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

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In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.  
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Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**RESCAP LIQUIDATING TRUST'S OMNIBUS RESPONSE TO MOTIONS FILED BY  
TIMOTHY J. LAHRMAN**



The ResCap Liquidating Trust (the “Trust”), established pursuant to the terms of the Plan filed in the above-captioned Chapter 11 Cases, as successor in interest to the above-captioned Debtors, by and through its undersigned counsel, hereby submits this response (the “Response”) and the Declaration of Joel Bornkamp (the “Bornkamp Decl.”), annexed hereto as Exhibit 1, to the following motions filed by Timothy J. Lahrman: (i) *Motion for Relief from Judgment or Order*, **Docket No. 8010**; (ii) *Request to Take Judicial Notice*, **Docket No. 8011**; and (iii) *Motion For Leave And Order To Show Cause Why Ally Financial, Inc.; GMAC Mortgage LLC, Debtor; And Attorney(s) Joel Bornkamp Together With Reisenfeld & Associates Should Not Be Held In Contempt*, **Docket No. 8066**. The Trust respectfully states as follows:

#### **PRELIMINARY STATEMENT**

1. While documents have been filed recently in the name of GMAC Mortgage, LLC (“GMACM”) in the Indiana state courts, Movant’s accusations of wrongdoing against GMACM place form over substance and blindly ignore the fact that GMACM has not serviced the Damron Loan since February 1, 2013. As this Court (and others) have recognized, “Green Tree acquired GMACM’s servicing rights to Damron’s mortgage after the Debtors filed these chapter 11 cases.” See D.E. 6816 at 11.<sup>1</sup> When Green Tree acquired those servicing rights, GMACM executed a Limited Power of Attorney in favor of Green Tree permitting Green Tree to enforce the servicer’s rights with respect to the loan. Therefore, as the actions at issue are being taken solely by Green Tree pursuant to a duly authorized Limited Power of Attorney and through a substitution in the underlying litigation, and not GMACM, there is no basis to hold GMACM in contempt since it has not been adverse to Ms. Damron once the servicing rights transferred to

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<sup>1</sup> See Order at n. 1, Case No. 3:15-cv-00026-RLM-CAN (N.D. Ind. South Bend Div. Feb. 23, 2015) [D.E. 30] (“Green Tree Servicing, LLC was substituted for GMAC Mortgage, LLC in the underlying foreclosure suit in April 2013, before Cynthia Damron – Mr. Lahrman’s companion – sought to remove the suit to federal court.”). A copy of the Order is attached hereto as Exhibit 2.

Green Tree in February 2013. For these same reasons, there is no basis for the Court to reconsider its earlier decisions on related matters because the Movant fails to demonstrate through clear and convincing evidence that GMACM made any contemporaneous or subsequent misrepresentations to the Court or committed any fraudulent act. Therefore, the Lahrman Motions must be denied with prejudice.

### **REPLY**

#### **A. GMAC Mortgage Has Not Violated Any Court Order**

2. GMACM originated the loan to Ms. Damron on or about July 19, 2005. Ownership of the loan then transferred to Fannie Mae on or about August 17, 2005. When GMACM sold its interest in the loan to Fannie Mae, it retained the right to service the loan, which it did from July 19, 2005 through February 1, 2013. In connection with the Debtors' sale of its servicing platform, Green Tree Servicing LLC ("Green Tree"), an affiliate of Walter Investment Management Corp., acquired, among other rights, the servicing rights for Ms. Damron's loan.<sup>2</sup>

3. In order for the Court to hold GMACM in contempt, Mr. Lahrman must prove by clear and convincing evidence that GMACM had knowledge of a valid order of the Court issued against GMACM that GMACM disobeyed. See In re Lands End Leasing, Inc., 220 B.R. 226 (Bankr. D.N.J. 1998).

4. The only order referenced by Mr. Lahrman is the order issued specifically against him, not Ally Financial or GMACM. See D.E. 6816 at 16 (directing Mr. Lahrman to dismiss the State Court complaint against AFI with prejudice, and further instructing Mr. Lahrman that his failure to comply with the Order may be punishable contempt). Therefore,

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<sup>2</sup> See generally, D.E. 2246 (order approving, *inter alia*, sale of Debtors' servicing platform to Ocwen Loan Servicing, LLC).

there is absolutely no basis for the relief sought by Mr. Lahrman because his request is predicated on a flawed interpretation of this Court's order and the party against whom the relief is directed. Notwithstanding, GMACM will use this opportunity to address certain of the allegations raised by Mr. Lahrman.

5. As explained above and as is noted in certain exhibits to the Movant's filings before the Elkhart County Circuit Court, Green Tree purchased certain mortgage loan servicing rights from GMACM, including the servicing rights to the loan at issue. In order to allow Green Tree to "take whatever steps [we]re necessary to enforce its rights with respect to the loans that were transferred to it by GMACM," on January 31, 2013, GMACM issued a Limited Power of Attorney to Green Tree. See D.E. 6621 at 28-34.

6. Mr. Lahrman alleges that "At all times relevant hereto Attorney Joel Bornkamp is/was counsel of record for GMACM in the state court foreclosure proceedings." See D.E. 8010 at ¶4.

7. Mr. Lahrman next alleges that GMACM "continues, as Lahrman complained of previously, to hold itself out and participate as 'plaintiff' in the state court foreclosure proceedings and, has likewise GMAC Mortgage LLC has unquestionably and clearly taken affirmative action as 'plaintiff' to levy execution upon Lahrman's home by way of foreclosure." See D.E. 8010 at ¶4; see also D.E. 8066 at ¶3.

8. Moreover, Lahrman further alleges that "GMACM's actions in the state court are unquestionably post-Plan confirmation, completely contrary to those prior representations made to this Court and completely contrary to AFI's stated position in the State Court Action which underlies this matter." See D.E. 8010 at ¶8.

9. Mr. Lahrman also notes that “[a]t no time relevant hereto has Attorney Joel Bornkamp or any of his associates at Reisenfeld & Associates LLP, LPA ever appeared as legal counsel for Green Tree Servicing LLC that there could be any simple clerical error or need for clarification to, or in the intent of, GMAC Mortgage LLC when holing [sic] itself out as ‘plaintiff’, knowingly and wrongfully, in both Declaration Exhibits C, and D.” See D.E. 8010 at ¶19.

10. Admittedly, the name “GMAC Mortgage LLC” appears on the referenced public filings; however, that was in name only. As of February 1, 2013, GMACM no longer serviced the loan held by Cynthia S. Damron. The note and loan servicing rights were transferred to Green Tree on January 30, 2013. Green Tree was substituted as Plaintiff in the state court action by an order entered on April 23, 2013. The fact that the docket was not updated to reflect Green Tree as the plaintiff as of February 1, 2013 is nothing more than a clerical error. Accordingly, after February 1, 2013, any affirmative actions against Ms. Damron’s property, including those referenced in Movant’s Exhibits B, C and D, were not taken by GMACM because it was not servicing her loan. As a result, there is no truth to the allegation that “the acts and conducts of GMACM and its ‘attorneys’, Joel Bornkamp in particular and including counsels for AFI, are knowing, intentional and egregious when engaged in by officers of the court and licensed attorneys.”<sup>3</sup> See Bornkamp Decl., ¶ 10.

11. In fact, as noted above, Mr. Lahrman’s allegations, as reflected in the Lahrman Motions, arise from nothing more than a clerical error. See Bornkamp Decl., ¶ 11.

12. In order to avoid any future ambiguity or confusion, Reisenfeld submitted amended pleadings to replace any reference to GMACM after February 1, 2013. Reisenfeld has

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<sup>3</sup> See D.E. 8010 at ¶18; see also D.E. 8066 at ¶9.

submitted an Amended Bid and Amended its Writ of Prohibit to reflect Green Tree Servicing as the proper Plaintiff. The pleadings were served upon Cynthia Damron by ordinary mail on February 17, 2015 and show on the Court's docket on February 18, 2015. See Id.

13. Contemporaneously with the filing of the Lahrman Motions, on January 27, 2015, Ms. Damron and Mr. Lahrman petitioned the state superior court to stay the sale based upon these purported errors; however, the Indiana courts overruled all requested relief. See Id.

14. There is no reason that this Court should come to a different conclusion than the Indiana state courts. Notwithstanding Mr. Lahrman's multi-jurisdictional approach to avoid being displaced from his residence as well as his misguided attempt to blame GMACM for his predicament, GMACM never violated an order of this Court. Therefore, there is neither a basis nor any evidence to find GMACM in contempt of an order of the Court.

**B. Movant Has Not Met The Burden For Reconsideration Pursuant to Fed. R. Bankr. P. 9024**

15. Bankruptcy Rule 9024 incorporates Rule 60 of the Federal Rules of Civil Procedures ("Rule 60"), which sets forth the grounds for relief from a final judgment, order or proceeding. Rule 60(b) provides that the Court may relieve a party from a final judgment, order or proceeding due to:

- 1) mistake, inadvertence, surprise, or excusable neglect;
- 2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- 3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

16. “A motion for relief from judgment is generally not favored and is properly granted only upon a showing of *exceptional circumstances*.” United States v. Int’l Bhd. of Teamsters, 247 F.3d 370, 391 (2d Cir. 2001) (emphasis added). Whether to grant a motion for relief under Rule 60 is within the discretion of the Court. In re Terrestar Networks, No. 10-15446 (SHL), 2013 WL 781613, at \*3 (Bankr. S.D.N.Y. Feb. 23, 2013).

17. By its terms, Rule 60(b)(3) provides relief in instances where the fraud is committed by an opposing party. See Simons v. United States, 452 F.2d 1110, 1115 (2d Cir. 1971) (noting that Rule 60(b)(3) permits relief only for fraud “of an adverse party”). “The movant has the burden to establish, by clear and convincing evidence, that the adverse party obtained the judgment through fraud, misrepresentation or other misconduct.” In re Old Carco LLC, 423 B.R. 40, 50 (Bankr. S.D.N.Y. 2010); see also Entral Grp. Int’l, LLC v. 7 Day Café & Bar, 298 Fed. Appx. 43, 44 (2d Cir. 2008) (noting that a motion under Rule 60(b)(3) cannot be granted absent clear and convincing evidence of material misrepresentations). To prevail under Rule 60(b)(3), a movant must show that the alleged fraud, misrepresentation or other misconduct precluded it from fully and fairly presenting its case. See State Street Bank & Trust Co. v. Inversiones Errazuriz Limitada, 374 F.3d 158, 176 (2d Cir. 2004); Entral Group, 298 Fed. Appx. at 44. This standard also applies to the context of fraud on the court under Rule 60(d)(3). See State Street, 374 F.3d at 176.

18. The circumstances before the Court are anything but exceptional. The facts, as described by the Court in the *Memorandum Opinion and Order Denying Timothy J. Lahrman’s Motion For Reconsideration Of Order Enforcing The Chapter 11 Plan Injunction* (see D.E. 6816 at 11), have not changed (i.e., “GMACM is not a plaintiff and is not engaged in

affirmative conduct in that foreclosure action.”). Rather, as described in the Bornkamp Decl., clerical errors have been made insofar as documents filed in the underlying state court action improperly identify “GMAC Mortgage, LLC” as the plaintiff notwithstanding that GMAC Mortgage has not serviced the underlying loan in over two years. See Bornkamp Decl., ¶¶ 10-11.

19. Even though the referenced filings (see D.E. 8010, Exhs. B–D) occurred after confirmation of the Plan, such documents do not constitute “newly discovered evidence” that warrants reconsideration or modification of the Court’s earlier decision pursuant to Fed. R. Civ. P. 60(b)(2).

20. Moreover, contrary to Movant’s suggestions, there has not been any fraud, misrepresentation or misconduct by any party. Since GMACM did not maintain the right to service (and thereby enforce the terms of) the loan, it could not have acted in a fraudulent manner towards the Movant. Moreover, without the right to service the loan, GMACM did not have the authority to make any representations or take any actions on behalf of the investor/owner of the loan. Accordingly, from the moment it transferred its servicing rights, GMACM did not have the ability to make a misrepresentation. Therefore, reconsideration or modification of the Court’s earlier decision pursuant to Fed. R. Civ. P. 60(b)(3) is also not warranted.

21. Mr. Lahrman asks the Court to take judicial notice of Federal National Mortgage Association v. Bradbury, 32 A.3d 1014 (2011) to substantiate his argument that GMACM is a bad actor. This case is wholly irrelevant to the issues being brought before the Court by the Lahrman Motions. For this case to be analogous or somehow relevant to the Court’s determination, GMACM must have acted as against Ms. Damron. However, for the reasons discussed throughout this Response and in the Bornkamp Declaration, GMACM has not



done so, despite the fact that GMACM's name may have been erroneously included on the underlying court documents and related notices notwithstanding that it transferred its right to service Ms. Damron's loan more than two years ago. Mr. Lahrman has not presented the Court with clear and convincing evidence to the contrary and therefore, the Lahrman Motions fail and must be denied.

**CONCLUSION**

22. WHEREFORE, the Trust respectfully submits that the relief requested in the Lahrman Motions be denied.

Dated: February 25, 2015  
New York, New York

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

*Counsel for the ResCap Liquidating Trust*

**Exhibit 1**

**Bornkamp 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 JOEL F. BORNKAMP IN SUPPORT OF THE OBJECTION OF  
THE RESCAP LIQUIDATING TRUST TO CERTAIN MOTIONS FILED BY TIMOTHY  
LAHRMAN**

I, Joel F. Bornkamp, hereby declare as follows:

1. I am an attorney with Reisenfeld & Associates ("Reisenfeld"), who served as counsel to GMAC Mortgage, LLC through February 1, 2013, and thereafter, as counsel to Green Tree Servicing, who presently services the loan at issue. I have been practicing law in the State of Indiana for more than seven years, and I have no record of discipline with the State Bar of Indiana.

2. I have been involved with the Damron-Lahrman foreclosure action pending before the Elkhart Superior Court in the State of Indiana from August 2011 to the present.

3. I am in receipt of, and have reviewed, the pleadings filed by Mr. Timothy Lahrman in this Court (collectively, the "Lahrman Motions"), including:

- *Motion for Relief from Judgment or Order*, Docket No. 8010;
- *Request to Take Judicial Notice*, Docket No. 8011; and
- *Motion For Leave And Order To Show Cause Why Ally Financial, Inc.; GMAC Mortgage LLC, Debtor; And Attorney(s) Joel Bornkamp Together With Reisenfeld & Associates Should Not Be Held In Contempt*, Docket No. 8066

4. I am authorized to submit this declaration on behalf of Reisenfeld (the "Declaration") in support of the *Omnibus Response of The ResCap Liquidating Trust (Successor In Interest to GMAC Mortgage LLC) to The Lahrman Motions* (the "Objection").

5. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the referenced state court litigation with Ms. Damron and Mr. Lahrman, information learned from my review of relevant documents and information I have received through my discussions with other members of the Reisenfeld firm or other employees of the Debtors, the Liquidating Trust's employees, professionals and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

A. Responses to Lahrman's Allegations

6. Mr. Lahrman alleges that "At all times relevant hereto Attorney Joel Bornkamp is/was counsel of record for GMACM in the state court foreclosure proceedings." *See* D.E. 8010 at ¶4.

7. Mr. Lahrman next alleges that GMACM "continues, as Lahrman complained of previously, to hold itself out and participate as 'plaintiff' in the state court foreclosure proceedings and, has likewise GMAC Mortgage LLC has unquestionably and clearly taken affirmative action as 'plaintiff' to levy execution upon Lahrman's home by way of foreclosure." *See* D.E. 8010 at ¶4; *see also* D.E. 8066 at ¶3.

8. Moreover, Lahrman further alleges that "GMACM's actions in the state court are unquestionably post-Plan confirmation, completely contrary to those prior representations made to this Court and completely contrary to AFI's stated position in the State Court Action which underlies this matter." *See* D.E. 8010 at ¶8.

9. Mr. Lahrman also notes that “[a]t no time relevant hereto has Attorney Joel Bornkamp or any of his associates at Reisenfeld & Associates LLP, LPA ever appeared as legal counsel for Green Tree Servicing LLC that there could be any simple clerical error or need for clarification to, or in the intent of, GMAC Mortgage LLC when holing [sic] itself out as ‘plaintiff’, knowingly and wrongfully, in both Declaration Exhibits C, and D.” *See* D.E. 8010 at ¶19.

10. Admittedly, the name “GMAC Mortgage LLC” did appear on the referenced public filings; however, that was in name only. As of February 1, 2013, GMAC Mortgage LLC no longer serviced the loan held by Cynthia S. Damron. The note and loan servicing rights were transferred to Green Tree on January 30, 2013. Green Tree was substituted as Plaintiff in the state court action by an order entered on April 23, 2013. The fact that the docket was not updated to reflect Green Tree Servicing as the plaintiff as of February 1, 2013 is nothing more than a clerical error. Accordingly, after February 1, 2013, any affirmative actions against Ms. Damron’s property were not taken by GMACM because it no longer had the right to service her loan. As a result, there is no truth to the allegation that “the acts and conducts of GMACM and its ‘attorneys’, Joel Bornkamp in particular and including counsels for AFI, are knowing, intentional and egregious when engaged in by officers of the court and licensed attorneys.”<sup>1</sup>

11. In fact, as noted above, Mr. Lahrman’s allegations, as reflected in the Lahrman Motions, arise from nothing more than a clerical error. In order to avoid any future ambiguity or confusion, Reisenfeld submitted amended pleadings to replace any reference to GMACM after February 1, 2013. Reisenfeld has submitted an Amended Bid and Amended its Writ of Prohibit to reflect Green Tree Servicing as the proper Plaintiff. The pleadings were served upon Cynthia Damron by ordinary mail on February 17, 2015 and show on the Court’s docket on February 18,

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<sup>1</sup> *See* D.E. 8010 at ¶18; *see also* D.E. 8066 at ¶9.

2015. Further, Ms. Damron and Mr. Lahrman petitioned the state superior court to stay the sale based upon these clerical errors. The motions were overruled by the state court. The orders overruling the motions are attached as Exhibit A.

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

Dated: February 25<sup>th</sup>, 2015

A handwritten signature in black ink, appearing to be "J. Bornkamp", written over a horizontal line.

Joel F. Bornkamp, Esq.  
Counsel to Green Tree Servicing

**Exhibit A**

STATE OF INDIANA

) IN THE ELKHART SUPERIOR COURT 2

)

COUNTY OF ELKHART

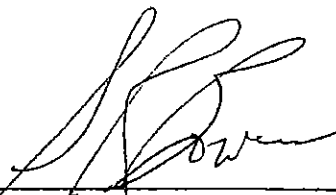
) CASE NO: 20D02-1008-MF-00312

GMAC MORTGAGE V DAMRON ET AL

**ORDER**

Timothy Lahrman, as a self represented litigant, files Verified Emergency Motion to Intervene. The Court finds that Mr. Lahrman's Motion to Intervene does not state sufficient facts to warrant his intervention in this case. The Court notes that occupying claimant is a term of art defined by statute, and that the putative intervener has failed to recite facts sufficient to qualify as an occupying claimant. Court further notes that these matters have been previously litigated in this case. The Court orders the putative intervener's Emergency Motion to Vacate Sheriff's Sale returned to him. The Court notes that even if intervention were allowed in this case that there is no basis for the Sheriff's Sale being vacated in this case. The Court notes *inter alia* that Mr. Lahrman did not successfully appeal the denial of his original Motion to Intervene in this case. Court also notes the receipt of a Notice of Misconduct, Motion for Bar Discipline Referral and Verified Motion for Sanctions. As a non-party, the Court denies the Verified Motion for Sanctions. Although it does not appear to the Court that any misconduct occurred in this case, if Mr. Lahrman wishes to pursue a disciplinary claim he should direct that claim to the Indiana Disciplinary Commission. Information on the Indiana Disciplinary Commission is available on the Indiana Supreme Court website. Order entered 1/27/15. Notice. Rjo. drc-d

So ordered on this the 27th day of January, 2015.

  
\_\_\_\_\_  
Judge/Magistrate  
Elkhart Superior Court 2

FILED IN  
OPEN COURT

JAN 27 2015

CLERK ELKHART  
SUPERIOR COURT #2

Exhibit A



STATE OF INDIANA ) IN THE ELKHART SUPERIOR COURT 2  
 )SS:  
 COUNTY OF ELKHART ) CAUSE NO. 20D02-1008-MF-000312

IN RE THE MATTER OF: )

GMAC MORTGAGE, LLC., )  
 Plaintiff )

vs. )

CYNTHIA S. DAMRON, et al., )  
 Defendants )

FILED IN  
OPEN COURT

JAN 28 2015

CLERK ELKHART  
SUPERIOR COURT #2

**ORDER DENYING JOINT EMERGENCY MOTION  
 FOR CHANGE OF JUDGE and EMERGENCY MOTION TO VACATE SHERIFF'S SALE**

Cynthia S. Damron ("Damron") and Timothy J. Lahrman ("Lahrman") filed their Joint Verified Emergency Motion for Change of Judge on January 27, 2015. Damron contemporaneously filed a Verified Motion to Vacate Sheriff's Sale. Both motions are DENIED. The motion for change of judge is untimely. The motion to vacate the Sheriff's Sale is an attempt to litigate matters previously decided, and would result in unnecessary delay, if granted.

This case was initiated in Elkhart Superior Court 1 under cause number 20D01-1004-MF-000187 on April 30, 2010, and transferred to this Court on August 4, 2010<sup>1</sup>. A motion for a change of judge is governed by Indiana Trial Rule 76, which provides in pertinent part that:

(B) In civil actions, where a change may be taken from the judge, such change shall be granted upon the filing of an unverified application or motion without specifically stating the ground therefore by a party or his attorney. Provided, however, a party shall be entitled to only one change from the judge.

\* \* \*

(C) In any action except criminal no change of judge or change of venue from the county shall be granted except within the time period herein provided. Any such application for change of judge shall be filed not later than ten days after the issues are first closed on the merits. Issues are first closed on the merits upon the filing of a defendant's original answer. *State ex rel. Prosser v. Lake Circuit Court*, 565 N.E.2d 751, 753 (Ind.1991).

<sup>1</sup> Damron filed a Motion for Change of Judge in the Superior Court 1 case on June 28, 2010.

No previous motion for change of judge has been filed in Elkhart Superior Court 2. Clearly, no motion for change of judge was sought within ten (10) days of the date the issues were first closed on the merits as required by T.R. 76(C).

Accepting the allegations of the Motion for Change of Judge as true for the purposes of this motion, it is also clear that Damron and Lahrman have not satisfied the requirements of T.R. 76(C)(6), which addresses the exception under T.R. 76(C) for a change of venue from this county or judge when the moving party obtains knowledge of grounds for a change after the general time limit. No attempt is made to specifically allege when the cause [for change of judge] was first discovered or could have been discovered by the exercise of due diligence. On the contrary, the allegations made appear to relate to facts alleged to have occurred as early as 2008, and no later than the entry of the Order for Sheriff's Sale entered by the Court on November 12, 2014, although arguably substantial before the later date.

Most of the allegations of bias appear to relate only to Lahrman, who is not a proper party to this action. Lahrman's attempt to intervene in this case is not warranted. As a preliminary matter, Lahrman alleges that he is under a guardianship in this State. If he is not competent, as implied by the allegations of paragraph three (3) of the motion for change of judge, then he has no standing to bring his motion except by his duly appointed guardian. Lahrman has attempted to intervene in this action multiple times without success. No guardian has ever attempted to intervene on his behalf. Lahrman's first Motion to Intervene was filed on May 28, 2013, after the Court had received Notice of Removal of this case to the U.S. District Court for the Northern District of Indiana, and was denied due to this Court's lack of jurisdiction at that time<sup>2</sup>.

Lahrman again attempted to intervene on December 30, 2013. The Court denied Lahrman's motion on January 2, 2014. On January 9, 2014, Lahrman, who was present but not allowed to participate in a hearing on Plaintiff's Motion to Compel Discovery (Damron), tendered to the Court a copy of his Notice of Appeal. The Court noted receipt of a copy of the Notice of Appeal and advised Lahrman that in order to be effective, it had to be filed with the Clerk of the Appellate Court. On January 16, 2014, this Court received notice of the filing of

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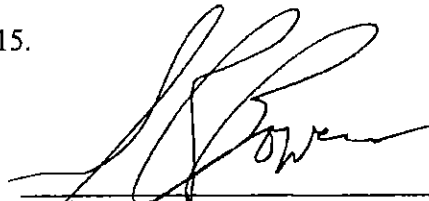
<sup>2</sup> The case was later remanded to the State Court and Damron was sanctioned by the Federal Court and ordered to pay attorney fees in excess of \$6,000.00.

an appeal with the Indiana Court of Appeals on January 8, 2014. Lahrman therefore had the opportunity to appeal the decision of this court denying his motion to intervene.

Finally, the Court notes that a stay of a scheduled Sheriff's Sale in a related action was granted on July 22, 2011, five (5) days before the scheduled sale<sup>3</sup>. The present filings appear to be only the most recent efforts to delay this matter<sup>4</sup>.

THEREFORE, the Court DENIES the Joint Emergency Motion for Change of Judge and Verified Emergency Motion to Vacate Sheriff's Sale.

So ORDERED this 28<sup>th</sup> day of January, 2015.



Stephen R. Bowers, Judge  
Elkhart Superior Court II

jh

<sup>3</sup> Apparently, the Sheriff did not receive notice of the stay and sold the property. The Court, at the request of GMAC Mortgage, LLC., set aside the sale and declared the Sheriff's Sale Deed as void.

<sup>4</sup> A mortgage foreclosure judgment was affirmed by the Court of Appeals in a related action on August 20, 2012. 973 N.E. 2d 104 (Table).

STATE OF INDIANA

) IN THE ELKHART SUPERIOR COURT 2

COUNTY OF ELKHART

) CASE NO: 20D02-1008-MF-00312

GMAC MORTGAGE V DAMRON ETAL

**ORDER**

Timothy J. Lahrman tenders Limited Appearance and Motion to Quash Writ. The Court rejects the limited appearance of Timothy J. Lahrman. Timothy J. Lahrman is not a party to this action, and the Writ of Assistance entered by this court does not make him a party to this action. Lahrman has repeatedly indicated that he is an adult ward under guardianship. As such he lacks standing to bring this or any other action except through his legally appointed guardian. The Court finds that Lahrman is an officious intermeddler who has repeatedly attempted to interject himself in the affairs of another. Lahrman lacking standing in this matter the Motion to Quash Writ is DENIED. Notice. Rjo, drd-d

So ordered on this the 13th day of February, 2015.

FILED IN  
OPEN COURT

FEB 13 2015

CLERK ELKHART  
SUPERIOR COURT #2

  
Judge/Magistrate  
Elkhart Superior Court 2

**Exhibit 2**

**February 23, 2015 Order**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

TIMOTHY J. LAHRMAN,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	CAUSE No. 3:15-CV-26-RLM-CAN
	)	
ELKHART COUNTY SUPERIOR	)	
COURT NO. 2, ET AL.,	)	
	)	
DEFENDANTS.	)	

ORDER

Plaintiff Timothy Lahrman has filed a second “Verified Motion/Petition for Emergency Preliminary Injunctive Relief With and/or Without Notice as an Emergency Temporary Restraining Order.” Mr. Lahrman’s *pro se* complaint names many defendants and asserts claims under many laws, including the Americans with Disabilities Act, but at the heart of the complaint is a mortgage note obtained by Mr. Lahrman’s companion on property located at 3004 Garden Boulevard in Elkhart, Indiana. Mr. Lahrman claims his companion granted him a one-half undivided ownership interest in the property and a right of survivorship in the property, although his name doesn’t appear on the mortgage note at issue. The Elkhart Superior Court No. 2 entered judgment and a decree of foreclosure on the property on May 16, 2014.

Mr. Lahrman’s first motion for emergency relief in this court sought to stop a January 28, 2015 Sheriff’s sale of the Elkhart property. This court denied the motion, and according to Mr. Lahrman, the Federal National

Mortgage Association purchased the property at the sale. Mr. Lahrman and his companion evidently refuse to vacate the property, and GMAC Mortgage, LLC,<sup>1</sup> the party that filed the foreclosure suit, filed a petition for a writ of assistance in Elkhart Superior Court No. 2 that seeks to grant the purchaser, Fannie Mae (a/k/a Federal National Mortgage Association), possession of the property. Mr. Lahrman claims the state court granted the petition for the writ of assistance, and his emergency motion in this court seeks to halt the writ's enforcement. He argues that GMAC Mortgage has no legal right to the Elkhart property that Fannie Mae purchased, and the Elkhart Superior Court No. 2 doesn't have jurisdiction over the foreclosure action. Mr. Lahrman's companion, Ms. Damron, joined him in the emergency motion. In 2013, Ms. Damron tried to remove the underlying state court foreclosure action to federal court; this court found no basis for jurisdiction and remanded the suit to Elkhart Superior Court No. 2.

#### I. STANDARD OF REVIEW

The standard a party must meet for a temporary restraining order is functionally the same as that required for a preliminary injunction. Caterpillar Inc. v. ESCO Corp., No. 12-CV-1017, 2012 WL 253293, at \*2 (C.D. Ill. Jan. 26, 2012). The party seeking the temporary restraining order or preliminary injunction must demonstrate that "(1) it has a reasonable likelihood of success

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<sup>1</sup> Green Tree Servicing, LLC was substituted for GMAC Mortgage, LLC in the underlying foreclosure suit in April 2013, before Cynthia Damron – Mr. Lahrman's companion – sought to remove that suit to federal court. For the court's discussion regarding Ms. Damron's related proper party arguments see 3:13-CV-482-RLM-CAN, Doc. No. 29.

on the merits of its claim; (2) no adequate remedy at law exists; (3) it will suffer irreparable harm if preliminary injunctive relief is denied; (4) the irreparable harm it will suffer without preliminary injunctive relief outweighs the irreparable harm the nonmoving party will suffer if the preliminary injunction is granted; and (5) the preliminary injunction will not harm the public interest.” Platinum Home Mortgage Corp. v. Platinum Fin. Grp., Inc., 149 F.3d 722, 726 (7th Cir. 1998). The threshold consideration is the moving party’s likelihood of success on the merits of the underlying claim, id., and that is where Mr. Lahrman’s motion falls short.

## II. DISCUSSION

Mr. Lahrman’s allegations specifically related to the writ of assistance issued by the state court are meritless. A writ of assistance enforces a judgment, and the party that obtained the judgment for possession can seek the writ. FED. R. CIV. P. 70(d). According to the copy of the petition for writ of assistance submitted by Mr. Lahrman, GMAC Mortgage obtained the judgment and decree of foreclosure,<sup>2</sup> and so was the appropriate party to seek the writ in order to deliver possession to the purchaser, Fannie Mae.

Mr. Lahrman argues the Elkhart Superior Court No. 2 and specifically Judge Stephen R. Bowers don’t have jurisdiction over the foreclosure action

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<sup>2</sup> Lest Mr. Lahrman try to argue in the future that Green Tree and not GMAC Mortgage was the appropriate party to seek the writ of assistance, since Green Tree was substituted for GMAC Mortgage as the plaintiff in the foreclosure suit, the court would agree based simply on its familiarity with Ms. Damron’s foreclosure suit. But the change would be in name only, and the writ, and its validity, wouldn’t otherwise be altered.



because Mr. Lahrman has named them in this suit in federal court. Naming a court and/or judge in a federal suit doesn't affect jurisdiction of the state courts.

Finally, Mr. Lahrman claims the Elkhart Superior Court No. 2 also doesn't have jurisdiction pursuant to the Housing and Economic Recovery Act of 2008, 12 U.S.C. § 4617(f), because the mortgage is a Fannie Mae asset. Ms. Damron made a similar argument when she tried to remove the foreclosure action to this court; she claimed Fannie Mae was the real party in interest on the mortgage note and so had to be added to the suit. The court found her argument ignored applicable Indiana law, which permits the holder of a negotiable instrument or a nonholder in possession of the instrument who has the rights of a holder to prosecute a foreclosure action. IND. CODE § 261-13.1-301. For further discussion of Ms. Damron's futile Fannie Mae related arguments see 3:13-CV-482-RLM-CAN, Doc. No. 29, and Green Tree Servicing, LLC v. Damron, No. 13-3832, 557 F. App'x 588, 589 (7th Cir. June 9, 2014).

This court likely doesn't have jurisdiction over Mr. Lahrman's claims asserted in this federal action. The *Rooker-Feldman* doctrine prevents a federal court from having subject matter jurisdiction over claims that seek review of a state court judgment. Taylor v. Federal Nat. Mortgage Ass'n, 374 F.3d 529, 532 (7th Cir. 2004). Although Mr. Lahrman asserts claims that might not have been raised in the state court proceedings, his claims are inextricably intertwined with the state court foreclosure action. See id. at 532-533 (federal claims raised

in federal court that weren't raised in the state court are subject to *Rooker-Feldman* if they are inextricably intertwined with a state court judgment). Mr. Lahrman twice was denied intervention in his companion's state court foreclosure suit. He says his second motion requested reasonable accommodations and modifications under the Americans with Disabilities Act, and the Elkhart Superior Court No. 2 summarily denied the motion. Mr. Lahrman's companion attempted to remove the foreclosure suit to federal court; this court remanded it back to state court because no basis for removal existed. See 3:13-CV-482-RLM-CAN. Mr. Lahrman claims that at a status hearing in his companion's state court foreclosure suit court staff sought to exclude him (as a non-party) from the hearing held in Judge Bowers' Chambers. He says Judge Bowers ultimately allowed him to attend the hearing, but not to participate. At that hearing, Mr. Lahrman says he personally served Judge Bowers with his notice of appeal of the court's decision denying his motion to intervene.

Mr. Lahrman says he filed suit in January 2014 in Elkhart Circuit Court against Ally Financial Inc., d/b/a GMAC Mortgage LLC, and others in an attempt to quiet title of the false, void, fraudulent, and unenforceable mortgage at issue in the underlying state court foreclosure action. Mr. Lahrman says the Elkhart Superior Court No. 2 denied his requests for reasonable accommodations, although it isn't clear in which case. The Indiana Court of Appeals also denied Mr. Lahrman's request for reasonable accommodations.

The outcomes of the appeal and Mr. Lahrman's suit in Elkhart Superior Court No. 2 aren't clear.

This glimpse of the muddy and superfluous litigation history surrounding the property at issue reveals that Mr. Lahrman likely had the opportunity to raise the claims in this complaint in state court. See *id.* at 533 (to be barred by *Rooker-Feldman*, an inextricably intertwined claim must also not have had a reasonable opportunity to be raised in the state court proceedings).

### III. CONCLUSION

Mr. Lahrman's criticisms of the writ of assistance issued by the state court are meritless, and he hasn't demonstrated that he is likely to succeed on his claims asserted in federal court. Mr. Lahrman hasn't met the threshold showing for a temporary restraining order. Accordingly, the court DENIES Mr. Lahrman's motion (Doc. No. 26) to the extent he seeks a temporary restraining order and DEFERS ruling on the motion to the extent he seeks a preliminary injunction until a separate motion is filed as required by Local Rule 65-1. The court advises Ms. Damron and her counsel that if she pursues a preliminary injunction in this case, they should be prepared to discuss 28 U.S.C. § 1927 in light of the proceedings in 3:13-CV-482-RLM-CAN.

SO ORDERED.

ENTERED: February 23, 2015

/s/ Robert L. Miller, Jr.  
Judge  
United States District Court