Docket #0025 Date Filed: 4/2/2013

Objection Deadline: April 23, 2013 at 4:00 p.m. (prevailing Eastern Time)
Reply Deadline: May 7, 2013 at 4:00 p.m. (prevailing Eastern Time)
Hearing Date and Time: May 23, 2013 at 2:00 p.m. (prevailing Eastern Time)

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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
RESIDENTIAL CAPITAL, LLC, et al.,	
Plaintiffs,	
v.	Adv. Case No. 13-01262 (MG)
ALLSTATE INSURANCE COMPANY, et al.,	**MOTION FOR SUMMARY JUDGMENT**
Defendants.	

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TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

The debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned jointly administered Chapter 11 cases,[1] and as plaintiffs in the above-captioned adversary proceeding (this "Adversary Proceeding"), hereby move (this "Motion"), pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable here by Rule 7056 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order substantially in the form attached hereto as Exhibit 1 (a) granting summary judgment to the Debtors on the relief sought in the complaint (the "Complaint") filed by the Debtors in this Adversary Proceeding,[2] namely: (i) a declaration that the claims against the Debtors filed by defendants AIG Asset Management (U.S.), LLC and affiliated entities, Allstate Insurance Company and affiliated entities, Massachusetts Mutual Life Insurance Company, Prudential Insurance Company of America and affiliated entities, and the National Credit Union Administration Board, based upon the purchase or sale of securities (the "Investor Claims"), to the extent (if any) that the claims are allowed, are subordinated pursuant to Section 510 of title 11 of the United States Code (the "Bankruptcy Code"); and/or (ii) subordination of the Investor Claims, to the extent (if any) that the claims are allowed, pursuant to Section 510 of the Bankruptcy Code; and (b) such other relief as the Court deems just and proper under the circumstances.[3]

[1] The Debtors are listed in the Affidavit of James A. Whitlinger, sworn to on May 14, 2012, *In re Residential Capital, LLC,* No. 12-12020 (MG) (Bankr. S.D.N.Y.) [Docket No. 6].

[2] *See* Complaint, filed on Feb. 19, 2013, *In re Residential Capital, LLC*, Case No. 12-12020 (MG), Adv. Pro. 13-01262 (MG) (Bankr. S.D.N.Y.) [Docket No. 2970, Adv. Pro. Docket No. 1].

[3] The Debtors hereby reserve their rights to object to the allowance, validity, amount or classification of any of the Investor Claims on all grounds, whether legal, factual, procedural, substantive or non-substantive.

JURISDICTION

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are Rule 7056 of the Bankruptcy Rules and Section 510 of the Bankruptcy Code.

2. In support of this Motion, the Debtors submit and rely upon the accompanying: (i) Memorandum of Law in Support of Debtors' Motion for Summary Judgment (the "Memorandum of Law"); and (ii) Local Rule 7056-1 Statement of Stipulated Undisputed Facts and Agreed-To Exhibits (the "Local Rule 7056-1 Statement").

3. For the reasons set forth in the Memorandum of Law and based upon the Local Rule 7056-1 Statement, there are no issues of material fact with respect to the relief requested in the Complaint, and summary judgment should enter granting the relief requested by the Debtors.

NOTICE

4. Notice of this Motion has been given in accordance with the Bankruptcy Rules, the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules"), and the *Order Under Bankruptcy Code Sections 102(1), 105(a) and 105(d), Bankruptcy Rules 1015(c), 2002(m) and 9007 and Local Bankruptcy Rule 2002-2 Establishing Certain Notice, Case Management and Administrative Procedures*, entered on May 23, 2012 [Docket No. 141].

5. No prior request for the relief sought herein has been made to this or any other court.

PRAYER FOR RELIEF

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested in this Motion by:

(a) granting summary judgment in their favor on the following issues:

(i) on Count I of the Complaint, the entry of an Order declaring that the Investor Claims, to the extent allowed, are subordinate to the claims of general unsecured creditors pursuant to Section 510(b) of the Bankruptcy Code, or in the alternative, the entry of an Order subordinating the Investor Claims, to the extent allowed, to the claims of general unsecured creditors pursuant to Section 510(b) of the Bankruptcy Code; and/or

(ii) on Count II of the Complaint, the entry of an Order declaring that the Investor Claims, to the extent allowed, are subordinate to the claims of general unsecured creditors pursuant to Section 510(a) of the Bankruptcy Code, or in the alternative, the entry of an Order subordinating the Investor Claims, to the extent allowed, to the claims of general unsecured creditors pursuant to Section 510(a) of the Bankruptcy Code; and/or

(iii) on Count III of the Complaint, the entry of an Order subordinating the Investor Claims, to the extent allowed, to the claims of general unsecured creditors pursuant to Section 510(c) of the Bankruptcy Code; and

(b) granting such other relief as the Court deems just and proper under the circumstances.

Dated: April 2, 2013
New York, New York

/s/ Joel C. Haims
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EXHIBIT 1

Proposed Order

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
RESIDENTIAL CAPITAL, LLC, et al.,	)	
Plaintiffs,	)	
v.	)	Adv. Case No. 13-01262 (MG)
ALLSTATE INSURANCE COMPANY, et al.,	)	
Defendants.	)	

ORDER GRANTING DEBTORS' MOTION FOR SUMMARY JUDGMENT

Upon consideration of the *Debtors' Motion for Summary Judgment,*[1] dated April 2, 2013 [Adv. Pro. Docket No. ___] (the "Motion"), and the responses and objections filed in response thereto; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Memorandum of Law in Support of the Debtors' Motion for Summary Judgment, filed contemporaneously therewith.

with the Bankruptcy Rules; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that: there are no disputed issues of material fact; the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and any objections or responses to the Motion having been withdrawn or overruled on the merits; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED as set forth herein.

2. In accordance with Section 510 of the Bankruptcy Code, the Investor Claims are subordinate to all general unsecured claims filed against the Debtors in these Chapter 11 Cases.

3. The Rule 3013 Motion is DENIED.

4. This Order shall not preclude the Debtors from objecting to the Investor Claims on any basis, including with respect to the allowance, validity, amount or classification of any of the Investor Claims on all grounds, whether legal, factual, procedural, substantive or non-substantive.

5. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

6. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

7. 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.

New York, New York
Date: _____, 2013

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE