Docket #0011 Date Filed: 11/20/2019

Alberto Rodriguez and
Maria Rodriguez
Plaintiffs,
1232 Wissmann Drive
Ballwin, Missouri republic
near [63011]
Located outside the District of Columbia

NOV 20 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	NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND THE ADVERSARY PROCEEDING
v.	
Residential Capital, LLC, Homecomings Financial, LLC, FKA Homecomings Financial Network, Inc., OCWEN LOAN SERVICING, LLC, DOES 1 through 15, inclusive, Defendants	

1. We, the Plaintiffs, hereby ask the court for leave to amend the adversary

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proceeding to name PHH Mortgage Corporation, who has acquired OCWEN LOAN SERVICING, LLC and has given us notice of the acquisition by mail, see Exhibit A, attached and incorporated by reference. We need to add PHH MORTGAGE as a defendant because of the recent acquisition of OCWEN LOAN SERVICING, LLC since they are acting as a debt collector without standing and their actions are in violation of the federal bankruptcy laws related to this case. Recently I received a notice from Bayview Loan Servicing, who is also claiming to be our loan servicer. I would like to add them as well. We rely upon this motion and the Memorandum of Points and Authorities in support of this motion and whatever oral argument we make.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION

A. THE COURTS JURISDICTION

2. The court has jurisdiction over this matter pursuant to Federal Rules of Bankruptcy Procedure Section 7001(2), which states in relevant part as follows:

> **An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:**
>
> (2) **a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);**

3. In addition the court has jurisdiction over this case where we are seeking injunctive relief related to the bankruptcy proceeding and debts and liens related thereto. Subsection (7) of FRBP 7001 states as follows:

> (7) **a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;**

4. In addition, FRBP, Rule 7001(9) states that the adversary proceeding can be used for Declaratory relief related to any of the previous subsections of Rule 7001. Subsection (9) of FRBP 7001 states as follows:

> (9) **a proceeding to obtain a declaratory judgment relating to any of the foregoing; or**

The Attorneys representing RESCAP and Homecomings mentioned above in the informal conference we had 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.

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 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. The recent acquisition by PHH MORTGAGE of OCWEN LOAN SERVICING, LLC makes it necessary for us to amend the Adversary Proceeding. Also we have received a notice in the mail from Bayview Loan Servicing stating that they are our loan servicer. We would like to name them as Defendants in the Adversary proceeding as well.

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).

5. Therefore it is important for us to amend the complaint to include PHH MORTGAGE, and BAYVIEW LOAN SERVICING as the alleged assignee of the Rodriguez real estate loan under 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.

> "The phrase 'Suits at common law' has been construed to refer to cases tried prior to the adoption of the Seventh Amendment in courts of law in which jury trial was customary as distinguished from courts of equity or admiralty in which jury trial was not." Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n, 430 U.S. 442, 449 (1977) (citing Parsons v. Bedford, 3 Pet. 433, 7 L.Ed. 732 (1830)). **"[T]he Seventh Amendment also applies to actions brought to enforce statutory rights that are analogous to common-law causes of action ordinarily decided in English law courts in the late 18th century, as opposed to those customarily heard by courts of equity or admiralty." Granfinanciera, S.A. v. Nordberg, 492 U.S. 33,** 42 (1989) (citing Curtis v. Loether, 415 U.S. 189, 193 (1974)).
>
> The form of [the Court's] analysis is familiar. "First, we compare the statutory action to 18th-century actions brought in the

> courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature." Tull v. United States, 481 U.S. 412, 417–418 (1987) (citations omitted). The second stage of this analysis is more important than the first. Id., at 421. If, on balance, these two factors indicate that a party is entitled to a jury trial under the Seventh Amendment, we must decide whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as factfinder.
>
> Granfinanciera, 492 U.S. at 42.

7. We explained to the Attorneys that there are several competing claims to ownership of the Alberto Rodriguez loan, Ocwen Loan Servicing, LLC and Freddie Mac are both claiming to be the holder-in-due-course of the Alberto Rodriguez loan. This creates double liability for the Plaintiff's which is unlawful. 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 now PHH MORTGAGE CORPORATION, as discussed because of the acquisition of Ocwen Loan Servicing, LLC.

10. For all of the foregoing reasons we need to amend the Adversary proceeding to add PHH Mortgage to the case.

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. We ask the court to grant the relief requested in the interest of justice.

Respectfully Submitted,

DATED: 11-04-2019

By Alberto Rodriguez

ALBERTO RODRIQUEZ,

REGISTERED ORGANIZATION

Not an accommodation UCC 3-419

Alberto Rodriguez, Sui Juris/Registered Agent

Missouri national in the geographic region known as

one of the several states of the American Union

By: Maria Rodriguez

MARIA RODRIQUEZ,

REGISTERED ORGANIZATION

Not an accommodation UCC 3-419

Maria Rodriguez, Sui Juris/Registered Agent

Missouri national in the geographic region known as

one of the several states of the American Union

VERIFICATION

We have read the **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND THE ADVERSARY PROCEEDING** 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 11-04-2019.

_____ (date).

Alberto Rodriguez Maria Rodriguez

Alberto Rodriguez
C/O 1232 Wissmann Drive
Ballwin Missouri Republic
near [63011]
Located Outside the
District of Colombia

Maria Rodriguez
C/O 1232 Wissmann Drive
Ballwin Missouri Republic
near [63011]
Located Outside the
District of Columbia

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 04th of November, 2019 ____ date, I served by mail a true copy of **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND THE ADVERSARY PROCEEDING, 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 6899 5069
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 04th of November, 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 04th of November, 2019 ____ date, I served by mail a true copy of **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND THE ADVERSARY PROCEEDING, 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 5090

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 04th of November, 2019 (date).

David Lopez

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