Docket #0044 Date Filed: 4/23/2013

HEARING DATE: MAY 23, 2013 AT 2:00 P.M. EST
REPLY DEADLINE: MAY 7, 2013 AT 4:00 P.M. EST

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Attorneys for National Credit Union Administration Board as Liquidating Agent for Western Corp. Federal Credit Union and U.S. Central Federal Credit Union

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.	)	

NOTICE OF OPPOSITION OF NATIONAL CREDIT UNION ADMINISTRATION BOARD TO DEBTORS' SUMMARY JUDGMENT MOTION

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PLEASE TAKE NOTICE that, on April 23, 2013, the National Credit Union Administration Board as Liquidating Agent for Western Corp. Federal Credit Union and U.S. Central Federal Credit Union, ("NCUAB") by and through its undersigned counsel, filed an opposition (the "Opposition") [1] to the motion seeking summary judgment on all counts of the Complaint dated February 19, 2013, filed by the Debtors commencing the above-captioned adversary proceeding.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 501, One Bowling Green, New York, New York, 10004 (the "Bankruptcy Court") is currently scheduled for **May 23, 2013 at 2:00 p.m. (prevailing Eastern time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that replies, if any, to the Opposition must be made in writing, filed with the Bankruptcy Court (with a copy to Chambers) in accordance with the Order Under Bankruptcy Code Sections 102(1), *105(a)*, and *105(d)*, Bankruptcy Rules 10 15(c), 202(m), and 9007, and Local Bankruptcy rule 2002-2 Establishing Certain Notice, Case Management and Administrative Procedures entered by this Court on May 23, 2012 (Doc. 141) (the "Case Management Order"), and served in accordance with the Case Management Order, so as to be received no later than **May 7, 20123 at 4:00 p.m. (prevailing Eastern time)**.

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Opposition.

Dated: April 23, 2013
New York, NY

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

OPPOSITION OF NATIONAL CREDIT UNION ADMINISTRATION BOARD TO DEBTORS' MOTION FOR SUMMARY JUDGMENT

The National Credit Union Administration Board as Liquidating Agent for Western Corp. Federal Credit Union and U.S. Central Federal Credit Union ("NCUAB") hereby submits this opposition (the "Opposition") to the Debtors' motion seeking summary judgment on all counts in the complaint (the "Adversary Complaint") filed by the above-captioned debtors and debtors-in-possession (the "Debtors") in the above-captioned adversary proceeding (the "Adversary Proceeding"). In support of this Opposition, NCUAB respectfully submits as follows:

BACKGROUND

The NCUAB Claims

1. NCUAB has filed eleven (11) proofs of claim (the "NCUAB Claims") against Debtors Residential Accredit Loans Inc. [Claim No. 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, and 2636] and Residential Funding Mortgage Securities II, Inc. [Claim No. 2635]. The NCUAB Claims total approximately $300,000,000 and arise out of violations of the Securities Act of 1933, the California Corporate Securities Law of 1968 and the Kansas Uniform Securities Act.

2. On November 27, 2012, AIG Management (U.S.), and affiliated entities, Allstate Insurance Company and affiliated entities, Massachusetts Mutual Life Insurance Company, and Prudential Insurance Company of America and affiliated entities (collectively, the "AIG Movants") filed the *Motion of AIG Asset Management (U.S.), LLC, the Allstate Entities, Massachusetts Mutual Life Insurance Company, and the Prudential Entities for an Order Under Bankruptcy Rule 2012 (i) Classifying RMBS Fraud Claims in the Same Class as the Securitization Trusts' Claims for Purposes of any Chapter 11 Plan for the Debtors and (ii)*

Directing That Misrepresentation Claims Cannot Be Placed in a Plan Class That Will Be Subordinated Under Bankruptcy Code Section 510(b) (the "3013 Motion") [Case No. 12-12020, Docket No. 2284].

3. By the 3013 Motion, the AIG Movants sought entry of an order determining, for purposes of any chapter 11 plan with respect to the Debtors, that (a) claims against the Debtors for violations of federal and state securities laws, common-law fraud, and other similar theories (collectively, "Misrepresentation Claims") arising out of the Debtors' misrepresentations and conduct in connection with the purchases by investors (such as NCUAB) of residential mortgage-backed securities (the "Certificates") issued by certain trusts (the "Trusts") should be classified as general unsecured claims, together with any claims of the trustees of the Trusts (the "Trustees") against the Debtors for breaches of representations and warranties by the Debtors ("R&W Claims") and (b) Misrepresentation Claims are not subject to subordination under section 510 of the Bankruptcy Code. *See* 3013 Motion at 1 – 4.

4. On January 4, 2013, NCUAB filed a joinder to the 3013 Motion [Docket 2555].

Opposition to the 3013 Motion

5. On February 19, 2013, the Debtors filed a brief in opposition to the 3013 Motion (the "3013 Opposition") [Docket No. 2953]. In the 3013 Opposition, the Debtors assert that Misrepresentation Claims (a) are subordinated pursuant to section 510(b) of the Bankruptcy Code because the Certificates are securities of either the Debtors or their affiliates, (b) are contractually subordinated pursuant to section 510(a) of the Bankruptcy code by an agreement among holders and/or subsequent purchasers of Certificates, (c) should be subordinated pursuant

to section 510(c) of the Bankruptcy Code, and (d) are fundamentally different from R&W Claims and should not be similarly classified. *See* 3013 Opposition at 1 – 4.

6. Various other parties filed or joined in objections to the relief sought in the 3013 Motion: the Trustees [docket No. 2967]; the Steering Committee Group of RMBS Holders [Docket NO. 2954]; MBIA Insurance Corporation [Docket No. 2955]; the Ad Hoc Group of Junior Secured Noteholders [Docket No. 2957]; and Wilmington Trust, National Association, as indenture trustee for various series of the Debtors' senior unsecured notes [Docket No. 2959].

The Adversary Proceeding

7. Also on February 19, 2013, the Debtors commenced their Adversary Proceeding against the AIG Movants and NCUAB, requesting (a) a declaratory judgment that the Misrepresentation Claims of the AIG Movants and NCUAB, to the extent allowed, are subordinated pursuant to section 510(b) of the Bankruptcy Code to all general unsecured claims against the Debtors' estates or, in the alternative, an order subordinating the Misrepresentation Claims pursuant to section 510(b) of the Bankruptcy Code; (b) a declaratory judgment that the Misrepresentation Claims, to the extent allowed, are subordinated pursuant to section 510(a) of the Bankruptcy Code to all general unsecured claims asserted against the Debtors' estates or, in the alternative, an order subordinating the Misrepresentation Claims pursuant to sections 510(a) of the Bankruptcy Code; and (c) an order subordinating the Misrepresentation Claims to all general unsecured claims asserted against the Debtors' estates pursuant to section 510(c) of the Bankruptcy Code. See Adversary Complaint, ¶ ¶ 91 – 107.

The Summary Judgment Motions

8. The Debtors and the AIG Movants agreed to consolidate the 3013 Motion, the 3013 Opposition, and the Adversary Proceeding for purposes of decision, and to proceed on cross-motions for summary judgment.

9. On April 2, 2013, the AIG Movants filed the Motion of AIG Asset Management (U.S.), LLC, the Allstate Entities, Massachusetts Mutual Life Insurance Company, and the Prudential Entities for Summary Judgment (the "AIG Summary Judgment Motion") [Docket No. 27], seeking summary judgment dismissing all counts of the Adversary Complaint.

10. On April 2, 2013, the Debtors filed their Motion for Summary Judgment (Docket No. 25) with an accompanying Memorandum of Law in support of Debtors' Motion for Summary Judgment (Docket No. 26).

11. Except to the extent inconsistent with the factual assertions set forth in this Opposition, NCUAB hereby incorporates by reference the factual assertions and legal argument set forth in the Opposition of AIG to Debtors' Summary Judgment Motion as if fully set forth herein.

ARGUMENT

12. NCUAB hereby joins in and incorporates by reference the arguments and factual assertions set forth in the Opposition of AIG to Debtors' Summary Judgment Motion as if fully set forth herein.

RESERVATION OF RIGHTS

13. NCUAB reserves all rights with respect to the Debtors' bankruptcy cases, and NCUAB's claims against the Debtors, including but not limited to the rights to oppose (a) any motion or adversary proceeding seeking expungement, disallowance, subordination, or other modification of any claims asserted against the Debtors by NCUAB and (b) confirmation of any chapter 11 plan filed in these cases that proposes to disallow or subordinate such claims. NCUAB further reserves the right to reply to any arguments raised by the Debtors in opposition to the AIG Summary Judgment Motion, or in support of or opposition to any other motion relating to the subject matter hereof.

WHEREFORE, NCUAB respectfully requests that the Court (a) enter an order granting summary judgment in its favor and dismissing all counts in the Debtors' adversary complaint and determining the Misrepresentation Claims are not subject to subordination pursuant to section 510 of the Bankruptcy Code and (b) grant NCUAB such other relief as may be just and proper.

Dated: April 23, 2013
New York, NY

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