Hearing Date: April 11, 2013 at 10:00 a.m. (ET)

Avery Samet, Esq.
John W. Brewer, Esq.
STORCH AMINI & MUNVES PC
2 Grand Central Tower
140 East 45th Street, 25th Floor
New York, NY 10017
Tel: (212) 490-4100
Fax: (212) 490-4208
Counsel for Plaintiff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
RESIDENTIAL CAPITAL, LLC et al.,	Case No. 12-12020 (MG)
Debtors.	Chapter 11
	(Joint Administration)
AMERICAN RESIDENTIAL EQUITIES, LLC, in its own individual capacity and in its capacity as Trustee under that certain American Residential Equities, LLC Master Trust Agreement dated August 8, 2005,	Adv. Pro. No. 12-01934
Plaintiff,	
v.	
GMAC MORTGAGE, LLC, as successor by merger to GMAC Mortgage Company, and BALBOA INSURANCE COMPANY,	
Defendants.	

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEBTOR'S MOTION FOR DISMISSAL

12120201303140000000000014

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

ARGUMENT 4

I. THE CLAIMS PROCESS DOES NOT APPLY TO PROCEEDINGS SEEKING TO DETERMINE WHAT IS AND IS NOT PROPERTY OF THE DEBTOR'S ESTATE UNDER SECTION 541(D) OF THE CODE 4

II. PLAINTIFF IS NOT FORUM-SHOPPING 7

III. DEVELOPMENTS IN THE FLORIDA ACTION DID NOT MOOT ACCOUNTING CLAIM 9

IV. THE DEBTOR'S OTHER ARGUMENTS FOR DISMISSAL OF THE MISCELLENEOUS TORT CLAIMS ARE MERITLESS AND/OR CAN BE ADDRESSED BY AMENDMENT 11

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

Burton v. Linotype Co.,
556 So.2d 1126 (Fla. 3d Dist.Ct.App. 1989) 13 n.16

Devore v. Pfizer, Inc.,
58 A.D.3d 138 (1st Dep't) 12

Edgewater Constr. Co., Inc. v. 81 of Watertown, Inc.,
1 A.D.3d 1054 (4th Dep't 2003) 12 n.13

Finance One Public Co. Ltd. v. Lehman Bros Special Financing, Inc.,
414 F.3d 325 (2d Cir. 2005) 11

Heineman v. S&S Machinery Co.,
707 F. Supp. 86 (E.D.N.Y. 1989) 12

In re Flanagan,
503 F.3d 171 (2d Cir. 2007) 5

In re Haber Oil Co., Inc.,
12 F.3d 426 (5th Cir. 1994) 5

In re K Chemical Corp.,
188 B.R. 89 (Bankr. D. Conn. 1995) 5

In re Martin Fein & Co., Inc.,
43 B.R. 623 (Bankr. S.D.N.Y. 1984) 6

In re United States Lines, Inc.,
79 B.R. 542 (Bankr. S.D.N.Y. 1987) 6, 7 n.7

Maltz v. Union Carbide Chemicals & Plastics Co.,
992 F. Supp. 286 (S.D.N.Y. 1998) 11

McLeod v. Barber,
764 So.2d 790 (Fla. 5 Dist Ct App. 2000) 13 n.16

McMaster v. Pearse,
9 Misc.3d 964 (N.Y. Co. Civ. Ct. 2005) 12 n.13

Old Republic Nat'l Bank v. Tyler,
155 F.3d 718 (4th Cir. 1998) 6

Pallant v. Sinatra,
7 F.R.D. 298 (S.D.N.Y. 1945) 1 n.2

Ulbrich v. GMAC Mortgage, LLC et al.,
S.D. Fla. Civ. No. 11–cv–62424–RNS 13 n.15

Statutes & Rules

11 U.S.C. § 541(d) ..... *passim*

28 U.S.C. § 1334(e)(1) 9 n.10

Fla. Stat. 95.11(3)(j) 12

CPLR 213 (8) 12 n.14

Fed. R. Bankr. P. 7001(1), (2) and (9) 5

Fed. R. Bankr. P. 7015 1

Fed. R. Civ. P. 12(b)(6) 7 n.7

Fed. R. Civ. P. 15(a)(1)(B) 1

Plaintiff American Residential Equities, LLC ("ARE") respectfully submits this Memorandum of Law in Opposition to the Debtor's Motion for Dismissal (the "Motion").[1] While the Motion should be denied for the reasons set forth below, we do wish to note as a preliminary matter that ARE plans to file an amended complaint as of right to, among other things, add new causes of action against the other defendant, non-debtor Balboa Insurance Co. ("Balboa"), as well as further clarifying the liability theories asserted against both defendants. ARE's deadline to amend as of right pursuant to Fed. R. Civ. P. 15(a)(1)(B) (applicable here via Fed. R. Bankr. P. 7015) has not yet run, but given the existing briefing schedule, ARE has nonetheless elected to file this brief to respond to the mischaracterizations and misunderstandings evident in the Debtor's Motion.[2]

PRELIMINARY STATEMENT

The core of this dispute is straightforward. As noted in the Complaint ("Cplt"), ARE holds and/or manages portfolios of residential mortgage loans, many of which became distressed during the collapse of the real estate market over the last decade. Cplt ¶¶ 1, 14-15. From 2004 until 2010, the Debtor ("GMAC") was retained by ARE to service those portfolios, collecting

[1] As set forth in ¶¶ 13-17 of the Complaint, ARE has the right as trustee and asset manager to bring litigation claims on behalf of and for the benefit of other entities (referred to in the Complaint as the "Beneficiaries") who were the ultimate owners of the underlying assets. For ease of exposition, "ARE" as used herein may also include references to the Beneficiaries where context so dictates.

[2] As a result of negotiations among counsel and good-faith attempts to accommodate everyone's schedules, the two defendants' time to respond to the Complaint ended up on different timelines. Balboa did not file its own motion to dismiss until March 1, 2013 (docket item 22), and accordingly the deadline for ARE to amend as of right is 21 days thereafter, or March 22, 2013. In a multi-defendant case where the claims against the different defendants are interrelated but the defendants' initial responses to the original complaint have ended up being filed at different times, the last-filed controls the timing of the right to amend. See, e.g., *Pallant v. Sinatra*, 7 F.R.D. 298 (S.D.N.Y. 1945); Wright, Miller & Kane, Federal Practice & Procedure § 1481. We acknowledge that not all of the case law in this area has been uniform (as the text of the rule does not specifically provide for its application to the complications that can arise in multi-defendant cases), and are willing to work in good faith with Debtor's counsel in the hope of obviating any potential need for motion practice with respect to the amendment, as well as with respect to the amendment's impact on the pending motion.

and accounting for monthly payments on performing loans, foreclosing on and disposing of property securing loans in default, and carrying out a multitude of other specified related functions (such as making sure that the value of property abandoned by borrowers was properly protected against deterioration). Cplt. ¶ 22. All monies collected by GMAC in connection with ARE's loans were required to be deposited by GMAC in segregated trust accounts (Cplt. ¶ 23 - the "Trust Accounts," with such assets as were or should have been held therein the "Trust Assets"), with the balance of such funds net of permissible expenses and fees remitted to ARE. Cplt. ¶ 24.

The Complaint alleges that GMAC failed to perform its mandated obligations under the governing documents ("Servicing Agreement"), thus causing millions of dollars of economic harm to ARE, looted the Trust Funds by improperly removing Trust Assets via improper or inflated fees and supposed expenses, failed to pay over the remaining (even post-looting) balance of the Trust Accounts to ARE upon the termination of the relationship (Cplt ¶¶ 26(o), 26(p), 29), and committed various torts such as conversion and unjust enrichment in connection with its looting of the Trust Funds. Some of these claims were previously brought in an action filed by ARE against GMAC in the U.S. District Court for the Southern District of Florida (No. 10-CV-21943, the "Florida Action"), which was subject to the automatic stay as soon as GMAC filed for bankruptcy last year. The Complaint also alleges (based on information that first began to come to light in 2011 after the original complaint in the Florida Action was filed) a fraudulent conspiracy between GMAC and Balboa, whereby GMAC directed business for "force-placed" insurance on properties in ARE's portfolio at inflated and unnecessary rates (passed through to

ARE) to Balboa (an insurer) in return for undisclosed kick-backs from Balboa to GMAC.[3] Indeed, this scheme predated ARE's original agreement to have GMAC service its loan portfolio, and ARE would not have entered into that agreement had it been aware of the kickback arrangement. Cplt. ¶ 58.

The Debtor's primary argument for dismissal is that the Complaint seeks no more than payment on a disputed unsecured general claim that should more properly be dealt with in the claims allowance process at a later stage in the Debtor's case. But this ignores the crucial fact that a crucial part of ARE's claims involve the Debtor's prepetition looting of the Trust Funds and failure to pay over the Trust Assets to ARE. ARE's equitable interest in all Trust Assets is superior to the interest of the Debtor, and, under section 541(d) of the Code, is not part of the Debtor's bankruptcy estate. It is well-established that an adversary proceeding is the appropriate procedural vehicle when a debtor has misappropriated trust funds and those funds, even if commingled with other assets that might be property of the estate, can still be traced. The Motion's other arguments are largely red herrings. ARE was unquestionably barred by the automatic stay from proceeding with the Florida Action (whose status is mischaracterized in the Debtor's papers), and there is no authority that ARE was required to move to lift the stay (without, to put it mildly, any assurance the Debtor would not oppose such relief) before seeking to pursue the same and related claims in this Court. Finally, the bulk of Debtor's miscellaneous arguments for the alleged pleading inadequacies of certain of the causes of action are either based on a serious misconstruction of relevant prior proceedings (as to the accounting claim) or on the attempted application of the wrong state's substantive law.

[3] These corrupt arrangements between Balboa and GMAC are the subject of a number of other pending lawsuits, one of which (S.D. Fla. docket number 11-cv-62424) is a class action which Balboa has already agreed to settle.

ARGUMENT

I. THE CLAIMS PROCESS DOES NOT APPLY TO PROCEEDINGS SEEKING TO DETERMINE WHAT IS AND IS NOT PROPERTY OF THE DEBTOR'S ESTATE UNDER SECTION 541(D) OF THE CODE

Nowhere does the Debtor dispute that the Complaint sets forth, at a minimum, a legally viable breach of contract claim. Yet the Debtor seeks dismissal of the entire adversary proceeding on entirely procedural grounds, claiming that ARE is somehow forum-shopping and the underlying claims ought to proceed instead either (a) as a mere unsecured proof of claim subject to a claims objection and allowance process that has not yet been scheduled; or b) in the Florida Action that the automatic stay indisputably applies to (and where, as detailed below, the Debtor filed a form notice demanding that ARE abide by the automatic stay). Neither of these claims is meritorious.

First, the Debtor devotes the bulk of its Motion (at 5-12) to arguing the uncontroversial proposition that disputed general unsecured claims should not generally be pursued in free-standing adversary proceedings but rather resolved through the claims allowance and objection process. It relegates to a footnote (Motion at 11 n.4) its single reference to the crucial provision of the Code applicable here: 11 U.S.C. § 541(d). The Debtor admits in that footnote that that section provides the law relevant to "property to which the debtor holds only legal title and not an equitable interest," and that at least some aspects of ARE's Complaint relate to that section. It nonetheless fails to acknowledge the necessary and inevitable conclusion. Because assets subject to 541(d) – such as the Trust Assets at issue here – are expressly excluded by the Code from the otherwise very broad definition of property of the estate to the full extent of the non-debtor beneficiary's interest in them (here, ARE's claim to them), the question of whether

particular assets in the Debtor's possession are in fact property of the estate in the first instance is not and cannot be relegated to the claims allowance process – which necessarily presumes that all allowed claims will be satisfied (typically at a discount) only out of what has been determined to be property of the estate.[4]

This adversary proceeding is brought pursuant to the express provisions of, inter alia, Fed. R. Bankr. P. 7001(1), (2), and (9) which provides that "a proceeding to recover money or property, "a proceeding to determine the validity . . . [of an] interest in property," and "a proceeding to obtain a declaratory judgment relating to any of the foregoing" must all be brought as adversary proceedings. The plain language of the rule makes clear that 541(d) claims ought to be raised in adversary proceedings and, indeed, the Fifth Circuit has specifically faulted a creditor who pursued a constructive trust claim under 541(d) in an ad hoc fashion via the claims allowance process instead, holding that pursuant to Rule 7001 it had been "incumbent on him to file an adversary proceeding in the bankruptcy court." *In re Haber Oil Co., Inc.*, 12 F.3d 426, 437 (5th Cir. 1994) (reversing favorable judgment for creditor below in part based on that procedural failure). *See also In re K Chemical Corp.*, 188 B.R. 89, 98 (Bankr. D. Conn. 1995) (refusing to consider 541(d) constructive trust theory in context of adjudicating claims objection but granting leave to creditor to file an adversary proceeding as the proper vehicle to pursue that issue).

Thus, in *In re Flanagan*, 503 F.3d 171 (2d Cir. 2007), a creditor brought an adversary proceeding seeking declaratory relief regarding certain assets in the debtor's possession that the creditor alleged were subject to a constructive trust and thus excluded from the estate under 541(d). The Second Circuit ultimately affirmed the lower courts' rejection of the constructive

[4] The Debtor's suggestion (Motion at 11) that it is unaware of any document requiring funds to be held in trust for ARE's benefit is simply baffling, given that it has attached to its papers the very document (Motion Exh. K at 2.04) which explicitly requires the Trust Assets to be held in the Trust Accounts.

trust claim on its merits, but (unsurprisingly, in light of the authority just cited) did not suggest that an adversary proceeding was not the appropriate mechanism for raising and resolving that dispute, or that the claims allowance process could even have the capacity to deal with the 541(d) issues. Here, of course, we are dealing not with an attempt to impose a constructive trust after the fact, but with funds that were subject to an express trust. *See also Old Republic Nat'l Bank v. Tyler*, 155 F.3d 718 (4th Cir. 1998) (affirming grant of summary judgment to plaintiffs in adversary proceeding brought under 541(d) to recover misappropriated trust funds held by debtor even though they had been commingled with other funds in debtor's general corporate account);[5] *In re Martin Fein & Co., Inc.*, 43 B.R. 623 (Bankr. S.D.N.Y. 1984) (granting relief in adversary proceeding commenced by creditor of debtor under 541(d) by imposing constructive trust when misappropriated funds had been commingled with other funds in debtor's bank account but were still traceable); *In re United States Lines, Inc.*, 79 B.R. 542 (Bankr. S.D.N.Y. 1987) (plaintiffs in adversary proceeding entitled to constructive trust to extent misappropriated funds were traceable, with a general unsecured claim as to the balance).

Accordingly, the first cause of action in the Complaint (seeking declaratory relief establishing that the Trust Accounts are not property of the Debtor's estate) and the fourth cause of action (seeking to have all amounts that are or should be in the Trust Accounts turned over to Plaintiff) cannot be dismissed or stayed on the grounds that they ought to be adjudicated in the claims allowance process, because they are at the heart of the 541(d) claims.[6] Likewise, the fifth cause of action for an accounting of all monies that passed through or should have passed

[5]Just as in *Old Republic*, the express trust here applies as a matter of black-letter law not only to such funds as may have been properly maintained and retained by the Debtor in the segregated Trust Accounts as of the petition date, but also to funds improperly removed from the Trust Accounts and commingled with other assets, to the maximum extent such improperly commingled funds remain traceable.

[6] The fourth cause of action does not seek turnover in the technical meaning of section 542 of the Code and does not claim to. The Debtor does not dispute that ARE would be entitle to recoup whatever Trust Assets the Debtor holds that are not property of the Debtor's estate, whether that remedy is labeled turnover or something else.

through the Trust Accounts is part of the core 541(d) case. The other causes of action were set forth in the same pleading both to avoid any waiver issues and also because they are directly relevant to identifying those funds subject to recoupment under 541(d). In other words, the actions GMAC took in connection with its improper looting of the Trust Funds (with the looted Trust Assets still subject to recovery under 541(d) to the maximum extent they are traceable) also constituted breach of contract , conversion, fraud, and unjust enrichment, as set forth in the Complaint.[7]

II. PLAINTIFF IS NOT FORUM-SHOPPING

The Debtor's rhetoric suggesting that it was on the verge of victory in the Florida Action and that Plaintiff is seeking to change forums for tactical advantage is just that – mere rhetoric. Separately, however, it may be worth briefly clarifying the record on the exact state of play in the Florida Action as of the date it was frozen by the imposition of the automatic stay. Contrary to the Debtor's insinuation, GMAC was not about to prevail on its pending motion for partial summary judgment. Quite to the contrary, the magistrate had recommended (Motion Exh. H) that that motion be withdrawn without prejudice as premature in light of the substantial additional discovery GMAC was being ordered to provide, with the proposed deadline for the filing of a renewed dispositive motion being pushed back almost nine months into the future. In light of that recommendation, the district court then sua sponte cancelled the then-scheduled argument date for GMAC's pending summary judgment motion without even waiting for any

[7] There is no dispute that to the extent ARE's total damages exceed what may ultimately be recovered in Trust Assets excluded from the Debtor's estate under 541(d), the remaining damages will constitute a general unsecured claim which may be handled in the Debtor's claims allowance process, just as happened in *U.S. Lines*, 79 B.R. at 547. We are willing to discuss in good faith with Debtor's counsel whatever thoughts they may have for sensible and efficient case management under the circumstances, given the very substantial factual and legal overlap between those claims that may be pursued at present in this proceeding under 541(d) and the remaining unsecured claims. Debtor does not appear to claim that the first, second, and fourth causes of action are inadequately pleaded for 12(b)(6) purposes. The Debtor's 12(b)(6) arguments with respect to the conversion and fraud claims are addressed below in section IV.

objections to this aspect of the magistrate's recommendations to be raised and adjudicated. Exh A hereto; Fla. Action docket item #129.[8] (The Debtor's misinterpretation of the Florida' court's prior denial of ARE's 12(c) motion on a single discrete issue is discussed below in section III.[9])

That general history aside, ARE has now come to this Court, with its plenary authority over the Debtor's affairs and over all disputes related to the Debtor's pre-petition misconduct and the appropriate remedies for such misconduct, not in search of a more favorable forum but simply because the law required it to do so. As soon as the judge overseeing the Florida Action was made aware of Debtor's chapter 11 filing, he issued an order to show cause (Exh. C hereto; Fla. Action docket #138) instructing the Debtor to give any reasons why the case should not be stayed and administratively closed. The Debtor did not do so, and the court accordingly stayed the case and cancelled all pending hearings and deadlines. Exh. D hereto; Fla. Action docket #140. Indeed, months later, the Debtor filed a supplemental notice in the Florida Action (Exh. E hereto; Fla. Action docket #141) reconfirming that the automatic stay applied and that the limited relief from the automatic stay the Debtor itself had sought and obtained from this Court (permitting certain specified categories of disputes to go forward in other forums) did not apply to the Florida Action, and that ARE was required to come to this Court if it wanted any relief.

---

[8] GMAC's then-pending *Daubert* motion with respect to ARE's expert was likewise taken off calendar (Exh. A), and that motion in any event was of less moment in light of the magistrate's recommendation that ARE be permitted to designate different or additional experts. Motion Exh. H at 18.

[9] Debtor likewise tries to make rhetorical hay by insinuating (Motion at 4) that ARE was "sanction[ed]" in the Florida Action. That issue is a red herring that has nothing to do with the substantive merits of ARE's claims in this Court, but simply for the Court's information, the situation was as follows: a) although the magistrate concluded that GMAC had failed to produce substantial discovery and accordingly granted ARE's motion to compel (Motion Exh. H at 12); b) the magistrate concluded that ARE's then-counsel had not fully complied with their meet-and-confer obligations prior to filing that motion to compel and accordingly recommended that ARE be ordered to pay certain of GMAC's fees related to that motion practice (*id.* at 13); c) ARE exercised its right to object to that aspect of the magistrate's recommendation and seek a ruling from the district judge (Exh. B hereto; Fla. Action docket #130); but d) the automatic stay intervened before the district judge had an opportunity to rule on whether, in fact, the alleged failure to comply with the meet-and-confer obligations merited any fee award to GMAC.

See also Exh. F hereto; Fla. Action docket #139 (threatening ARE with contempt sanctions if it took any further steps in the Florida Action).

Thus, until filing the present motion, the Debtor never gave any indication that it thought this dispute should proceed in Florida. There was and is no reason to believe that the Debtor would, if put to the test, have consented to any motion ARE might have made for relief from the automatic stay to permit the Florida Action to proceed, and their insinuation (Motion at 4, 6) that ARE ought to have sought relief from the stay in order to seek leave of the Florida judge to amend its complaint rather than adding new claims to its filing in this Court is disingenuous, given that lack of any realistic possibility that the Debtor would have agreed to proceed to litigate the merits in that forum.[10]

III. DEVELOPMENTS IN THE FLORIDA ACTION DID NOT MOOT ACCOUNTING CLAIM

Debtor's claim that the accounting claim is precluded by developments in the prior Florida litigation is not only inaccurate but highly disingenuous. The complaint in that action (Motion Exh. A) did not even contain a separate cause of action for an equitable accounting, seeking only specific performance of a narrower, contractually-specified right of audit. ARE made a motion under Rule 12(c) for judgment on the pleadings on that specific issue, so that (in the face of stonewalling behavior by GMAC in discovery) it could obtain specific performance of that

[10] Moreover, this Court's exclusive jurisdiction over the property of the Debtor's estate under 28 U.S.C. § 1334(e)(1) may make it uniquely well-suited to adjudicate the 541(d) issues, which necessarily require a determination of what is and is not property of the estate.
Separately, this proceeding was filed simultaneously with the filing of a proof of claim on the Bar Date (Motion Exh. J), with the complaint herein serving as the exhibit to that proof of claim. To the extent the present Complaint seeks recovery on additional factual and legal theories not present in the prior complaint in the Florida Action (which could not have been amended without a prior order from this Court lifting the stay), ARE could have been prejudiced by the passage of the Bar Date if it had only specified its claims by reference to the prior pleading in the Florida Action.

contractual right and conduct that audit. The Court denied the motion precisely because of unresolved "disputes and factual uncertainty," meaning that the issue could not be determined on the face of the pleadings. *See* Motion Exh. C at 11. GMAC did not bother to cross-move for judgment in its favor on that claim and it is clear from the opinion that it would necessarily have lost if it had. There is no possible basis on which a prior decision that a separate, narrow issue could not be resolved without further factual development could possibly entitle the Debtor to a judgment in its favor on that claim on 12(b)(6) grounds without the factual development the Florida court thought necessary.

Nor can Debtor simply claim that the issue has been mooted as a matter of law by claiming (without any record support) that it produced in the Florida Action "substantially" all (in other words, not in fact all) of the documents an expert retained by ARE had preliminarily thought might be needed for a particular analysis. It cannot claim it produced everything responsive to all discovery requests (which it most assuredly did not), nor can it even claim that it produced everything it was legally required to, in light of the magistrate's report and recommendation (Motion Exh. H at 1) granting ARE's motion to compel after finding serious shortfalls in GMAC's prior document production.[11]

In any event, GMAC's bankruptcy filing has itself significantly changed the relevant legal landscape, and thus shifted the focus of necessary discovery. The flow of funds into and out of the Trust Accounts was not, as such, the focus of discovery in the Florida Action, because the sharp distinction imposed by 541(d) of the Code between trust monies ARE is entitled to recover in their entirety and assets of the Debtor's estate as to which ARE may be limited to a general

[11] It is our understanding that production of the additional discovery materials at issue was not completed by GMAC before the bankruptcy filing and automatic stay intervened.

unsecured claim was simply not then at issue.[12] Indeed, the need to distinguish and trace Trust Funds is now crucial to this dispute, and the accounting requested will greatly clarify those issues. Furthermore, as already noted above, the accounting remedy, since it is non-monetary in nature, cannot meaningfully be dealt with in the claims allowance process.

IV. THE DEBTOR'S OTHER ARGUMENTS FOR DISMISSAL OF THE MISCELLANEOUS TORT CLAIMS ARE MERITLESS AND/OR CAN BE ADDRESSED BY AMENDMENT

The Servicing Agreement has a choice-of-law provision (Motion Exh. K at 13.07) providing that "THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA AND THE OBLIGATIONS, RIGHTS AND REMEDIES HEREUNDER" determined under Pennsylvania law. This narrow and specific language does not purport to govern tort claims, and accordingly (since contractual choice-of-law is just that – voluntary and contractual) does not govern them. *See, e.g. Finance One Public Co. Ltd. v. Lehman Bros Special Financing, Inc.*, 414 F.3d 325, 335 (2d Cir. 2005) ("tort claims are outside the scope of contractual choice-of-law provisions that specify what law governs construction of the terms of the contract"); *Maltz v. Union Carbide Chemicals & Plastics Co.*, 992 F. Supp. 286, 296 (S.D.N.Y. 1998) (New York choice of law provision in contract would govern contract claims but was irrelevant to proper choice-of-law analysis for tort claims).

The Debtor does not attempt to provide any other basis on which a proper choice-of-law analysis would or must yield Pennsylvania law. The Complaint, for example, does not allege that any of the key facts related to the Debtor's fraudulent misrepresentations and omissions to

[12] For example, it is our understanding that GMAC never produced in the Florida Action the bank statements related to the Trust Accounts.

ARE occurred in Pennsylvania. To the contrary, one key factor for any choice-of-law analysis is that those representations were received, relied on, and caused injury to the Plaintiff in Florida, where plaintiff was headquartered at the time. *Devore v. Pfizer, Inc.*, 58 A.D.3d 138 (1st Dep't 2008) (applying law of jurisdiction where injury was suffered for purposes of New York choice-of-law analysis); *Heineman v. S&S Machinery Co.*, 707 F. Supp. 86, 88 (E.D.N.Y. 1989) (situs of place of injury for choice-of-law analysis in fraud claim is typically plaintiff's residence). Nor is any basis set forth to think that Pennsylvania law would apply to the conversion claim.[13]

Thus, not only are Debtor's references to Pennsylvania's idiosyncratic "gist of the complaint" rule entirely beside the point, the Debtor's invocation (Motion at 16) of Pennsylvania's short statute of limitations period is a transparent attempt to avoid less helpful potentially-applicable law, such as Florida's four-year limitations period for fraud claims. Fla. Stat. 95.11(3)(j). In any event, the statute of limitations was tolled until the fraud related to the concealed scheme whereby Balboa paid kickbacks to GMAC was or could have been discovered.[14] Evidence of Balboa's misconduct in this regard began coming to public light in March 2011, and the first other lawsuit alleging joint misconduct between GMAC and Balboa

[13] The conversion claims arise from the improper and unjustified looting by GMAC of the Trust Accounts, and there is no basis to conclude that any of the relevant events giving rise to those claims occurred in Pennsylvania. The Complaint does not specify the location of the Trust Accounts, but our understanding is that they were not located in Pennsylvania and were at least primarily located in New York. The Debtor cites no non-Pennsylvania authority in support of its contention that the mere existence of a contract means that a trustee can loot a trust fund with complete impunity from tort liability. Under New York law, there are numerous cases where liability for both breach of contract and for other liability theories arising from wrongful diversion of trust funds can and does coexist. See., e.g., *Edgewater Constr. Co., Inc. v. 81 of Watertown, Inc.*, 1 A.D.3d 1054 (4th Dep't 2003); *McMaster v. Pearse*, 9 Misc.3d 964 (N.Y. Co. Civ. Ct. 2005) (breach of contract and conversion theories co-existing in case where defendant breached obligation to maintain funds in segregated trust accounts).

[14] *See also* CPLR 213 (8) (limitations period for fraud either six years from accrual or two years from discovery). The Debtor does not argue that any of the other causes of action in the Complaint are subject to any limitations defense.

was not filed until November 2011.[15] Given that Balboa, in its separate motion to dismiss, has likewise raised a limitations issue, we intend to provide details in the forthcoming amended complaint of the events such as these that might have first given rise to inquiry notice (without prejudice to the issue of whether it is actually plaintiff's affirmative burden to plead facts that will preemptively negate a potential affirmative defense such as the statute of limitations). Similarly, any alleged issues with respect to lack of sufficient Rule 9(b) particularity in the fraud claim can and will be addressed by the amendment.[16]

[15] See, e.g. BofA Leak Exposes Possible Force-Placed Insurance Fraud, http://thedailybail.squarespace.com/home/bofa-leak-exposes-possible-force-placed-insurance-fraud.html; *Ulbrich v. GMAC Mortgage, LLC*, S.D. Fla. 11-cv-62424.

[16] The fraud claim would not be barred by Florida's "economic loss rule," assuming Florida law might govern, because among other things the Complaint alleges that ARE was fraudulently induced to enter into the original contractual agreement with GMAC via culpable nondisclosure and concealment of the kickback scheme. *See, e.g., McLeod v. Barber*, 764 So.2d 790, 794 (Fla. 5th Dist. Ct. App. 2000) ("claims of fraudulent inducement are not barred by Florida's economic loss rule"). *Burton v. Linotype Co.*, 556 So.2d 1126, 1128 (Fla. 3d Dist. Ct. App. 1989) ("Fraud in the inducement and deceit are independent torts for which compensatory and punitive damages may be recovered.").

CONCLUSION

For all of the foregoing reasons, the Motion should be denied and Plaintiff permitted to proceed with all claims asserted against the Debtor insofar as they seek the identification and recovery of funds which are property of the Plaintiff rather than property of the Debtor's estate pursuant to 11 U.S.C. § 541(d), all of Plaintiff's other claims against the Debtor be fully preserved for adjudication at such future time and fashion as may be appropriate, and Plaintiff be awarded such other and further relief as may be appropriate.

Dated: March 13, 2013
New York, New York

STORCH AMINI & MUNVES PC

By: /s/Avery Samet, Esq.
Avery Samet, Esq.
John W. Brewer, Esq.
2 Grand Central Tower
140 East 45th Street, 25th Floor
New York, NY 10017
Tel: (212) 490-4100
Fax: (212) 490-4208

Counsel for Plaintiff

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-21943-CIV-GOLD/GOODMAN

AMERICAN RESIDENTIAL EQUITIES, LLC,

Plaintiff,

v.

GMAC MORTGAGE, LLC,

Defendant.
_____/

ORDER CANCELLING ORAL ARGUMENT

THIS CAUSE having come before the Court *sua sponte*. Oral argument on Defendant's Motion for Partial Summary Judgment [ECF No. 106] and Motion to Exclude Expert [ECF No. 101] was previously scheduled for Friday, May 18, 2012 at 2:00 p.m. Having reviewed the case file and being otherwise fully advised in the premises, it is hereby ORDERED and ADJUDGED:

Oral argument on Defendant's Motion for Partial Summary Judgment [ECF No. 106] and Motion to Exclude Expert [ECF No. 101], previously set before the Honorable Alan S. Gold, at the United States District Courthouse, Courtroom 11-1, Eleventh Floor, 400 North Miami Avenue, Miami, Florida, 33128 on Friday, May 18, 2012 at 2:00 p.m. is hereby **CANCELLED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 20 day of April, 2012.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
All Counsel of Record
U.S. Magistrate Judge Jonathan A. Goodman

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-21943-Civ-Gold/Goodman

AMERICAN RESIDENTIAL EQUITIES, LLC,

Plaintiff,

vs.

GMAC MORTGAGE, LLC, successor by merger to GMAC Mortgage Company,

Defendant.
_____/

PLAINTIFF AMERICAN RESIDENTIAL EQUITIES, LLC'S MOTION TO STRIKE DEFENDANT'S REPORT, DE 127 AND FOR SANCTIONS

Plaintiff American Residential Equities, LLC ("ARE"), by and through undersigned counsel, moves this Court for an order striking Docket Entry # 127 filed by Defendant GMAC Mortgage, LLC ("GMAC"), and imposing an appropriate sanction against GMAC. GMAC has violated not only the instructions of the Magistrate Judge but also the fundamental principle of confidentiality which protects (and promotes) efforts to compromise disputed matters.

I. HAS THE LEVEL OF PROFESSIONAL CONDUCT SUNK SO LOW THAT EFFORTS TO SETTLE ARE NOW FREELY PUBLISHED TO THE COURT?

On the afternoon of April 20, 2012, Plaintiff's counsel opened an e-filing from GMAC and was disappointed[1] to find that GMAC had chosen to publish to the Court the settlement efforts of Plaintiff's counsel on a disputed issue: the imposition of a fee-payment requirement in connection with a motion to compel discovery. As described in the Objection to the Magistrate Judge's Report and Recommendation of April 10, 2012 filed contemporaneously herewith, Plaintiff's counsel had been proven to be correct that GMAC was withholding substantial

[1] In this context, the word "disappointed" is a euphemism.

amounts of essential discovery information—but the Magistrate Judge (while granting Plaintiff's Motion to Compel) required Plaintiff's counsel to pay GMAC's fees in the discovery dispute.

Plaintiff's counsel, holding a firm belief that the fee imposition was in error (but recognizing that the process of preparing, filing and arguing an Objection would be expensive) attempted to resolve the disputed issue amicably, saving money and time for the parties and the Court.[2] On April 13, 2012, Plaintiff's counsel initiated the process of attempting to "negotiate a resolution." As aforesaid, GMAC then revealed Plaintiff's offer to the Court: the series of communications is found as Exhibits A-D to "GMAC's Report to the Court Regarding Fees", DE 127.

Disclosure of settlement efforts chills the incentive of litigants to try to resolve disputed matters without consuming the resources of the court, contravening the public policy favoring compromise and settlement. *See* Advisory Committee Notes to Fed. R. Evid. 408. GMAC has blatantly violated this principle, and has prejudiced Plaintiff (as discussed *infra*.) DE 127 should be stricken.

II. DE 127 VIOLATES THE MAGISTRATE JUDGE'S APRIL 10, 2012 RULING.

The Magistrate Judge recognized the need to "maintain the privacy" of the information relative to the fee issue, and provided that filings relative thereto would be sent to the Magistrate's efile inbox and not be spread upon the public record via the CM/ECF docket. Report and Recommendation, at 14. DE 127, including its attachments, flies in the face of the Magistrate Judge's privacy-protecting mechanism, and should be stricken.

[2] Indeed, the Magistrate Judge instructed counsel for the parties to "first attempt by themselves to resolve the issue of the amount of fee." Report and Recommendation, at 14.

COFFEY BURLINGTON
OFFICE IN THE GROVE, PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133
T: 305.858.2900 F: 305.858.5261
Email: info@coffeyburlington.com www.coffeyburlington.com

III. PLAINTIFF HAS BEEN PREJUDICED BY GMAC'S VIOLATION OF CONFIDENTIALITY; THE COURT SHOULD FASHION AN APPROPRIATE SANCTION.

GMAC's tactic of filing with the Court the settlement overture from the Plaintiff is extremely prejudicial. At the same time that Plaintiff places before the Court its sincerely-held belief that the Magistrate was in error in imposing a fee-payment obligation upon Plaintiff's counsel, GMAC waves emails in the face of the Court, effectively proclaiming "Look at this, they offered to pay over $XXXXX!"[3]

Inasmuch as the confidential information has already been disclosed, and cannot simply be retrieved from the mind of the District Judge,[4] Plaintiff respectfully requests that the Court fashion an appropriate sanction in addition to striking DE 127.

WHEREFORE, for all of the reasons detailed above, ARE and undersigned counsel respectfully request that this Court strike Docket Entry 127 from the record, and impose an appropriate sanction upon GMAC for its violation of confidentiality and of the requirements of the Magistrate Judge.

---

[3] In accordance with the instructions of the Magistrate Judge to maintain privacy on this issue, Plaintiff does not recite the amount of the offer in this Motion; the information appears in DE 127, Ex. A-D.

[4] "[Y]ou can throw a skunk into the jury box and instruct the jurors not to smell it, but it doesn't do any good." *O'Rear v. Fruehauf Corp.*, 554 F.2d 1304, 1309 (5th Cir. 1977).

COFFEY BURLINGTON
OFFICE IN THE GROVE, PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133
T: 305.858.2900 F: 305.858.5261
Email: info@coffeyburlington.com www.coffeyburlington.com

Respectfully submitted,

COFFEY BURLINGTON, P.L.
Counsel for American Residential Equities, LLC
2699 South Bayshore Drive, Penthouse
Miami, Florida 33133
Tel: 305-858-2900
Fax: 305-858-5261

By: /s/ David A. Freedman
David A. Freedman, Fla. Bar No. 161817
dfreedman@coffeyburlington.com
Alice E. Meyer, Fla. Bar No. 772941
ameyer@coffeyburlington.com

CERTIFICATION

I hereby certify that on April 22, 2012, I served a copy of the foregoing by CM/ECF to the following:

Hope T. Cannon
Christian Watson Hancock
Ann T. Taylor
David Brian O'Dell
Bradley Arant Boult Cummings LLP
1819 5th Avenue North
One Federal Place
Birmingham, Alabama
35203

/s/ Alice E. Meyer

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-21943-CIV-GOLD/GOODMAN

AMERICAN RESIDENTIAL EQUITIES, LLC,

Plaintiff,

v.

GMAC MORTGAGE, LLC,

Defendant.
_____/

ORDER TO SHOW CAUSE

THIS CAUSE came before the Court *sua sponte*. Oral argument on the parties' objections [ECF No. 128, 132] to Magistrate Judge Goodman's Report and Recommendation and Plaintiff's Motion to Strike [ECF No. 130] is scheduled for June 8, 2012. On May 16, 2012, Plaintiff filed a Notice Regarding Scheduling [ECF No. 137] stating Defendant GMAC filed for bankruptcy in the Southern District of New York, Case No. 12-12032-mg on May 14, 2012.[1] It is hereby ORDERED and ADJUDGED as follows:

On or before **May 24, 2012,** Defendant GMAC Mortgage, LLC shall **SHOW CAUSE** why this case should not be stayed and administratively closed, and the June 8, 2012 hearing cancelled, pending resolution of Southern District of New York Bankruptcy Case Number 12-12032-mg.

[1]The docket in S.D.N.Y. Bankruptcy Case No. 12-12032 reflects debtor GMAC Mortgage LLC aka GMAC Mortgage Corporation filed for Chapter 11 bankruptcy on May 14, 2012.

DONE AND ORDERED in Chambers at Miami, Florida, this 17TH day of May, 2012.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
All Counsel of Record
U.S. Magistrate Judge Jonathan A. Goodman

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-21943-CIV-GOLD/GOODMAN

AMERICAN RESIDENTIAL EQUITIES, LLC,

Plaintiff,

v.

GMAC MORTGAGE, LLC,

Defendant.
_____/

ORDER DISCHARGING ORDER TO SHOW CAUSE; STAYING CASE

THIS CAUSE came before the Court on Defendant GMAC's Notice of Bankruptcy and Effect of Automatic Stay [ECF No. 139]. Having reviewed the Notice and being otherwise duly advised, it is hereby ORDERED and ADJUDGED as follows:

1. The Order to Show Cause [ECF No. 138] is DISCHARGED.
2. This case is STAYED pursuant to 11 U.S.C. § 362(a) pending resolution of Southern District of New York Bankruptcy Case Number 12-12032-mg.
3. The Clerk of Court is instructed to ADMINISTRATIVELY CLOSE this case.
4. All hearings are CANCELLED.
5. All deadlines are HELD IN ABEYANCE pending further Court order.
6. Defendant GMAC shall notify the Court within five (5) days of the expiration of the stay and/or resolution of Southern District of New York Bankruptcy Case Number 12-12032-mg.
7. The case may be reopened upon motion of either party.

DONE AND ORDERED in Chambers at Miami, Florida, this18th day of May, 2012.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
All Counsel of Record
U.S. Magistrate Judge Jonathan A. Goodman

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

AMERICAN RESIDENTIAL EQUITIES, LLC,	)	
Plaintiff,	)	
v.	)	**Civil Action No.: 10-CV-21943/ GOLD/GOODMAN**
GMAC MORTGAGE, LLC, successor by merger to GMAC Mortgage Corporation,	)	
Defendant.	)	

AMENDED NOTICE OF BANKRUPTCY FILING AND SUPPLEMENTAL SERVICING ORDER

Defendant and debtor GMAC Mortgage, LLC, by and through its undersigned counsel, in accordance and consistent with section 362(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), respectfully submits this Am*ended Notice of Bankruptcy Filing and Supplemental Servicing Order*, and states as follows:

1. On May 14, 2012 (the "Petition Date"), Residential Capital, LLC and certain of its direct and indirect subsidiaries (collectively, the "Debtors"), including GMAC Mortgage, LLC, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Filing") in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408 (the "Bankruptcy Court"). The Debtors' Chapter 11 cases are being jointly administered, indexed at case number 12-12020 (MG).

2. As a result of the Bankruptcy Filing, on the Petition Date, the protections of the automatic stay codified in section 362(a) of the Bankruptcy Code arose with regard to the Debtors. Section 362(a), among other things, operates as an automatic stay of: (i) "the

commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding" against the Chapter 11 Debtors (11 U.S.C. § 362(a)(1)); (ii) acts to "obtain possession of property" of the Debtors' Chapter 11 estate (11 U.S.C. § 362(a)(3)); and (iii) acts to "collect, assess, or recover a claim" against the Debtor arising prior to the Petition Date (11 U.S.C. § 362(a)(6)).

3. On May 17, 2012, Debtor filed a *Notice of Bankruptcy and Effect of Automatic Stay* with this Court.

4. In a May 18, 2012 Order, this Court administratively closed the case pending resolution of the Debtor's bankruptcy proceedings.

5. On July 13, 2012, the Bankruptcy Court entered a final supplemental order granting, among other things, the Debtors' motion for limited relief from the automatic stay to permit non-Debtor parties in foreclosure and eviction proceedings, borrower bankruptcy cases and title disputes to continue to assert and prosecute certain defenses, claims and counter-claims (the "Final Supplemental Order"). Paragraphs 14, 15, 16 and 17 of the Final Supplemental Order identify the categories of defenses, claims and counter-claims for which the automatic stay has been modified (the "Permitted Claims"). A copy of the Final Supplemental Order is attached hereto as **Exhibit A**.

6. With regard to this matter, Plaintiff's claims remain stayed in their entirety as they do not fall within the relief from stay granted by the Final Supplemental Order. Plaintiff requests only monetary relief against Debtor, and as such, the claims remain subject to the automatic stay.

7. Pursuant to paragraph 23 of the Final Supplemental Order, any dispute regarding the extent, application and/or effect of the automatic stay under the Final Supplemental Order, must be heard and determined in the United States Bankruptcy Court for the Southern District of

New York, jointly administered under Case No. 12-12020, in accordance with the Case Management Order entered in the Debtors' case [Docket No. 141] and such other and further orders as may be entered by the United States Bankruptcy Court for the Southern District of New York.[1]

Dated this __ day of September, 2012.

Hope T. Cannon *(pro hac vice)*
D. Brian O'Dell (Bar No. 0659665)
BRADLEY ARANT BOULT CUMMINGS LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 521-8000
Facsimile: (205) 488-6318
bodell@babc.com
hcannon@babc.com

ATTORNEYS FOR DEFENDANT/COUNTERCLAIM PLAINTIFF GMAC MORTGAGE, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ___ day of September, 2012, a true and correct copy of the foregoing document was served, via the Courts CM/ECF system, upon the following:

David A. Freedman
Coffey Burlington, PL
Office in the Grove, Penthouse
2699 South Bayshore Drive
Miami, Florida 33133
dfreedman@coffeyburlington.com

OF COUNSEL

[1] A copy of the Case Management Order may be obtained at no charge at http:/www.kccllc.net/rescap.

EXHIBIT

"A"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

FINAL SUPPLEMENTAL ORDER UNDER BANKRUPTCY CODE SECTIONS 105(a), 362, 363, 502, 1107(a), AND 1108 AND BANKRUPTCY RULE 9019 (I) AUTHORIZING THE DEBTORS TO CONTINUE IMPLEMENTING LOSS MITIGATION PROGRAMS; (II) APPROVING PROCEDURES FOR COMPROMISE AND SETTLEMENT OF CERTAIN CLAIMS, LITIGATIONS AND CAUSES OF ACTION; (III) GRANTING LIMITED STAY RELIEF TO PERMIT FORECLOSURE AND EVICTION PROCEEDINGS, BORROWER BANKRUPTCY CASES, AND TITLE DISPUTES TO PROCEED; AND (IV) AUTHORIZING AND DIRECTING THE DEBTORS TO PAY SECURITIZATION TRUSTEE FEES AND EXPENSES

Upon the motion (the "Motion")[1] of Residential Capital, LLC, and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors") for entry of a supplemental order under Bankruptcy Code sections 105(a), 362, 363, 1107(a) and 1108, and Bankruptcy Rule 9019 (i) authorizing the Debtors to continue implementing loss mitigation programs; (ii) approving procedures for the compromise and settlement of certain claims, litigations and causes of action in the ordinary course of the Debtors' business; (iii) granting limited stay relief to permit (w) borrowers or their tenants, as applicable, to prosecute direct claims and counter-claims in foreclosure and eviction proceedings (including in states in which non-judicial foreclosure is followed), (x) borrowers to prosecute certain actions in borrower bankruptcy cases, (y) the Debtors to prosecute foreclosure actions in those circumstances where

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion. Creditors and parties-in-interest with questions or concerns regarding the Debtors' Chapter 11 cases or the relief granted herein may refer to http://www.kccllc.net/rescap for additional information.

1212020120713000000000011

they service senior mortgage loans and own the junior mortgage loans on the underlying property, and (z) third party lien holders to prosecute direct claims and counter-claims in actions involving the amount, validity or priority of liens on properties subject to foreclosure proceedings; and (iv) authorizing and directing the Debtors to pay certain securitization trustee fees and expenses; and the Court having considered the Whitlinger Affidavit and the Bocresion Declaration; and the Court having entered the Interim Supplemental Order on June 15, 2012 [Docket No. 391]; and the Court having entered a final order on June 15, 2012 granting the GA Servicing Motion on a final basis [Docket No. 401]; and the Court having entered a final order on June 15, 2012 granting the Non-GA Servicing Motion on a final basis [Docket No. 402]; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these Chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and it appearing that this proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and sufficient notice of the Motion having been given and it appearing that no other or further notice need be provided; and the National Association of Consumer Bankruptcy Attorneys, on its own behalf and in a representative capacity, two individuals who are debtors under Chapter 13, and Edward Boltz, counsel for those individuals, having filed jointly the Limited Omnibus Objection To The Servicing Orders And Debtors' May 31, 2012 Motion For A Supplemental Order [Docket No. 221] (the "NACBA Objection"); and the Committee having filed the Omnibus Response And Reservation Of Rights Of The Official Committee Of Unsecured Creditors To Certain Of The Debtors' First Day Motions [Docket No. 240]; and the Debtors having filed the Omnibus Reply To Objections To Entry Of Final Orders For Specific "First Day" Motions And Related Relief [Docket. No. 254]; and upon the record of the hearing; and it appearing that the relief requested

by the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation thereon; and any objections to the Motion, including the NACBA Objection, having been withdrawn, resolved, or overruled on the merits; and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein, and any objections to the Motion are hereby overruled;

Loss Mitigation Programs

2. The Debtors are authorized, but not directed in their sole and absolute discretion and subject to available funding, to continue developing and implementing loss mitigation programs and procedures in the ordinary course of their businesses *nunc pro tunc* to the Petition Date, including, but not limited to, making incentive payments to borrowers in connection with the closing of short sales, or vacating properties in lieu of foreclosure or eviction proceedings, or in the form of borrower rebates for loan payoffs including honoring all obligations related thereto that accrued in whole or in part prior to the Petition Date (collectively, the "Loss Mitigation Programs"); provided, however, that the aggregate cash payments made by the Debtors to individual borrowers under the Loss Mitigation Programs that are not reimbursed to the Debtors shall not exceed $550,000 per month (the "Monthly Cap"), absent consent of the Committee or further order of the Court; provided, further, however, that to the extent the Debtors do not exceed the Monthly Cap in any month they shall be entitled to utilize the difference between the actual amount and the Monthly Cap in any succeeding month. The Debtors shall provide monthly reports to the Committee and the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), which reports shall be in a

form agreed to by the Debtors and the Committee and such additional information as shall be reasonably requested by the Committee, in each case, concerning the Loss Mitigation Programs.

3. Cash payments made by the Debtors to individual borrowers under the Loss Mitigation Programs for which the Debtors are not reimbursed shall not exceed $4.2 million in the aggregate, absent consent of the Committee or further order of the Court. For the avoidance of doubt, the limitation on the amount of cash payments provided for in this paragraph 3 is in addition to the limitation on the amount of cash payments provided for in paragraph 12 hereof.

Settlement Procedures

4. The Debtors are authorized, but not directed to compromise and settle certain claims brought by the Debtors against any non-insider third parties in connection with foreclosure, eviction, or borrower bankruptcy proceedings (each a "Settling Party") or by a Settling Party against any of the Debtors (each, a "Claim") in accordance with the following two-tiered procedures (the "Settlement Procedures"):

> Tier I: The Debtors, in their sole discretion, may enter into, execute and consummate written agreements of settlement with respect to Claims that will be binding on the Debtors and their estates without further action by this Court or notice to any party and grant such Settling Parties cash payments or allowed prepetition claims in amounts not to exceed $40,000 in full settlement of such Claim (each, a "Tier I Settlement").
>
> Tier II: The Debtors may enter into, execute and consummate written agreements of settlement with respect to Claims that will be binding on the Debtors and their estates without further action by this Court or notice to any party and grant such Settling Parties cash payments or allowed prepetition claims in amounts exceeding $40,000 but less than $100,000 in full settlement of such Claims (each, a "Tier II Settlement"); provided, that in each case:
>
> (a) The Debtors must provide advance written notice (by formal or informal means, including by e-mail correspondence) of the terms of any Tier II Settlement to (x) the U.S. Trustee, 33

Whitehall Street, 21st Floor, New York, New York 10004, Attn: Brian S. Masumoto, (y) counsel for the Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas New York, NY 10036, Attn: Kenneth H. Eckstein and Douglas H. Mannal; and (z) counsel to the administrative agent for the Debtors' providers of debtor in possession financing, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036, Attn: Kenneth S. Ziman and Jonathan H. Hofer (collectively the "Notice Parties")

(b) Those Notice Parties wishing to object to any proposed Tier II Settlement must serve a written objection (by formal or informal means, including by e-mail correspondence) on the Debtors, so that it is received by no later than 4:00 p.m. (prevailing Eastern Time) on the day that is seven (7) calendar days from the date the Notice Parties received written notice of such Tier II Settlement (the "Settlement Objection Deadline"). Objections should be addressed to the proposed attorneys for the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104, Attn: Larren M. Nashelsky (LNashelsky@mofo.com) and Norman S. Rosenbaum (NRosenbaum@mofo.com).

(c) If the Debtors receive a timely objection from a Notice Party, the parties will confer and attempt to resolve any differences. Failing that, the Debtors may petition the Court for approval of the Tier II Settlement in accordance with any case management orders entered in the Chapter 11 cases. An objection by a Notice Party with respect to a given Tier II Settlement shall not delay the finality or effectiveness of any other settlement to which an objection has not timely been delivered.

(d) If the Debtors do not receive a written objection to a Tier II Settlement from a Notice Party by the Settlement Objection Deadline, then such Tier II Settlement shall be deemed approved and the Debtors and Settling Parties may carry out the terms of such Tier II Settlement without further notice or Court approval.

5. The Debtors shall be required to seek approval from the Court in order to enter into and consummate any proposed settlement of a Claim with a settlement amount in excess of $100,000.

6. The Debtors are authorized in their sole discretion, but not directed, to settle claims where some or all of the consideration is being provided by a third party and/or

where the Debtors are releasing claims against creditors or third parties provided the Debtors otherwise comply with the Settlement Procedures.

7. The Settlement Procedures are without prejudice to the right of the Debtors to seek an order of this Court approving additional or different procedures with respect to specific claims or categories of claims. For claims relating to matters specified in paragraphs 14(a) and 15(a) of this Order that were resolved pursuant to a settlement prior to the Petition Date, but where such settlement has not been consummated, the Debtors are authorized, but not directed to, consummate said settlements in accordance with the Settlement Procedures set forth in this Order.

8. Notwithstanding anything to the contrary contained herein, this Order shall not affect, impair, impede or otherwise alter the right of the Debtors to resolve any prepetition or postpetition controversy arising in the ordinary course of the Debtors' businesses, or resolve any controversy authorized by any other order of the Court.

9. Nothing in this Order or the Motion shall constitute a determination or admission of liability or of the validity or priority of any claim against the Debtors, and the Debtors reserve their rights to dispute the validity or priority of any claim asserted.

10. The authority granted in this Order shall not replace or obviate the need to comply with the Debtors' internal procedures, legal or otherwise, for authorizing the settlements contemplated in the Motion. All settlements made pursuant to the Settlement Procedures shall, to the extent applicable, be made in accordance with the Debtors' settlement procedures in effect as of the Petition Date (the "Internal Settlement Protocol") and as may be amended from time; provided, however, that the Debtors shall provide the Committee and the U.S. Trustee with notice of any material changes to the Internal Settlement Protocol.

11. The Debtors shall provide monthly reports to the Committee and the U.S. Trustee, which reports shall be in a form agreed to by the Debtors and the Committee, and such additional information as shall be reasonably requested by the Committee, in each case, concerning settlements of any Claims pursuant to the Settlement Procedures.

12. Cash payments made by the Debtors under the Settlement Procedures shall not exceed $4 million in the aggregate, absent consent of the Committee or further order of the Court.

13. Any period prescribed or allowed by the Settlement Procedures shall be computed in accordance with Bankruptcy Rule 9006.

Limited Relief from Automatic Stay

Borrower Foreclosure And Eviction Proceedings

14. The stay imposed by section 362(a) of the Bankruptcy Code applicable to (a) pending and future foreclosure actions initiated by the Debtors or in those states providing for non-judicial foreclosures, by a borrower; and (b) pending and future eviction proceedings with respect to properties for which a foreclosure has been completed or is pending, is hereby modified pursuant to the following terms and conditions:

(a) except as set forth herein, a borrower, mortgagor, or lienholder (each, an "Interested Party") shall be entitled to assert and prosecute direct claims and counter-claims relating exclusively to the property that is the subject of the loan owned or serviced by a Debtor for the purposes of defending, unwinding, or otherwise enjoining or precluding any foreclosure, whether in a Judicial State or a Non-Judicial State, or eviction proceeding, where a final judgment (defined as any judgment where the right to appeal or seek reconsideration has expired or has been exhausted) permitting the foreclosure or

eviction has not been awarded or, with respect to completed foreclosure sales in Non-Judicial States, where any applicable challenge period has not yet expired, and to prosecute appeals with respect to any such direct claims or counter-claims;

(b) absent further order of the Court, the automatic stay shall remain in full force and effect with respect to all pending and future Interested Party direct claims and counter-claims: (i) for monetary relief of any kind and of any nature against the Debtors, except where a monetary claim must be plead in order for an Interested Party to a assert a claim to defend against or otherwise enjoin or preclude a foreclosure (each a "Mandatory Monetary Claim"); (ii) for relief that if granted, would not terminate or preclude the prosecution and completion of a foreclosure or eviction; or (iii) asserted in the form of a class action or collective action;

(c) absent further order of the Court, the stay shall remain in full force and effect with respect to any party seeking to intervene to assert related claims against the Debtors or any class action or collective action brought by any Interested Party on behalf of any other Interested Party or class of Interested Parties;

(d) under no circumstances shall an Interested Party be entitled to enforce against, recoup, setoff or collect from the Debtors any judgment or award related to any direct claim or counter-claim for which the automatic stay has been lifted by the terms of this Order, including, without limitation, a Mandatory Monetary Claim;

(e) the Debtors shall retain the right, upon appropriate motion and notice to any affected Interested Party, to seek to impose any provision of section 362(a) of the Bankruptcy Code modified by this Order and to the extent such relief is sought, the

Debtors will not object to the Interested Party's telephonic participation at any hearing on the motion; and

(f) nothing set forth herein shall preclude or limit any Interested Party from seeking relief from the automatic stay under section 362(a) of the Bankruptcy Code on appropriate motion and notice to the Debtors and parties in interest.

Borrower Bankruptcy Proceedings

15. The automatic stay imposed by section 362(a) of the Bankruptcy Code applicable against a borrower who currently has filed, or in the future files, for bankruptcy protection under any chapter of the Bankruptcy Code (a "Bankruptcy Borrower"), is hereby modified pursuant to the following terms and conditions:

(a) except as set forth herein, a Bankruptcy Borrower or a trustee duly appointed under the Bankruptcy Code in the Bankruptcy Borrower's bankruptcy case (a "Bankruptcy Trustee") shall be entitled to: (i) assert and prosecute or continue to prosecute an objection to the Debtors' proof of claim filed in the Bankruptcy Borrower's bankruptcy case; (ii) assert and prosecute or continue to prosecute an objection to the Debtors' motion for relief from the automatic stay filed in the Bankruptcy Borrower's bankruptcy case; (iii) commence or continue to prosecute against the Debtors a motion or adversary proceeding, as applicable, to determine the validity, priority or extent of a Debtor's lien against the Bankruptcy Borrower's property; (iv) commence or continue to prosecute against the Debtors a motion or adversary proceeding, as applicable, to reduce (including to reduce to $0) or fix the amount of the Debtors' claim or lien against the Bankruptcy Borrower's property; (v) prosecute appeals with respect to items (i) through (iv) above; (vi) seek an accounting from the Debtors with respect to the Bankruptcy

Borrower's loan; and (vii) enter into, execute and consummate a written agreement of settlement with the Debtors where the Debtors elect to enter into such settlement in their sole discretion (but subject to the Settlement Procedures), to resolve items (i) through (vi) above;

(b) except as set forth herein, a Bankruptcy Borrower shall be entitled to (i) engage in court-supervised or court-authorized loss-mitigation programs regarding the Bankruptcy Borrower's loan; and (ii) engage in discussions with the Debtors and execute a modification of the Bankruptcy Borrower's loan or otherwise discuss, enter into and consummate settlements of claims and liens in accordance with the ordinary course of the Debtors' business and applicable law;

(c) absent further order of the Court, the automatic stay shall remain in full force and effect with respect to all Bankruptcy Trustee's and Bankruptcy Borrower's direct claims, counter-claims, motions or adversary proceedings: (i) for monetary relief of any kind and of any nature against the Debtors; (ii) for violation of any local, state or federal statute or other law in connection with the origination of the Bankruptcy Borrower's loan; (iii) for relief that if granted, would have no effect on the amount, validity or priority of the Debtors' claim or lien against a Bankruptcy Borrower or the property of the Bankruptcy Borrower securing such claim or lien of the Debtors; or (iv) asserted in the form of a class action or collective action; provided however, a Bankruptcy Trustee or Bankruptcy Borrower, solely in connection with their objections to Debtors' proof of claim permitted by paragraph 15(a)(i) or proceedings permitted by 15(a)(iii), may assert claims of the type covered by subsection (i) or (ii) of this paragraph 15(c);

(d) absent further order of the Court, the automatic stay shall remain in full force and effect with respect to any party seeking to intervene to assert related claims against the Debtors or any class action or collective action brought by any Bankruptcy Borrower on behalf of any other class of borrowers;

(e) with the sole exception of objections to Debtors' proofs of claim permitted by paragraph 15(a)(i) above and proceedings described in 15(a)(iii) above and solely for purposes of reducing any such claim and not for the purpose of obtaining an affirmative recovery or award, under no circumstances shall a Bankruptcy Borrower or Bankruptcy Trustee be entitled to recoup, setoff or collect from the Debtors any judgment or award related to any direct claim or counter-claim for which the automatic stay has been lifted by the terms of this Order;

(f) the Debtors shall retain the right, upon appropriate motion and notice to any Bankruptcy Borrower or Bankruptcy Trustee, to seek to impose any provision of section 362(a) of the Bankruptcy Code modified by this Order and to the extent such relief is sought, the Debtors will not object to the Interested Party's telephonic participation at any hearing on the motion; and

(g) nothing set forth herein shall preclude or limit any Bankruptcy Borrower or Bankruptcy Trustee from seeking relief from the automatic stay under section 362(a) of the Bankruptcy Code on appropriate motion and notice to the Debtors and parties in interest.

Foreclosures By The Debtors On Senior Loans

16. The stay imposed by section 362(a) of the Bankruptcy Code applicable to pending and future foreclosure actions initiated by the Debtors in cases where they act as

servicer for the Senior Loan and also own (or for which the applicable public land records otherwise reflect that the Debtors hold an interest) the Junior Loan with respect to the underlying property (collectively, the "Junior Foreclosure Actions") is hereby modified pursuant to the following terms and conditions:

(a) except as otherwise set forth herein, the Debtors shall be entitled to assert and prosecute Junior Foreclosure Actions, whether in a Judicial State or a Non-Judicial State;

(b) the Debtors shall be entitled to take such actions as are necessary to extinguish the lien with respect to a Junior Loan or to otherwise ensure clear and marketable title with respect to the property underlying a Senior Loan in connection with any sale or other disposition of such property;

(c) the Debtors shall be entitled to seek all appropriate relief with respect to a Senior Loan in connection with the bankruptcy cases of a Bankruptcy Borrower without further order of the Court; and

(d) the Debtors shall provide monthly reports to the Committee and the U.S. Trustee, which reports shall be in a form agreed to by the Debtors and the Committee, and such additional information as shall be reasonably requested by the Committee, in each case, concerning Junior Foreclosure Actions.

D. Actions Involving Amount, Validity Or Priority Of Liens

17. The stay imposed by section 362(a) of the Bankruptcy Code applicable to actions involving the amount, validity, and/or priority of liens commenced by third parties purporting to have a lien interest or other claim ("Third Party Claimants") with respect to

properties that are subject to mortgages owned or serviced by the Debtors ("Title Disputes") is hereby modified pursuant to the following terms and conditions:

(a) except as otherwise set forth herein, a Third Party Claimant shall be entitled to assert and prosecute direct claims and counter-claims relating exclusively to the property that is the subject of the loan owned or serviced by a Debtor in connection with any Title Dispute, and to prosecute appeals with respect to any such direct claims or counter-claims;

(b) absent further order of the Court, the automatic stay shall remain in full force and effect with respect to all pending and future Third Party Claimant direct claims and counter-claims: (i) for monetary relief of any kind and of any nature against the Debtors; (ii) for relief that is not necessary for the resolution of the Title Dispute; or (iii) asserted in the form of a class action or collective action;

(c) absent further order of the Court, the stay shall remain in full force and effect with respect to any party seeking to intervene to assert related claims against the Debtors or any class action or collective action brought by any Third Party Claimant on behalf of any other Third Party Claimant or class of Third Party Claimants;

(d) under no circumstances shall a Third Party Claimant be entitled to enforce against, recoup, setoff or collect from the Debtors any judgment or award related to any direct claim or counter-claim for which the automatic stay has been lifted by the terms of the Order;

(e) the Debtors shall be entitled to take such actions as are necessary to clear title with respect to property that is subject to a Title Dispute or to otherwise ensure

clear and marketable title with respect to such property in connection with any sale, foreclosure or other disposition of such property;

(f) the Debtors shall retain the right, upon appropriate motion and notice to any affected Third Party Claimant, to seek to impose any provision of section 362(a) of the Bankruptcy Code modified by the Order; and

(g) nothing set forth herein shall preclude or limit any Third Party Claimant from seeking relief from the automatic stay under section 362(a) of the Bankruptcy Code on appropriate motion and notice to the Debtors and parties in interest.

Payment of Securitization Trustee Fees and Expenses

18. The Debtors shall continue to perform all of their respective servicing duties and servicing related duties, including, but not limited to, their duties as master servicer, under all the governing agreements (including, without limitation, pooling and servicing agreements, servicing agreements, or any other agreements concerning or relating to the Debtors' obligations to reimburse and/or indemnify for reasonable fees, costs, expenses, liabilities, and/or losses) (collectively, the "Agreements") relating to Debtor-sponsored securitization transactions and non-Debtor sponsored securitization transactions to which any of The Bank of New York Mellon Trust Company, N.A., Wells Fargo Bank, N.A., Deutsche Bank Trust Company Americas, Deutsche Bank National Trust Company, or U.S. Bank National Association, or any affiliate of such entities acts as trustee for which any Debtor performs servicing duties, in each of their respective capacities as trustee (collectively, the "Trustees") and one or more of the Debtors is a party, including but not limited to, making all principal, interest or other servicing advances (including property protection advances) and reimbursing, indemnifying, defending and holding harmless the Trustees and the securitization trusts for any liability, loss, or reasonable fees, cost

or expense (including fees and disbursements of counsel or agents) incurred by any of the Trustees in the performance of their duties or their administration of the trusts or other agencies under the Agreements to the extent required by the Agreements. For the avoidance of doubt, the Debtors shall pay the reasonable, actual out-of-pocket costs and expenses of the Trustees in connection with reviewing and analyzing the request by the Debtors to approve the MBS Settlement Agreement, and in connection with reviewing and analyzing amendments to the Agreements as necessary or appropriate in connection with any proposed Chapter 11 plan, the MBS Settlement Agreement or the Platform Sale. Notwithstanding the foregoing, nothing in this paragraph 18 shall require any Debtor (i) to repurchase any mortgage loans on the basis of alleged breaches of representations, warranties or other requirements of the Agreements, or make any make-whole payments with respect to any mortgage loans pursuant to the Agreements; or (ii) to enforce, as against any other Debtor entity or any non-Debtor affiliate, any provision of the Agreements under which such other Debtor entity or non-Debtor affiliate are required to repurchase any mortgage loans on the basis of alleged breaches of representations, warranties or other requirements of the Agreements, or make any make-whole payments with respect to any mortgage loans pursuant to the Agreements; and nothing in this paragraph 18 shall be deemed to impose liability on any Debtor with respect to such alleged breaches or make-whole payment requirements.

19. The Trustees shall submit invoices to (a) counsel to the Debtors, (b) counsel to the Committee, and (c) the U.S. Trustee, and all such invoices shall include (i) an itemization of all professional fees by task with a detailed description of the work performed in connection with such task, (ii) a description of related expenses, and (iii) a description of any indemnity claims. Thereafter, within thirty (30) days of presentment of such invoices, if no

written objections to the reasonableness of the fees and expenses charged in any such invoice (or portion thereof) is made by the Debtors, the Committee, or the U.S. Trustee, the Debtors are authorized and directed to pay all reasonable fees, costs and expenses and all indemnity claims referred to in paragraph 18 (including without limitation, attorney, financial advisor, consultant and expert fees and costs) incurred postpetition by any of the Trustees relating to the performance of each of the Trustees' duties or the administration of the trusts or other agencies under the Agreements (the "Trustee Expenses") that are not subject to an objection by the Debtors, the Committee, or the U.S. Trustee without further order from the Court. Any objection to the payment of the Trustee Expenses shall be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and a detailed basis for such objection. To the extent an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the Debtors, the Committee, or the U.S. Trustee and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the disputed amounts. This Court shall resolve any dispute as to the reasonableness of any fees and expenses.

20. To the extent either the Committee, or the RMBS Trustees determine that the Trustee Expenses were improperly or mistakenly allocated to an RMBS trust or to the Debtors' estates, the Committee and the RMBS Trustees reserve the right to seek to correct the allocation of the Trustee Expenses as between the RMBS trusts or the Debtors' estates in accordance with the applicable Agreement, and such adjustment shall be the Committee's and RMBS Trustees' sole remedy arising from a misallocation. All Trustee Expenses for which (a) no objection under paragraph 19 has been interposed, or (b) where such an objection has been

interposed and the amount of Trustee Expenses determined by the Court to be reasonable, shall be entitled to administrative expense priority in the Debtors' Chapter 11 cases notwithstanding the entry of an order authorizing the assumption and assignment or rejection of any Agreement. However, the Debtors will not be responsible for any fees, costs and expenses incurred with respect to any Agreement after the entry of an order in the Debtors' Chapter 11 cases authorizing the rejection of such Agreement.

21. If any or all of the provisions of this Order are hereafter reversed, modified, limited, vacated or stayed, such reversal, stay, modification or vacatur shall not affect the validity, priority or enforceability of any Trustee Expenses incurred prior to the actual receipt of written notice by the Trustees of the effective date of such reversal, stay, modification or vacatur (the "Notice Date"). Notwithstanding any such reversal, stay, modification or vacatur, the payment of any Trustee Expenses incurred prior to the Notice Date and reimbursed prior to or after the Notice Date by the Debtors shall be governed in all respects by the original provisions of this Order, and the Trustees shall be entitled to all of the rights, remedies, privileges and benefits granted in this Order with respect to payment of Trustee Expenses.

22. Notwithstanding the Debtors' obligations set forth in paragraphs 18 and 19, nothing in this Order shall be deemed to limit, extinguish, or prejudice the Debtors' rights in any way to assume and assign or reject any Agreement in accordance with Bankruptcy Code section 365.

Other Relief

23. Any disputes regarding the extent, application and/or effect of the automatic stay under this Order shall be heard and determined in the Debtors' jointly administered bankruptcy cases pending in the United States Bankruptcy Court for the Southern

District of New York, Case No. 12-12020 in accordance with the Case Management Order entered in the Debtors' cases [Docket No. 141] and such other and further orders as may be entered by the Court.

24. The Debtors are authorized and empowered to take all actions and execute such documents as may be necessary or appropriate to carry out the relief granted herein.

25. Nothing herein shall be deemed to limit the rights of the Debtors to operate their business in the ordinary course, and no subsequent order shall be required to confirm such rights.

26. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is it intended to constitute, the assumption of any contract or agreement under Bankruptcy Code section 365 or the waiver by the Debtors or their non-Debtor affiliates of any of their rights pursuant to any agreement by operation of law or otherwise.

27. Notwithstanding anything to the contrary in this Order, any action to be taken pursuant to the relief authorized in this Order is subject to the terms of any cash collateral order or debtor in possession financing order entered in these chapter 11 proceedings. All amounts authorized to be paid pursuant to this Order are subject to the limitations and restrictions imposed by the Approved DIP Budget (as defined in the DIP Credit Agreement). To the extent that there is any inconsistency between the terms of this Order and the terms of any order relating to postpetition financing or cash collateral, the terms of the orders relating to postpetition financing or cash collateral shall govern.

28. Notwithstanding anything herein to the contrary, this Order shall not modify or affect the terms and provisions of, nor the rights and obligations under, (a) the Board

of Governors of the Federal Reserve System Consent Order, dated April 13, 2011, by and among AFI, Ally Bank, ResCap, GMAC Mortgage, LLC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, (b) the consent judgment entered April 5, 2012 by the District Court for the District of Columbia, dated February 9, 2012, (c) the Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as amended, dated February 10, 2012, and (d) all related agreements with AFI and Ally Bank and their respective subsidiaries and affiliates.

29. Nothing in this Order shall discharge, release, or otherwise preclude any setoff or recoupment right of the United States of America, its agencies, departments, or agents.

30. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

31. Notwithstanding the possible applicability of Bankruptcy Rules 2002(a)(3), 6004(h), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

32. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: July 13, 2012
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

AMERICAN RESIDENTIAL EQUITIES, LLC,	)	
Plaintiff,	)	
v.	)	**Civil Action No.: 10-CV-21943/ GOLD/GOODMAN**
GMAC MORTGAGE, LLC, successor by merger to GMAC Mortgage Corporation,	)	
Defendant.	)	

NOTICE OF BANKRUPTCY
AND EFFECT OF AUTOMATIC STAY

Defendant and debtor, GMAC Mortgage, LLC (the "Debtor"), by and through its undersigned counsel, in accordance and consistent with section 362(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), respectfully submits this Notice of Bankruptcy and Effect of Automatic Stay, and states as follows:

1. On May 14, 2012 (the "Petition Date"), the Debtor and certain of its affiliates filed voluntary petitions (the "Petitions") under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408 (the "Bankruptcy Code"). The bankruptcy cases of the Debtor and its affiliates are jointly administered under the Chapter 11 Case for the affiliated debtor Residential Capital, LLC, which case is indexed as case number 12-12020.

2. The "automatic stay" is codified in section 362 of the Bankruptcy Code. Section 362(a), *inter alia*, operates as an automatic stay of: (i) the commencement or continuation of a

"judicial, administrative, or other action or proceeding" against the Debtor (11 U.S.C. § 362(a)(1)); (ii) acts to "obtain possession of property" of the Debtor's estate (11 U.S.C. § 362(a)(3)); and (iii) acts to "collect, assess, or recover a claim" against the Debtor arising prior to the Petition Date (11 U.S.C. § 362(a)(6)).

3. The above-captioned action constitutes a "judicial, administrative, or other action or proceeding" against the Debtor, an act to obtain possession of the Debtor's property, and/or an act to collect or recover on a claim against the Debtor.

4. Accordingly, the above-captioned lawsuit is stayed pursuant to 11 U.S.C. § 362(a).

Any action taken by the Plaintiff or any other party against the Debtor without obtaining relief from the automatic stay from the Bankruptcy Court may be void *ab initio* and may result in finding of contempt by the Bankruptcy Court against Plaintiff or such other party. The Debtor reserves and retains all of its rights to seek relief in Bankruptcy Court from any action, judgment, order, or ruling entered in violation of the automatic stay.

Dated this 17th day of May, 2012.

/s/ Hope T. Cannon

Hope T. Cannon *(pro hac vice)*
D. Brian O'Dell (Bar No. 0659665)
BRADLEY ARANT BOULT CUMMINGS LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 521-8000
Facsimile: (205) 488-6318
bodell@babc.com
hcannon@babc.com

ATTORNEYS FOR DEFENDANT/COUNTERCLAIM PLAINTIFF GMAC MORTGAGE, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of May, 2012, a true and correct copy of the foregoing document was served, via the Courts CM/ECF system, upon the following:

David A. Freedman
Coffey Burlington, PL
Office in the Grove, Penthouse
2699 South Bayshore Drive
Miami, Florida 33133
dfreedman@coffeyburlington.com

s/ Hope T. Cannon
OF COUNSEL