UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

In the Matters of:

RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg

Debtors.

- -x

HAWTHORNE,

Plaintiff, Case No. 12-02050-mg

- against -

GMAC MORTGAGE, LLC,

Defendant.

- -x

VON BRINCKEN,

Plaintiff, Case No. 13-01436-mg

- against -

GMAC MORTGAGE, LLC, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

April 24, 2014

10:19 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(CC: Doc. nos. 6687 and 6688) Adj. Hrg. RE: Motion of the ResCap Liquidating Trust for an Order Enforcing Plan Injunction Against Karla Brown filed by Douglas Mannal on behalf of ResCap Liquidating Trust.

(CC: Doc# 6448) Adj. Hrg. RE: Motion for Omnibus Objection to Claim(s) / ResCap Borrower Claims Trusts Fifty-Ninth Omnibus Objection to Claims (Insufficient Documentation Borrower Claims).
Hearing solely as to claim filed by Annie M. Trammell will be going forward. Hearing, solely as to claim filed by Alredia Holiday is not required as parties anticipate claimant's filing of a Notice of Withdrawal of claim.

Adversary proceeding: 12-02050-mg Hawthorne v. GMAC MORTGAGE, LLC
(CC: Doc no. 1) Adj. Status Conference

Adversary proceeding: 13-01436-mg Von Brincken v. GMAC MORTGAGE, LLC, et al
(CC: Doc. no. 15) Adjourned Status Conference.

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P R O C E E D I N G S

THE COURT: Please be seated.

All right, we're here in Residential Capital, number 12-12020. Mr. Rosenbaum?

MR. ROSENBAUM: Good morning, Your Honor. Norm Rosenbaum, Morrison & Foerster, for the ResCap Liquidating Trust and the ResCap Borrowers' Trust.

Your Honor, the first matter is on page 6 of the agenda. That's the motion of the ResCap Liquidating Trust for an order enforcing the plan injunction.

THE COURT: Yes.

MR. ROSENBAUM: And I'll turn the podium over to Mr. Mannal.

THE COURT: Okay.

MR. MANNAL: Your Honor, Doug Mannal from Kramer Levin on behalf of the Liquidating Trust. Your Honor --

THE COURT: Let me get the other appearances in this.

MR. COLLIER: Your Honor, Paul Collier for the claimant, Karla Brown, and Max Weinstein with me.

THE COURT: Thank you very much.

MR. MANNAL: Your Honor, we were prepared to go forward today on the trust's motion, however, in an effort to hopefully reach a settlement, not only of the claims that are being asserted against Mr. Brown, but also the claims being asserted against GMAC Mortgage, the parties have agreed to an

adjournment, if Your Honor is so inclined, to the date of June 10th, which your chambers has informed us, is available. And it's our hope that we make further progress in resolving all the claims to avoid the need to proceed on the trust's motion.

(Pause)

THE COURT: Just bear with me a second, Mr. Mannal.

MR. MANNAL: Absolutely.

THE COURT: This will take more than a few seconds. I guess the computer rebooted by itself overnight.

Let me ask you this. What is the status of the Massachusetts action? Because I certainly read that there was a motion for summary judgment that was argued, I think, in January. And it's described in Mr. Weinstein's brief as fully briefed and, I guess -- was it argued, Mr. Weinstein?

MR. WEINSTEIN: Yes, Your Honor, it was argued.

THE COURT: Okay. So what's the status of it?

MR. WEINSTEIN: It's presently under advisement. I don't think the Massachusetts Superior Court judge intends to act on it before resolution of this matter.

THE COURT: Okay. And that is -- you believe that because why?

MR. WEINSTEIN: She said so.

THE COURT: Okay, well, that's a good reason.

MR. COLLIER: We also, Your Honor, just for the Court's information --

THE COURT: Go ahead -- you need to identify yourself when you speak.

MR. COLLIER: I'm sorry. Paul Collier, Your Honor.

THE COURT: Okay, Mr. Collier, go ahead.

MR. COLLIER: We also have a trial date scheduled for next -- but it's not until next March. So there's some --

THE COURT: You don't have a trial date.

MR. COLLIER: We don't have a trial date.

THE COURT: Nothing imminent. Let's put it that way.

MR. WEINSTEIN: Nothing imminent.

THE COURT: Okay. Because the -- I think -- look, I'm always in favor of a consensual resolution of matters, and am certainly aware that the claim against GMAC remains pending. And what's it, a 700,000-dollar claim that was filed. Is that it?

MR. MANNAL: I believe it was a 700,000-dollar claim filed, yes.

THE COURT: My only concern -- I didn't want the judge in Massachusetts -- I didn't know what the expectation was as to whether the judge in Massachusetts was going to go ahead and decide the matters that are pending before her or wait for this Court to decide. It was un -- let's put it that way -- it was unclear to me whether the issue of the effect of the release and injunction provisions had been raised with and argued with the judge in Massachusetts or what.

MR. MANNAL: They have not, Your Honor.

THE COURT: Mr. Collier? Go ahead, Mr. Collier.

MR. COLLIER: Halfway in between, Judge, which is the court's order and the plan were filed there. The court instructed counsel for Mr. Brown to file a motion by May 10th with regard to its effect. And then in the meantime, counsel gave -- and then us to reply after that. And in the meantime, counsel filed here for the motion for the order enforcing.

So the judge is awaiting --

THE COURT: Okay.

MR. COLLIER: -- the resolution of this issue here.

THE COURT: All right. Let me try and clear one thing up that I guess seems evident to me. Karla Brown and Phillip Brown are not related to each other. Is that right?

MR. COLLIER: That's right, Judge.

THE COURT: Okay. Just trying to keep straight at all times the two --

MR. COLLIER: Not within any degree of separation that we could identify biologically.

THE COURT: Okay, all right. I'm -- well, now my computer is -- let me get my calendar.

(Pause)

THE COURT: All right. I see there is a ResCap calendar on June 10th. At this point, at least, not very many matters on it.

Well, I'm prepared to adjourn this matter until June 10th to allow the parties an opportunity to see if they can reach an overall global resolution that would resolve all issues.

I would ask this, that a letter in an agreed form be sent to the judge in Massachusetts, indicating that the Court held a hearing today; at the request of the parties, the hearing was adjourned until June 10th, and that the bankruptcy court requested that the Massachusetts court withhold any decision on the pending motion for summary judgment, pending a resolution of the matters before this court. And it's just a request, and the court there will do whatever it's going to do.

But I just want to be clear so that -- just agree. It's a pretty straightforward letter. I'm sure you'll be able to agree on that.

MR. WEINSTEIN: Absolutely, Your Honor.

THE COURT: Okay. All right, Mr. Mannal?

MR. MANNAL: Thank you, Your Honor. And we do apologize to the Court for the late adjournment of this matter.

THE COURT: And the Court has done a lot of work on this, let me put it that way. But I think that, in particular, because there is the claim pending against GMAC-M as well, and so there's more that's going to need to be done to resolve the entire matter.

Mr. Collier and Mr. Weinstein, while there wasn't a

reference to it in any of the briefing because it's late developments, within the last week, the Court has issued several opinions, one for publication, at least one not for publication but available on the court's Web site, enforcing the third-party nondebtor release included in the plan with respect to Ally Financial.

MR. COLLIER: We've read them, Your Honor.

THE COURT: Okay. I just wanted to be sure that you were aware. Because it wasn't -- the briefing was all in before those opinions were issued. So --

MR. MANNAL: In fact, Your Honor, I was going to refer to the Lahrman motion decision. I'd be happy to share a copy with counsel.

THE COURT: That's fine. They're on the Web site. But you ought to do that. Okay, I just wanted to be sure everybody was aware of that.

Okay, so I guess what I would ask is that counsel file a status letter with the Court by 5 p.m. Tuesday, May 27th, that's two weeks before the hearing, regarding the status of the matter. I mean, if the status is, you're still talking, you'll indicate that as well. But -- and if you're still talking but it's -- and you're going to continue talking but it's still unresolved, then I want another status letter a week after that. I want to know -- I definitely want to know a week before the hearing whether this is going to be resolved

consensually or not. But let me ask you for two weeks before, a status letter, and then again, if necessary, a week before the hearing. Okay.

MR. MANNAL: Absolutely, Your Honor. Thank you.

THE COURT: All right. Thanks very much.

MR. COLLIER: Would you like a copy of the letter to the state court judge, Your Honor?

THE COURT: Sure. Why don't you forward a copy. That would be -- I'd appreciate that. Thanks very much.

Okay, Mr. Rosenbaum? Mr. Mannal --

MR. MANNAL: May we be excused?

THE COURT: Absolutely.

MR. MANNAL: Thank you.

THE COURT: Sure.

MR. ROSENBAUM: Your Honor, the next matter on the agenda is Roman numeral II. It's the debtors' continued thirtieth omnibus objection. And I'd turn the podium over to my colleague, Meryl Rothchild.

THE COURT: Sure.

MS. ROTHCHILD: Good morning, Your Honor. Meryl Rothchild of Morrison & Forester on behalf of the ResCap Borrower Claims Trust.

The next matter on the agenda, I believe, is on page 8 at number 2, the Borrower Trust's fifty-ninth omnibus claims objection to insufficient documentation borrower claims, filed

at docket number 6448. The Borrower Trust filed a related reply in support of the objection at docket number 6797 as to claim number 4419 filed by Ms. Annie Trammell. Ms. Trammell, acting pro se --

THE COURT: Let me ask --

MS. ROTHCHILD: Oh, sure.

THE COURT: -- is Ms. Trammell on the phone, by any chance?

All right, no appearance -- no one in the court or by telephone appearing on behalf of Ms. Trammell.

Go ahead, Ms. Rothchild.

MS. ROTHCHILD: Okay. So Ms. Trammell filed her response to the objection at docket number 6692. In support of the objection and reply, the Borrower Trust also submitted a supplemental declaration by Deanna Horst, chief claims officer of the ResCap Liquidating Trust, as Exhibit 1 to the reply. I believe Ms. Horst has made a telephonic appearance and is available to answer any questions.

THE COURT: Okay.

MS. ROTHCHILD: Your Honor, we can proceed however the Court prefers. The trust can state its arguments in favor of the objection as to Ms. Trammell's claim, or we can answer any questions the Court may have.

THE COURT: All right. Since Ms. Trammell hasn't appeared, the Court has reviewed the objection and the response

to the objection. And as indicated, this is claim 4419. The objection is at ECF 6692 -- or the opposition to the objection is at 6692. The objection is at 6448 and is supported by the declaration of Deanna Horst and Mr. Rosenbaum. Those are both exhibits to the objection. The trust filed a reply which is at 6797.

The Trammell claim attaches only sparse and unhelpful documentation. The Court has concluded that based on the proof of claim and its documentation, the claim is not entitled to be treated as prima facie evidence of validity and amount. The claim asserts -- it asserts a claim for an 80,000-dollar secured claim against GMAC for "mortgage payments (GMAC)".

The trust has treated the claim as one stated against GMAC Mortgage LLC, and argues that the claim lacks adequate documentation. With respect to the requirement for adequate documentation, see In re Consolidated Pioneer, 178 B.R. -- that's In re Consolidated Pioneer Mortgage, 178 B.R. 222. And see also my opinion in In re Minbatiwalla, 424 B.R. 104.

Trammell's opposition attaches a letter from Ocwen. And in her response, Trammell writes that she objects to the disallowance because she has "an outstanding debt of approximately 80,000 dollars." And her account was transferred to Ocwen. It was transferred to Ocwen as part of the sale of the servicing platform.

In the reply the trust states that it has reviewed the

debtors' books and records to examine the history of the debtors' relationship with Trammell. The trust learned that the debtor Homecomings Financial LLC serviced Trammell's loan from 2001 until 2009, when it transferred servicing to GMAC-M. That's in the supplemental declaration at paragraph 5.

GMAC-M then serviced the loan until transferring the servicing rights to Ocwen in February 2013. And while servicing the loan, GMAC-M sent Trammell several notices indicating that she was delinquent on her loan payments. But GMAC-M never commenced foreclosure proceedings.

The Court concludes, based on the evidence that the trust has submitted, that Trammell has failed to establish a basis for her claim. The claim itself, what's attached, is not entitled to be treated as prima facie evidence of validity and amount. She has not countered the evidence that the trust has put forward in support of the objection and in the reply.

Consequently the objection to Trammell proof of claim number 4419 is sustained, and the claim is expunged.

MS. ROTHCHILD: Thank you, Your Honor. And we will submit an order to the court to that effect.

THE COURT: All right.

MR. ROSENBAUM: Your Honor, Norm Rosenbaum, Morrison & Foerster, again. Your Honor, there is -- the remaining items on the calendar are two status conferences in the Hawthorne adversary proceeding and the Von Brincken.

THE COURT: Okay. Is anybody -- well, go ahead, Mr. Rosenbaum.

MR. ROSENBAUM: It says that it -- maybe I'll get it right this time. It's page 9, Roman numeral III of the agenda.

THE COURT: Okay.

MR. ROSENBAUM: I believe --

THE COURT: Is anybody on the phone for Hawthorne? Is anybody appearing --

MS. HAWTHORNE: Yes, this is Gwen Hawthorne, sir.

THE COURT: Okay. Thank you, Ms. Hawthorne.

I read -- I saw your status letters with respect to both Hawthorne and Von Brincken. So I've reviewed that. So go ahead Mr. Rosenbaum. And then I'll give Ms. Hawthorne a chance to respond.

MR. ROSENBAUM: Thank you, Your Honor. As indicated in the status report, Your Honor was concerned at the last status conference we had on this matter in February that the loan modification application make its way to Ocwen. And we agreed to do everything we could to facilitate that. We did pass on the application that was received by Morrison & Foerster to Ocwen's counsel, who has joined the hearing today, at our request. That's Matt Brooks of Troutman Sanders.

THE COURT: Okay.

MR. ROSENBAUM: My understanding is that the application was routed to Ocwen by Mr. Brooks on March 8th.

THE COURT: Let me just stop -- Mr. Brooks, are you on the phone?

MR. BROOKS: I am, Your Honor.

THE COURT: Okay, go ahead, Mr. Rosenbaum.

MR. ROSENBAUM: It's our understanding -- but Ms. Hawthorne and Mr. Brooks are on the phone and they can elaborate -- it's our understanding that this application, in effect, asks for a short -- request for a short sale, not a loan modification. In early April, April 3rd, I believe, Mr. Brooks responded to Ms. Hawthorne and her son, indicating what items were missing from the application for the short sale and inquiring again as to whether she, in fact, would still want to be considered for a loan modification.

My understanding -- our understanding is, there has yet to be a response from the Hawthornes.

THE COURT: Okay.

MR. ROSENBAUM: From the perspective of the liquidating trust, we're happy to continue to try to facilitate this, if this can resolve the matter. And if there is to be a further continuance, that's fine from the trust's perspective. But if not, at some point we'll want to move with a dismissal of the complaint.

THE COURT: So, Mr. Brooks, maybe you could tell me from Ocwen's standpoint, where things stand?

MR. BROOKS: I'd be happy to, Judge. It's -- Ocwen

mailed out a letter to Ms. Hawthorne around the same time I sent my e-mail, April 3rd, indicating that some additional documents would be necessary. And I don't know -- I don't think the status report detailed what those items were, but it's a few documents confirming pay that -- an income that was indicated in the loan modification, as well as a sale contract that has allegedly been entered into.

And I followed up with Ms. Hawthorne and left her a voice mail on April the 10th to see if she had any questions about either Ocwen's letter or my e-mail outlining what documents would be needed. And as of yet, I haven't heard anything. And I confirmed with Ocwen yesterday, that Ms. Hawthorne has not submitted any of the additional documents that it requested.

THE COURT: Okay. Ms. Hawthorne?

MS. HAWTHORNE: Yes, Your Honor, I actually apologize. I've been in the hospital and trying to recover, so I wasn't able to probably get all of that information. It's probably why he didn't hear from me, because I didn't know I received it.

THE COURT: Let me ask you, do you have a contract for a proposed short sale of the property?

MS. HAWTHORNE: We have an offer for the house. Yes we do.

THE COURT: Okay. So really, at this point, Ms.

Hawthorne, and I'm sorry if you were ill and in the hospital --

MS. HAWTHORNE: Thank you.

THE COURT: -- you need to -- if you want to pursue it with Ocwen either to get approval for a short sale or if you still want to seek a loan modification, you need to provide the information that Ocwen's requesting.

MS. HAWTHORNE: Absolutely. Absolutely.

THE COURT: Okay. What I would like to -- I mean, I want -- I think what I'm going to do, Mr. Rosenbaum, is adjourn the matter. I don't want to see the trust have to go through the expense of preparing a motion to dismiss if there's a consensual resolution that will solve the matter. And certainly from reading the status report and hearing Mr. Brooks, it certainly sounds to me that Ocwen is prepared to consider -- it hasn't made any decision, I understand that -- Ocwen is prepared to consider approving a short sale. And Mr. Brooks inquired also whether Ms. Hawthorne was interested, alternatively, in a loan modification.

But when will you be able -- do you know what information Ocwen is asking for, Ms. Hawthorne? Do you have the request that Mr. Brooks has forwarded to you?

MS. HAWTHORNE: I can probably get the request. I've been back and forth from my sister's house. That's probably why I didn't receive it.

THE COURT: Okay, well me -- Mr. Brooks --

MS. HAWTHORNE: So --

THE COURT: -- can you send -- do you have her -- Ms. Hawthorne, do you have e-mail?

MS. HAWTHORNE: I do. I have e-mail.

THE COURT: Okay. Mr. Brooks do you have her e-mail address?

MR. BROOKS: I do, Judge.

THE COURT: Okay. Could you -- may I ask you to do this? Could you just, so that -- it sounds as if Ms. Hawthorne doesn't have it immediately at hand. If you would forward the request. And you really -- it's one of these things. Whenever you seek either a modification or approval for a short sale, it's important that you respond quickly, Ms. Hawthorne, because you run the risk that the information you've provided to Ocwen becomes stale, and the result is that they need more information from you.

So to try to and move this along --

MS. HAWTHORNE: Okay.

THE COURT: -- it's important that you really respond promptly. Are you able to do that, Ms. Hawthorne?

MS. HAWTHORNE: I am. Definitely, Your Honor.

THE COURT: Okay, Mr. Brooks --

MS. HAWTHORNE: I'm a lot better, Your Honor. But if he could e-mail that -- forward that by e-mail, I'll respond ASAP.

THE COURT: Mr. Brooks, may I ask you to do that?

MR. BROOKS: I will, Judge. And you raised a good point. Ocwen told me yesterday that the current information in Ms. Hawthorne's loan modification request is going to get stale at the end of this week.

THE COURT: Okay.

MR. BROOKS: And so if Ms. Hawthorne has the information available that she can send today or tomorrow, I can prevent that from happening. But if we move into next week, then I'm going to need some more information.

THE COURT: Okay. That's true for both a short sale or a modification, or --

MR. BROOKS: That's right. For both, Judge.

THE COURT: Okay. So, Ms. Hawthorne, let me say, I mean, because of my experience as a judge with loan modifications, I certainly -- I don't think that was intended as a threat. I mean, all loan servicers' information has to be -- is required to be current for them to consider either a short sale or a loan modification. So it really is important that you get Mr. Brooks the information that he's asking for. Otherwise, the result is you've got to go back and do it again.

MS. HAWTHORNE: Your Honor, this is like every two years we're doing this. So I understand the urgency. Yes.

THE COURT: Okay. So do it as quickly as you can.

MS. HAWTHORNE: Okay.

THE COURT: Okay.

MS. HAWTHORNE: Thank you.

THE COURT: Mr. Rosenbaum, I guess I would ask this of you or one of your colleagues. If -- keep tabs on this for the next couple of weeks. If there isn't a resolution, you can go ahead with a motion to dismiss. I'm trying to save the trust from having to go through the expense, if it really is -- if a resolution is possible consensually. Okay?

MR. ROSENBAUM: We're happy to do that, Your Honor. Thank you.

THE COURT: Thanks very much. Okay.

Now, Von Brincken? Thank -- Ms. Hawthorne, you're certainly excused.

MS. HAWTHORNE: Thank you, Your Honor.

THE COURT: Okay.

MR. ROSENBAUM: Your Honor, the next matter and final matter on the agenda is at page 10. It's the pre-trial status conference on Von Brincken v. GMAC Mortgage. That's adversary proceeding number 13-1436. I believe earlier I heard Ms. Von Brincken had made an appearance.

THE COURT: Ms. Von Brincken, are you on the phone?

MS. VON BRINCKEN: Yes, Your Honor. John and Shelley are on -- Von Brincken --

THE COURT: Okay.

MS. VON BRINCKEN: -- are on the phone.

THE COURT: All right. I'll give you -- I'll have Mr. Rosenbaum speak to it, and then I'll give you a chance to talk. Okay?

MS. VON BRINCKEN: Thank you.

THE COURT: All right, go ahead.

MR. ROSENBAUM: Your Honor --

MR. KORNBERG: Your Honor, Bernard Kornberg for Ocwen.

THE COURT: Okay. Thank you.

MR. ROSENBAUM: Your Honor, in brief, Your Honor did grant the Von Brinckens' -- or Ms. Von Brincken's motion to amend the complaint and filed an amended complaint. We had -- that had been preceded by unsuccessful settlement discussions.

We did file the joint report on the 17th, I believe, Your Honor. And then on the 18th we received a settlement proposal from Ms. Von Brincken. We have not had an opportunity to fully vet that. And that is something, actually, I would need to raise with the Borrowers' Trust.

THE COURT: Yes.

MR. ROSENBAUM: We would like an opportunity to do so. And if we're unable to come to a resolution, my proposal would be to enter into just a joint scheduling stipulation on a motion to dismiss with the plaintiff, and we could present that to Your Honor.

THE COURT: Okay. That sounds -- well, let me ask, Ms. Von Brincken, do you want to say something new?

MS. VON BRINCKEN: I'm going to defer to my husband. I have a cold.

THE COURT: Okay.

MS. VON BRINCKEN: Okay?

THE COURT: Mr. Von Brincken?

MR. VON BRINCKEN: Yes, good morning. John Von Brincken here. Yeah, that's fine. We do want them to take a look at what we have submitted as a settlement offer. And if, in fact, it's not satisfactory and we can't reach a point, then we know that they've already advised that they would possibly send a motion to dismiss. And then we would obviously answer that and continue on.

THE COURT: Okay. Mr. Rosenbaum, how much time do you think you need to explore the settlement opportunity?

MR. ROSENBAUM: I think two weeks, Your Honor.

THE COURT: Okay. So why don't you do this. I'd ask for a status report by Monday, May 12th at 5 o'clock. And if you're not able to reach a settlement, you ought to see if you can agree on a schedule for briefing a motion to dismiss. Okay?

MR. ROSENBAUM: That's fine, Your Honor.

THE COURT: All right. Mr. Von Brincken, so you ought to -- I'll leave it to the two of you and Mr. Rosenbaum or his colleagues to see whether you can pursue the settlement issue. And if that's not going to work, they're going to go ahead and

file a motion to dismiss. You'll have an opportunity to respond to it. And we'll have a hearing.

Where do you live?

MR. VON BRINCKEN: We're in Grass Valley, California.

THE COURT: Okay. I'll permit you to -- just so it's clear, I'll permit you to appear at any hearing on a motion to dismiss by telephone. Okay?

MR. VON BRINCKEN: Thank you.

THE COURT: All right.

MR. ROSENBAUM: Thank you, Your Honor. That concludes our agenda.

THE COURT: Okay. Thanks very much, Mr. Rosenbaum.

MR. ROSENBAUM: You're welcome.

MR. VON BRINCKEN: Thank you.

THE COURT: Thank you. All right, we're adjourned.

(Whereupon these proceedings were concluded at 10:47 AM)

I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

_____

PENINA WOLICKI

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