

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Thurgood Marshall United
3 States Courthouse, 40 Foley Square, in the City of New York,
4 on the 15th day of July, two thousand thirteen.

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6 PRESENT: DENNIS JACOBS,
7 Chief Judge,
8 ROSEMARY S. POOLER,
9 DEBRA ANN LIVINGSTON,
10 Circuit Judges.

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12 - - - - -X 12-3342
13 In Re: Residential Capital, LLC,
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15 Debtor.

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17 - - - - -
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19 Residential Capital, LLC, Ditech, LLC, DOA
20 Holding Properties, LLC, DOA Properties IX
21 (Lots-Other), LLC, EPRE LLC, Equity Investment
22 I, LLC, ETS of Virginia, Inc., ETS of
23 Washington, Inc., Executive Trustee Services,
24 LLC, GMAC-RFC Holding Company, LLC, GMAC Model
25 Home Finance I, LLC, GMAC Mortgage USA
26 Corporation, GMAC Mortgage, LLC, GMAC
27 Residential Holding Company, LLC, GMAC RH
28 Settlement Services, LLC, GMACM Borrower LLC,

1 GMACM REO LLC, GMACR Mortgage Products, LLC,
2 HFN REO Sub II, LLC, Home Connects Lending
3 Services, LLC, Homecomings Financial Real
4 Estate Holdings, LLC, Homecomings Financial,
5 LLC, Ladue Associates, Inc., Passive Asset
6 Transactions, LLC, PATI A, LLC, PATI B, LLC,
7 PATI Real Estate Holdings, LLC, RAHI A, LLC,
8 RAHI B, LLC, RAHI Real Estate Holdings, LLC,
9 RCSFJV2004, LLC, Residential Accredit Loans,
10 Inc., Residential Asset Mortgage Products,
11 Inc., Residential Asset Securities
12 Corporation, Residential Consumer Services of
13 Alabama, LLC, Residential Consumer Services of
14 Ohio, LLC, Residential Consumer Services of
15 Texas, LLC, Residential Consumer Services,
16 LLC, Residential Funding Company, LLC,
17 Residential Funding Mortgage Exchange, LLC,
18 Residential Funding Mortgage Securities I,
19 Inc., Residential Funding Mortgage Securities
20 II, Inc., Residential Funding Real Estate
21 Holdings, LLC, Residential Mortgage Real
22 Estate Holdings, LLC, RFC-GSAP Servicer
23 Advance, LLC, RFC Asset Holdings II, LLC, RFC
24 Asset Management, LLC, RFC Borrower LLC, RFC
25 Construction Funding, LLC, RFC REO LLC, RFC
26 SFJV-2002, LLC,

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28 Plaintiffs-Appellants,

29
30 -v.-

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32 Federal Housing Finance Agency, as
33 conservator for the Federal Home Loan
34 Mortgage Corporation,

35
36 Defendant-Appellee.

37 - - - - -X

38
39 FOR APPELLANTS: DEANNE E. MAYNARD (Joel
40 C. Haims, Kayvan B.
41 Sadeghi, and Marc A.
42 Hearn, on the brief),
43 Morrison & Foerster LLP,
44 Washington, D.C.

1 **FOR APPELLEE:**

MARC E. KASOWITZ (Andrew
K. Glenn, Kanchana
Wangkeo Leung, and Daniel
A. Fliman, on the brief),
Kasowitz Benson Torres &
Friedman LLP, New York,
New York.

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9 Appeal from an order of the United States District
10 Court for the Southern District of New York (Cote, J.).

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12 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
13 **AND DECREED** that the case is **REMANDED** to the district court.

14
15 Appellant Residential Capital, LLC, and various related
16 entities (collectively, "ResCap"), appeal from the July 17,
17 2012, order of the United States District Court for the
18 Southern District of New York (Cote, J.), denying ResCap's
19 motion to stay a lawsuit brought by the Federal Housing
20 Finance Agency ("FHFA"), as conservator for the Federal Home
21 Loan Mortgage Corporation ("Freddie Mac"), against ResCap's
22 corporate parents and affiliate. We assume the parties'
23 familiarity with the underlying facts, the procedural
24 history, and the issues presented for review.

25
26 In denying ResCap's motion to stay the lawsuit that has
27 been brought by the FHFA against ResCap's corporate parents
28 and affiliate, the district court concluded that the
29 Bankruptcy Code's automatic stay provision, 11 U.S.C.
30 § 362(a), could not extend to ResCap's corporate parents and
31 affiliate because they were not debtors in bankruptcy. The
32 district court also denied ResCap's request for a
33 discretionary stay of the lawsuit under Section 105(a) of
34 the Bankruptcy Code.

35
36 Section 362(a)(1) provides that a bankruptcy petition
37 "operates as a stay" of "the commencement or
38 continuation . . . of a judicial, administrative, or other
39 action or proceeding against the debtor." 11 U.S.C.
40 § 362(a)(1). Additionally, Section 362(a)(3) will stay "any
41 act to obtain possession of property of the estate or of
42 property from the estate or to exercise control over
43 property of the estate." Id. § 362(a)(3). ResCap relies on
44 both of these provisions to support application of the

1 automatic stay to the non-debtor entities. "The automatic
2 stay can apply to non-debtors, but normally does so only
3 when a claim against the non-debtor will have an immediate
4 adverse economic consequence for the debtor's estate."
5 Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282, 287 (2d Cir.
6 2003). In Queenie, for example, this Court held that the
7 automatic stay applied to proceedings against a debtor's
8 wholly owned corporation. Id. at 287.

9
10 Here, the district court denied application of Section
11 362(a)'s automatic stay to the non-debtor entities as a
12 categorical matter, without factual findings as to whether
13 the lawsuit against those entities would have had "immediate
14 adverse economic consequence[s]" on ResCap's estate. The
15 district court did examine some of ResCap's arguments
16 regarding the adverse consequences of the lawsuit in the
17 context of ResCap's request for a stay under Section 105(a),
18 but there are no explicit findings with regard to ResCap's
19 request under Section 362(a).

20
21 Because Section 362(a)'s automatic stay may apply to
22 non-debtors in some limited circumstances, we remand the
23 case pursuant to the procedure outlined in United States v.
24 Jacobson, 15 F.3d 19, 22 (2d Cir. 1994), for the district
25 court to supplement the record and determine whether Section
26 362(a)'s automatic stay applies to the non-debtor entities.
27 It may be that the anti-injunction provision in the Housing
28 and Economic Recovery Act of 2008, 12 U.S.C. § 4617(f), bars
29 application of Section 362(a)'s automatic stay, but we do
30 not have to reach that question until the district court has
31 determined whether the automatic stay applies in the first
32 instance.

33
34 The panel retains jurisdiction to hear ResCap's appeal
35 once the district court has made its determination. Given
36 ResCap's ongoing bankruptcy proceedings, we invite the
37 district court to act with celerity, at the latest within
38 sixty calendar days of the date of this decision.

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40 For the foregoing reasons, we hereby **REMAND** the case to
41 the district court. After the district court has made its
42 determination, either party may restore jurisdiction to this
43 Court by filing with the Clerk a letter (along with a copy
44 of the relevant order or transcript) advising the Clerk that

1 jurisdiction should be restored. The returned appeal will
2 be assigned to this panel and an additional notice of appeal
3 will not be needed.

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FOR THE COURT:
CATHERINE O'HAGAN WOLFE, CLERK