Professional Regulation and EPA appears to refer to the United States Environmental Protection Agency. The allegations contained in paragraphs 5-7 may be related to the allegations regarding David Stern, but it is not clear and, in any event, to the best of the Borrower Trust's knowledge, David Stern has no connection with the Loan. *See supra* at ¶ 6. The Borrower Trust reserves the right to supplement this Reply to the extent that the import of these entities and their relation to the Loan becomes clear.

CONCLUSION

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

Dated: December 15, 2014

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum

Jordan A. Wishnew

James A. Newton

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

Braun, Danielle

From: stephanie harris <stephanieharris70@hotmail.com>
Sent: Monday, October 27, 2014 7:24 PM
To: Braun, Danielle
Subject: Re: In re Residential Capital, LLC (Case No. 12-12020)

Dear Miss Braun:

I am calling the court tomorrow. Cease all attempts to delete any files in reference to this case as I will just republish them again. Legal Sololutions attempt to destroy the files is only self serving, to hide and deny the basis of claim of the Trick upon the Court that was played by the hand of Rescap's legal council (Hidden under the name of Duetche Bank) was the creative work of convicted Mortgage Fraudster attorney Stern. The incorrect arrangement and interruption of these exhibits will be correction in the Objection to the Objection of Claim no 2536; as these are part of my objection to denial of claim which I will file this week.

This is only self serving of Legal Sololutions as to hide the facts and to correct the gross misstatements of Legal Sololutions. It is also self serving as to the attempts to avoid a class action suit to Legal Sololutions . and or to address the error to the errors and omissions accounts of Legal Sololutions and Morrison and Forrester as the admission that it was an "error" was in open court.

The quit claiming off of Residential in the trust after the platform auction, specifically prohibited by Judge Glen in order to the demote Harris to lesser claim status, GMAC by both Legal Sololutions and Morrison and Forrester was an attempt to place Harris in a victim class. NO MODIFICATIONS, no Federal Loans , No claim, and a foreclosure was a Legal Sololutions delibert attempt to create a victim class. and number crunching. The loans are and were unmodifiable due to the fact that GMAC failed to pay the Federal Reserve, (not as Legal Sololutions incorrectly stated amonst many other facts, that Harris refused a loan. GMAC could not produce the loan it alledge to offer as it had failed to pay Federal Reserve thereby doing the same switch and bait throughout the entire lifespan of GMAC. There was no modification offered as GMAC could not produce a HAMP which it deceptively sent out these forms, and clearly any in house modification which would have come from its own pocket was not produced. The same Federal Reserve has not been paid as stated by Morrison and Forrester; so that no HAMP or government loans were possible. The SAME DAMAGE IS CONTINUING AS THE chap 11 as it had promised and seems to feel that this as it promised, paying the Federal Reserve was not a priority . The repayment was promised before the IPO of Ally BANK . ALLY BANK DID ITS ipo YET THE FEDERAL RESERVE IS NOT PAID. Thereby creating loans that cannot be modified. The damage was not corrected as promised . The Liquidating Trust I assume, and Morrison and Forrester have errors and omissions accounts that will cover the ongoing damage in case the claims are not paid. GMAC by its own admission in the ill fated Obama reviews admitted by it own voluntary submission of gultit that it has performed errors in the foreclosure . These errors are being committed en gross by Legal Sololutions and Morrison and Forrester by step by step avoidance to all correction of damages and the creating of new problems which shall be outlined in Objection to Objection of Claim. 2536.

Please cease and desist from all deletion of data. I do not wish to file a full Adversary Complaint against Legal Sololutions and Morrison and Forrester for the actions of failing to pay Federal Reserve and the delibert violation of Judge Glens order that the Platform Auction to Ockwan stood, Yet Residential removed itself . As you will see in the Objection to the Objection of Proof of Claim no 2546. The ongoing and new damages which will be outlined in the Objection to the Objection of Proof of Claim no 2536 will be presented in that document.

Please forward this to Legal Sololutions and thanking you for calling the courts to stop any removal of files until the completion of the Chapter 11 and all claims are dealt with, as is the general procedure.

STEPHANIE HARRIS claim no 2536

Sent from Windows Mail

From: [Braun, Danielle](#)
Sent: Monday, October 20, 2014 5:13 PM
To: [stephanie harris](#)

Ms. Harris,

Attached please find a letter which has been sent to the court today in connection with *the ResCap Borrower Claims Trust's Objection to Proof of Claim No. 2536 Filed By Stephanie Harris* [Docket No. 7666], that has been filed in the above referenced case. Also attached, please find the Exhibit referenced in the attached Letter to the Bankruptcy Court.

Thank you,
Danielle

Danielle Braun
Paralegal
Morrison & Foerster LLP
250 West 55th Street | New York, NY 10019-9601
P: +1 (212) 336.4118 | C: +1 (201) 403.3766
DBraun@mofo.com | www.mofo.com

=====

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail DBraun@mofo.com, and delete the message.

Exhibit 2

**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
-----)	

**SUPPLEMENTAL DECLARATION OF KATHY PRIORE
IN SUPPORT OF THE RESCAP BORROWER CLAIMS TRUST’S
OBJECTION TO PROOF OF CLAIM NO. 2536 FILED BY STEPHANIE HARRIS**

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 (the “**Chapter 11 Cases**”). During the Chapter 11 cases, I served as Associate Counsel in the legal department at 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**”). I joined ResCap on May 1, 2008 as in-house litigation counsel. 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 residential 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 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 Reply in Support of Objection to Proof of Claim No. 2536 Filed by Stephanie Harris* (the “**Reply**”).²

3. 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 on 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. Since the Plan went effective and the Borrower Trust was established, I, 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 (v) the official claims register maintained in the Debtors’ Chapter 11 Cases.

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 of 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 used but not defined herein shall have the meanings ascribed to them in the Reply.

4. 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 Reply on that basis.

5. Claimant makes numerous allegations in her Response regarding Florida attorney, David Stern, his law firm, and their alleged involvement in legal proceedings related to the Loan. To the best of my knowledge and belief, neither Mr. Stern nor his law firm was engaged by the Debtors in connection with the foreclosure proceedings related to Claimant's loan or in connection with Claimant's bankruptcy cases. Moreover, after a review of the Debtors' servicing records and foreclosure records, I am unaware of any records that reflect that Mr. Stern and his law firm were ever involved in any way with Claimant's Loan.

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

Dated: December 15, 2014

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