

Hearing Date: June 15, 2016 at 10:00 A.M. (Prevailing Eastern Time)

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

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

)
) Case No. 12-12020 (MG)
)

) Chapter 11
)

) Jointly Administered
)

**RESCAP BORROWER CLAIMS TRUST'S OMNIBUS REPLY IN SUPPORT OF ITS
NINETY-THIRD OMNIBUS OBJECTION TO CLAIMS ((I) REDESIGNATE AND
ALLOW BORROWER CLAIMS, (II) RECLASSIFY AND ALLOW BORROWER
CLAIMS, (III) REDESIGNATE, RECLASSIFY AND ALLOW BORROWER CLAIMS,
AND (IV) ALLOW IN FULL BORROWER CLAIMS) AS TO CLAIM NO. 1457**



The ResCap Borrower Claims Trust (the “Borrower Trust”), established pursuant to the terms of the Plan¹ filed in the above-captioned Chapter 11 Cases, as successor in interest to the above-captioned Debtors with respect to Borrower Claims, by and through its undersigned counsel, hereby submits this reply (the “Reply”) to the response filed by Beverly Blake (the “Respondent”) [Docket No. 9849] (the “Response”)² to the *ResCap Borrower Claims Trust’s Ninety-Third Omnibus Objection to Claims ((I) Redesignate and Allow Borrower Claims, (II) Reclassify and Allow Borrower Claims, (III) Redesignate, Reclassify and Allow Borrower Claims, and (IV) Allow In Full Borrower Claims)* [Docket No. 9779] (the “Objection”). The Trust respectfully states as follows:

PRELIMINARY STATEMENT

1. The Borrower Trust examined the Response and the statements submitted in support thereof. For purposes of this Reply and the Objection, the Borrower Trust takes these statements at face value. If the Court is not prepared to rule on the Objection with respect to the Respondent, then the Borrower Trust reserves the right to take discovery from the Respondent.

2. As described herein, the Borrower Trust examined the Claim and determined that it improperly asserts a priority claim under section 507(a)(7) of the Bankruptcy Code. For the reasons set forth in the Objection and this Reply, the Respondent has failed to demonstrate she made a deposit in connection with the purchase, lease, or rental of property or services that were not delivered or provided and therefore is not entitled to a priority claim under section 507(a)(7). Therefore, the Respondent has failed to meet her burden of proof, and the relief sought in the Objection should be granted with respect to the Respondent.

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

² The Borrower Trust also received a letter, attached as Exhibit A hereto (the “Letter”), that might have been in response to the Objection. However, the signature on the Letter is illegible, and there is nothing in the Letter to identify the author as a Borrower whose claim was objected to in the Objection. As a result, the Borrower Trust does not respond to the Letter in this Reply.

BACKGROUND

3. In connection with the claims reconciliation process, the Borrower Trust identified certain claims filed by Borrowers that it believed improperly assert a secured claim or a priority claim under section 507 of the Bankruptcy Code (together, the “Reclassify and Allow Borrower Claims”).

Background Facts

4. On or around October 22, 2012, the Respondent filed a proof of claim against Debtor Homecomings Financial, LLC (“Homecomings”) designated as Claim No. 1457 (the “Claim”), asserting a priority unsecured claim in the amount of \$26,000.00. See Exhibit B attached hereto. On the proof of claim form, the Respondent identified her claim as a priority claim under section 507(a)(7) of the Bankruptcy Code and stated as the basis for her claim: “There was a breach of performance in handling my loan for real estate.” See id.

5. In the Response, the Respondent expands on the basis for her claim, stating that her claim is based on the improper origination of her loan.

REPLY

6. 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). As noted previously by the Court, claims objections have a shifting burden of proof. Pursuant to Federal Rule of Bankruptcy Procedure 3001(f), a Respondent establishes a prima facie case against a debtor upon filing a proof of claim alleging facts sufficient to support the claim. The objecting party is thereafter required to produce evidence equal in force to that provided by the Respondent to rebut the presumption of the Respondent’s prima facie case. In re Residential

Capital, LLC, 507 B.R. 477, 490 (Bankr. S.D.N.Y. 2014). See also Allegheny Int'l, Inc. v. Snyder (In re Allegheny Int'l, Inc.), 954 F.2d 167, 173-74 (3d Cir. 1992).

7. Once an objection refutes an essential allegation of the claim, the burden of persuasion is on the holder of a proof of claim to establish a valid claim against a debtor by a preponderance of the evidence. Residential Capital, 507 B.R. at 490; Feinberg v. Bank of N.Y. (In re Feinberg), 442 B.R. 215, 220-22 (Bankr. S.D.N.Y. 2010); In re Oneida Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), aff'd sub nom., Peter J. Solomon Co. v. Oneida Ltd., No. 09-cv-2229 (DC), 2010 U.S. Dist. LEXIS 6500 (S.D.N.Y. Jan. 22, 2010).

8. As stated in the Objection, the Borrower Trust is prepared to allow the Claim as a general unsecured non-priority claim, but disputes that the Claim is entitled to priority status under section 507(a)(7) of the Bankruptcy Code. That provision states that the following types of claims shall receive priority:

[A]llowed unsecured claims of individuals, to the extent of \$[2,600]³ for each individual, arising from the deposit before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7).

9. Here, the Respondent has not identified any deposit that she made with Homecomings in connection with the purchase, lease, or rental of property that was not provided to her. Rather, she asserts that her claim is based on higher interest rates and fees that she has been required to make. Furthermore, the Claim amount far exceeds the \$2,600 cap on priority

³ For cases commenced prior to April 1, 2013, the dollar amount is \$2,600, rather than \$2,775, the amount currently listed in 11 U.S.C. § 507(a)(7).

claims permitted under 11 U.S.C. § 507(a)(7). The Borrower Trust has not identified any other basis for granting the Claim priority status, and no other basis is put forward by the Respondent. As a result, the Respondent has failed to demonstrate that her claim is entitled to be classified as a priority claim, and the Court should reclassify her claim as a general unsecured claim and allow it in the asserted amount.

CONCLUSION

10. WHEREFORE, the Borrower Trust respectfully submits that the relief requested in the Objection should be granted in its entirety, and the Claim should be reclassified as a general unsecured claim and allowed against Homecomings in the amount of \$26,000.

Dated: May 12, 2016
New York, New York

/s/ Norman S. Rosenbaum
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Counsel for the ResCap Borrower Claims Trust

Exhibit A

4/18/16

Case no. 12-12020(MG)

To Whom It May Concern,

The insurance fines, penalties and fees imposed on my property by Central mortgage and GMAC during an economic depression, with no consideration to the mortgage hardships millions of Americans were forced to deal with do to the illegal practices of banks and mortgage companies, caused me and my family to suffer hardships, misfortunes, and increase charges on everything. My credit was destroyed. I was a victim of predatory lending. Insurance was imposed by the mortgage company; and I was sold a liber index loan on another property, without my knowledge, because of the damage done to my credit by GMAC illegal unfair predatory practices. This had a snowball effect on my entire life. My finances, career, and marriage unraveled. This became a hopeless and impossible situation for 7 plus years and counting. This situation caused me to default and pay other creditors late. Because property insurance was imposed by GMAC, that was priced much higher then normal insurance, (put with half the coverage), I was not able to do the repairs caused by hurricane in 2014. (I could not get my property fixed do to I had no control over the insurance that was forced on my property.) The property was unsuitable for certification. I lost that property in Brigantine. On my other property, I have been forced to keep a liber index because my credit does not allow me to qualify for a refinance. My credit score would not allow me to take out a loan for my daughter's Rutgers tuition, and she could not attend. Credit cards, mortgage, purchases, retirement savings, and investments, have been greatly affected negatively, by these injustices done by GMAC.

*Truly
Komb Galt*

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Exhibit B

B 10 Modified (Official Form 10) (12/11)

| UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK | | PROOF OF CLAIM |
|---|---|---|
| Name of Debtor and Case Number: <u>Homecomings FINANCIAL/LLC 12-12042</u> | | |
| NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503. | | |
| Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>BEVERLY A. BLAKE</u> | | <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____ <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. 5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input checked="" type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: <u>\$ 26,000.00</u> * Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. |
| Name and address where notices should be sent: <u>BEVERLY A. BLAKE</u> <u>210 C. L. BRADFORD ST. PINEVILLE, LOUISIANA 71360</u> | | |
| Telephone number: <u>(318) 528-8674</u> | email: <u>b-blake8@yahoo.com</u> | |
| Name and address where payment should be sent (if different from above): | | |
| Telephone number: _____ email: _____ | | |
| 1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges. | | |
| 2. Basis for Claim: <u>There was a breach of performance in handling my loan for Real Estate.</u> (See instruction #2) | | |
| 3. Last four digits of any number by which creditor identifies debtor: _____ 1234 | 3a. Debtor may have scheduled account as: <u>Alison Teamen</u> (See instruction #3a) | 3b. Uniform Claim Identifier (optional): _____ (See instruction #3b) |
| 4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____ | | |
| 6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6) | | |
| 7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7) | | |
| 8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: | | |
| 9. Signature: (See instruction #9) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <u>BEVERLY A. BLAKE</u> <u>Beverly A. Blake</u> 10/11/12 Title: _____ (Signature) (Date) Company: _____ Address and telephone number (if different from notice address above): | | |
| Telephone number: _____ Penalty for presenting fraudulent claim: Fine of up to \$500,000 | | |

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