Alberto Rodriguez and
Maria Rodriguez
Plaintiffs,
1232 Wissmann Drive
Ballwin, Missouri republic
near [63011]

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U.S. BANKRUPTCY COURT
SO DIST OF NEW YORK
Docket #0009 Date Filed: 10/1/2019

IN THE US BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: Residential Capital, LLC, Debtor	**Case No.:** 12-12020mg
	Adversarial Proceeding Case No. 19-01320 (MG)
Alberto Rodriguez and Maria Rodriguez Plaintiffs, Claimants at law, Aggrieved Parties v. Residential Capital, LLC, Homecomings Financial, LLC, FKA Homecomings Financial Network, Inc., OCWEN LOAN SERVICING, LLC, DOES 1 through 15, inclusive, Defendants	PLAINTIFF'S PROGRESS REPORT RE THE CONFERENCE BETWEEN THE THE PLAINTIFF AND DEFENDANTS Residential Capital, LLC. And Homecomings Financial, LLC

I. PROGRESS REPORT OF THE CONFERENCE

A. THE CONFERENCE

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1. We, the Plaintiffs, hereby met and conferred with the Attorneys representing the Defendants Residential, Capital, LLC, hereinafter RESCAP, and Homecomings Financial, LLC, hereinafter Homecomings on August 29, 2019 at 6:00PM Central time, and we wish to summarize the conference for the court. *The Defendants filed a Progress Report, independently of the Plaintiffs, while claiming to have contacted the Plaintiffs to obtain our input. We have no record of the proposed Joint Progress Report from the Defendants lead counsel. As a result we are filing this Progress Report independently in order to insure that our perspective and our legal status and the facts and circumstances of the case, together with the legal requirements under the Federal Rules of Bankruptcy and Title 11 US Code, for the Defendants to petition this court for Relief from Stay before assigning the Rodriguez note and Deed Of Trust.*

B. THE COURTS JURISDICTION

2. The Attorneys mentioned above immediately asserted that the court has no jurisdiction to hear the matter, while completely ignoring and refusing to address many of the core issues of the case, especially, the fact that the Attorneys representing RESCAP and Homecomings never filed a Motion for Relief from the Automatic Stay or any other motion asking the judge for permission to assign the Alberto Rodriguez Note and Deed of Trust. These attorneys did not explain why we, as Plaintiff's have no right to enforce our rights with respect to the failure of

RESCAP and Homecomings to ask for permission from the bankruptcy Judge to Assign the Rodriguez loan as required pursuant to Federal Rules of Bankruptcy § 4001, 6004, Title 11, US Code §§ 362, 363. *We have identified FRCP, Rule 4001(d) as a particular section of the Rules that imposes a specific requirement to obtain a court order before assigning the Rodriguez loan documents. Without this and with a proper assignment in accordance with the terms and conditions of this Rule, the identity of the person or entity with a property interest in the Rodriguez note and Deed of Trust cannot be determined. It is reasonable to seek out and determine the identity and capacity and standing of any party who has a documented, enforceable interest in the Rodriquez note and Deed of Trust, see Adams v. Madison Realty & Dev. Inc., 853 F 2d 166 (3rd Cir, 1988), which states:*

> *From the maker's standpoint, therefore,* ***it becomes essential that the person who demands payment of a negotiable note, or to whom payment is made, is the duly qualified holder. Otherwise the obligor is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument.*** *These risks provide makers with a recognizable interest in demanding proof of the chain of title. Consequently, plaintiffs here, as makers of the notes, may properly press defendant to establish its holder status.*

3. The alleged assignee OCWEN LOAN SERVICING, LLC has attempted to avoid the consequences of the Federal Rules of Bankruptcy, Rule 4001, and Title 11, US Code § 363, because the original lender was in bankruptcy throughout

(f) Treatment of servicer

(1) In general

the time when the Defendant OCWEN LOAN SERVICING, LLC was actively claiming to be a creditor and the lawful assignee in violation of the above statutes and court rules.

4. There is a current assignment recorded in the county real estate records in St Louis County, but it is signed about one year after Homecomings Financial, LLC and their parent company filed a bankruptcy petition. This violates the Federal Rules of Bankruptcy, wherein assets of a bankruptcy estate cannot be assigned or sold when there is a bankruptcy in process. In addition, it appears that the Deed of Trust was Assigned to Freddie Mac based upon the claims to ownership of the Rodriquez loan is on their website. THE ABOVE ASSIGNMENT WAS MADE IN VIOLATION OF THE FEDERAL RULES OF BANKRUPTCY AND It is important to note that the Rodriguez Note and Deed of Trust, is an asset of the bankruptcy estate of Residential Funding Company, LLC, the Parent Company of the original lender, and said loan cannot be assigned without permission from the bankruptcy Judge. Any claim that we do not have a right to litigate this matter is a violation of the due process clause of the Fourteenth Amendment. Given the level of controversy regarding the actual identity of the creditor we clearly have a right to seek resolution of these issues under the law that governs adversary proceedings, see Federal Rules Of Bankruptcy Procedure Rule 7001, Subsections (2), (3), and (9).

follows:

(f) Treatment of servicer

(1) In general

5. The attorneys attempted to claim that we do not have a remedy in violation of the doctrine established by the US Supreme Court in Bell v. Hood, 327 US 678, which stated:

> **"[I]t is established practice for [the Supreme] Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution." Bell v. Hood, 327 U.S. 678, 684 (1946); Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., 561 U.S. 477, 491 n.2 (2010).**
>
> **....."injunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally." Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 74 (2001); see also 5 U.S.C. § 702** (stating that under the Administrative Procedure Act, any "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof" and may seek injunctive relief).

6. We. The Plaintiffs, discovered further that the US Supreme Court has affirmed the rights under the Seventh Amendment apply in matters such as these when they stated in Granfinanciera, S.A. v Nordberg, 492 U.S. 33, at 42.

9. The original lender is Homecomings Financial, LLC and the current claimant is Ocwen Loan Servicing, LLC. The current claimant has steadfastly refused to identify the assignee of the note and Deed of Trust and has taken on the role of the lender, in violation of Title 31 US Code Section 1641(f), which states as follows:

(f) Treatment of servicer

(1) In general

In addition, the loan was assigned about a year after the bankruptcy as stated above. This means that presumably Homecomings or RESCAP can claim to own the Rodriguez loan. We cannot be held liable to three different creditors for the same debt.

8. In Adams v. Madison Realty & Dev. Inc., 853 F 2d 166 (3rd Cir, 1988) The Third Circuit stated as follows:

> From the maker's standpoint, therefore, it becomes essential that the person who demands payment of a negotiable note, or to whom payment is made, is the duly qualified holder. Otherwise the obligor is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument. These risks provide makers with a recognizable interest in demanding proof of the chain of title. Consequently, plaintiffs here, as makers of the notes, may properly press defendant to establish its holder status.

9. The original lender is Homecomings Financial, LLC and the current claimant is Ocwen Loan Servicing, LLC. The current claimant has steadfastly refused to identify the assignee of the note and Deed of Trust and has taken on the role of the lender, in violation of Title 31 US Code Section 1641(f), which states as follows:

(f) Treatment of servicer

(1) In general

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

(2) Servicer not treated as owner on basis of assignment for administrative convenience

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) "Servicer" defined

For purposes of this subsection, the term "servicer" has the same meaning as in section 2605 (i)(2) of title 12.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

10. As we can see Ocwen Loan Servicing, LLC cannot function as if they are the assignee without violating the terms of Title 15 US Code, Section 1641 Subsection (f) which states that they cannot be treated as the owner of the loan for administrative convenience. They have also refused to identify the assignee when asked in writing.

C. THE ISSUE OF DOUBLE RECOVERY

11. We put less than 20% down when we purchased the subject property. This means that the assignee, will have purchased mortgage insurance. If the Assignee is Freddie Mac, they have definitely purchased mortgage insurance based upon the information that is displayed on their website. THIS MEANS THAT THEY HAVE ALREADY BEEN PAID THE FULL AMOUNT OF THE DEBT AND THERE IS NO LAWFUL FOUNDATION TO FORECLOSE, OTHERWISE THEY ARE ENGAGING IN DOUBLE RECOVERY, ONCE WHEN THEY RECEIVE INSURANCE CLAIMS AND ONCE WHEN THEY SELL THE SUBJECT PROPERTY IN FORECLOSURE. The Freddie Mac website states as follows:

Private Mortgage Insurance

If you made a down payment of less than 20% to buy your home, private mortgage insurance or PMI will be part of your monthly mortgage payment.

The cost of PMI varies based on your loan-to-value ratio – the amount you owe on your mortgage compared to its value – and credit score. You can expect to pay between $30 and $70 per month for every $100,000 borrowed.

We found the above reference at the following link on the internet:

http://myhome.freddiemac.com/own/pay-pmi-insurance-taxes.html

12. We can supply the court with a copy of the above cited web page for convenience if necessary. If we interpret the above statements to be an accurate portrayal of the circumstances of their business practices with loans where the consumer has brought less than 20% down to the transaction, then the Rodriguez loan was paid off and there is no debt. This is a matter involving double recovery.

13. Having received the proceeds of their insurance claim, Freddie Mac cannot claim that the loan has not been paid in full, and then proceed to foreclose. We present numerous controversies and dilemmas regarding this loan, which must be addressed before any alleged creditor can claim ownership. The creditors cannot continue to play hide and seek with the promissory note and the Deed of trust and the facts.

II. CONCLUSION

14. Based upon the foregoing we, As homeowners, have made a reasonable request of the court for Declaratory and Injunctive Relief, so that we can obtain a legal determination regarding the competing claims of the parties and so that we can resolve the controversy regarding these matters. We believe that double recovery is unlawful and that if Freddie Mac is the actual assignee there must be a

recorded assignment and they cannot collect the same debt twice, once from the mortgage insurance carrier and once from the sale of the foreclosed property. If we were to do nothing at this point we could be asked to pay the same debt twice.

15. Under Missouri law the Deed of Trust must be assigned and the assignment must be recorded in the county recorder's office, see RSMO § 443.350. The Loan Servicer cannot function as the assigner for administrative convenience, see Title 15 US Code, Section 1641(f). We mentioned the fact that the Defendant Ocwen Loan Servicing, LLC lacked standing to enforce the note and deed of trust in the Adversary proceeding.

DATED: 9-28-2019

By Alberto Rodriguez

314-494-4896
Alberto Rodriguez
1232 Wissmann Drive
Baldwin Missouri 63011

By: Maria Rodriguez

Maria Rodriguez
1232 Wissmann Drive
Baldwin Missouri 63011

VERIFICATION

We have read the **PLAINTIFF'S PROGRESS REPORT RE THE CONFERENCE BETWEEN THE PLAINTIFFS AND DEFENDANTS RESIDENTIAL CAPITAL, LLC AND HOMECOMINGS FINANCIAL, LLC** and know the contents thereof to be true; and the same is true of our own knowledge, except to the matters, which are therein stated on our information and belief, and as to those matters, we believe them to be true. The foregoing is true, correct, complete and not misleading to the best of our knowledge.

Sealed by the voluntary act of our own hand on this September 28, 2019 (date).

Alberto Rodriguez Maria Rodriguez

314-494-4596

Alberto Rodriguez
1232 Wissmann Drive
Ballwin Missouri 63011

Maria Rodriguez
1232 Wissmann Drive
Ballwin Missouri 63011

PROOF OF SERVICE BY MAIL

I David Lopez, now certify that I am domiciled in the Saint Louis-county, I am over the age of eighteen years and I did in fact serve as follows: On the 9-28, 2019 ____ date, I served by mail a true copy of **PLAINTIFF'S PROGRESS REPORT RE THE CONFERENCE BETWEEN THE PLAINTIFFS AND DEFENDANTS RESIDENTIAL CAPITAL, LLC AND HOMECOMINGS FINANCIAL, LLC, by placing said document in an envelope postage prepaid and placing the envelope in the US mail** for Case No. 19-01320 (MG) in The US BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, upon the agent of the Defendants RESIDENTIAL CAPITAL, LLC AND HOMECOMINGS FINANCIAL, LLC, located at;

MORRISON & FOERSTER, LLC
250 WEST 55TH Street
New York, New York 10019

My mailing location is: 7019 0160 0000 6299 5021
733 Riderwood Drive, Hazelwood Missouri 63042

VERIFICATION

I hereby affirm all facts stated in this Proof of Service are true of my own knowledge except for those facts, which are stated upon information and belief, and as to those such matters, I believe them to be also true. On the _____ 9-28, 2019 (date).

David Lopez

NOTICE TO THE AGENT IS NOTICE TO THE PRINCIPAL NOTICE TO THE PRINCIPAL IS NOTICE TO THE AGENT

PROOF OF SERVICE BY MAIL

I David Lopez, now certify that I am domiciled in the Saint Louis-county, I am over the age of eighteen years and I did in fact serve as follows: On the 9-28, 2019 date, **PLAINTIFF'S PROGRESS REPORT RE THE CONFERENCE BETWEEN THE PLAINTIFFS AND DEFENDANTS RESIDENTIAL CAPITAL, LLC AND HOMECOMINGS FINANCIAL, LLC, by placing said document in an envelope postage prepaid and placing the envelope in the US mail** for Case No. 19-01320 (MG) in The US BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, upon the agent of the Defendants OCWEN LOAN SERVICING, LLC, located at;

OCWEN LOAN SERVICING, LLC
1661 Worthington Road
West Palm Beach, Florida
33409 7019 0160 0000 6299 5038

My mailing location is:
733 Riderwood Drive, Hazelwood Missouri 63042

VERIFICATION

I hereby affirm all facts stated in this Proof of Service are true of my own knowledge except for those facts, which are stated upon information and belief, and as to those such matters, I believe them to be also true. On the 9-28, 2019 (date).

David Lopez

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