

No. 18-7070
In the Supreme Court of the United States

Corla Jackson,
Petitioner

v.

GMAC Mortgage, LLC, formerly known as
GMAC Mortgage Corporation,¹
Respondent.

PETITION FOR REHEARING UNDER RULE 44.2

On Petition for Writ of Certiorari to the United States Court of Appeals for the
Eleventh Circuit
(Order Denying Petition Entered on
February 19, 2019)

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¹ GMAC Mortgage, LLC is continuing to operate in the claimed capacity of “Post-Effective Date Debtor” in the administratively consolidated Chapter 11 Case No. 12-12020 in the United States Bankruptcy Court for the Southern District of New York, lead case titled *In re Residential Capital, LLC*, despite public representations to the contrary. Petitioner’s effort to include additional parties as “et al.” in the Petition for Writ of Certiorari is not pertinent to the issues in this Petition for Rehearing.

**GROUNDS FOR REHEARING
UNDER RULE 44.2**

JURISDICTION

On February 19, 2018, this Court entered an Order Denying the Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit in *Jackson v. GMAC Mortgage, LLC*, No. 17-7070.¹

A Petition for Rehearing under Rule 44.2 must be filed within 25 days after the date of the Order Denying the Petition for Writ of Certiorari. Rule 44.2 provides that the Petition for Rehearing shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. This Petition for Rehearing under Rule 44.2 is timely filed and raises substantial grounds upon which the Petition for Writ of Certiorari should be granted.

In addition to the documents attached as Exhibits to the concurrently-filed Request for Judicial Notice pursuant to Rule 201 of the Federal Rules of Evidence (Fed. R. Evid. 201), Petitioner requests judicial notice pursuant to Fed. R. Evid. 201

¹ GMAC Mortgage, LLC is continuing to operate in the claimed capacity of “Post-Effective Date Debtor” in the administratively consolidated Chapter 11 Case No. 12-12020 in the United States Bankruptcy Court for the Southern District of New York, lead case titled *In re Residential Capital, LLC* despite public representations to the contrary. Petitioner’s effort to include additional parties as “et al.” is not pertinent to the issues before the court and will not be addressed in this Petition for Rehearing.

of the documents retrievable at <http://www.kccllc.net/rescap>² as specifically referenced in the concurrently-filed Request for Judicial Notice and retrievable through the links contained in this Petition for Rehearing.

GROUND FOR REHEARING UNDER RULE 44.2

The intervening circumstances of a substantial or controlling effect or to substantial grounds not previously presented are (1) that on February 5, 2019, GMAC Mortgage, LLC (hereinafter “GMACM”) caused the Sheriff of Mobile County, Alabama to enforce the February 22, 2017 Order of the Circuit Court of Mobile County, Alabama, Case No. CV-2013-902219, granting an Order for Ejectment of the Petitioner from her Homestead to GMACM in its own identity and capacity (Request for Judicial Notice, Exhibit 1), while the Petition for Writ of Certiorari was pending before this Court and (2) despite GMACM purporting to have ceased engaging in business after the effective date of the confirmed Second Amended Chapter 13 Plan Case No. 12-12020 by the United States Bankruptcy Court for the Southern District of New York (hereinafter “SDNY” or “Bankruptcy Court”), GMACM is still operating as a Chapter 11 “Post-Effective Date” Debtor (see, e.g.

² Kurtzman Carson Consultants, LLC (“KCCLLC”) is the court-approved documents custodian for *In re RESCAP*, SBNY Case No. 12-12020 under one of the May 14, 2012 “First Day Motions,” approved in the May 16, 2012 Order, Docs. 49 and 96, respectively, are retrievable at <http://www.kccllc.net/rescap/document/1212020120514000000000099> and <http://www.kccllc.net/rescap/document/12120201205160000000000005>.

KCCLLC provides access to the court documents filed in for *In re RESCAP*, SBNY Case No. 12-12020 to the public at no charge. Petitioner requests judicial notice of the documents available at kccllc.net identified herein upon which this Petition relies.

Doc.³ 10616: February 11, 2019 Stipulation and Order Granting Relief from the Automatic Stay filed by the RESCAP Liquidating Trust⁴ and the “Post-Effective Date Debtor,” GMACM).

Petitioner could not have raised the substantial and controlling circumstances and substantial grounds raised in this Petition for Rehearing (1) because the ejectment had not taken place and (2) because GMACM had not been identified as a “Post-Effective Date Debtors” in the Bankruptcy Court *In re RESCAP*, SBNY Case No. 12-12020 (Doc. 10616⁵) until February 22, 2019. See also Doc. 10622 filed on March 7, 2019 in which unidentified “Post-Effective Date Debtors” appear⁶.

GMACM is identified as the “Post-Effective Date Debtor” in Doc. 10616⁷, despite GMACM holding itself out to the public as no longer engaged in business

³ Documents filed in Bankruptcy Courts are identified by the Court and as Doc. followed by the document number; documents filed in Federal District Courts are identified by the Court and as ECF No. followed by the document number. Documents filed in Circuit Courts of Appeals are identified by the Court and as Docket No. followed by the document number.

⁴ The RESCAP Liquidated Trust was created under the December 11, 2013 Confirmed Second Amended Chapter 11 Plan (Doc. 6065-1) retrievable at <http://www.kccllc.net/rescap/document/1212020131211000000000009>. The Trust Agreement creating the RESCAP Liquidating Trust was filed with the Bankruptcy Court on December 17, 2013 as Doc. 6136 (retrievable at <http://www.kccllc.net/rescap/document/1212020131217000000000008>).

⁵ Retrievable at <http://www.kccllc.net/rescap/document/1212020190211000000000002>

⁶ Retrievable at <http://www.kccllc.net/rescap/document/12120201903070000000000001>

⁷ Doc. 10616 is retrievable at <http://www.kccllc.net/rescap/document/12120201902110000000000002>

following the effective date⁸ of the December 11, 2013 Order Confirming the Second Amended Chapter 11 Plan of Reorganization in the Chapter 11 filed in the United States Bankruptcy Court for the Southern District of New York (“SBNY” or “RESCAP Bankruptcy Court”) titled *In re Residential Capital, LLC (In re RESCAP)* in Case No. 12-12020. See Request for Judicial Notice, Exhibit 2: published report at Bloomberg.com⁹, which Petitioner brought to the attention of the Circuit Court for Mobile County, Alabama in the ejectment proceedings.

The Chapter 11 Case filed by GMAC Mortgage, LLC on May 14, 2012 (the “Petition Date”) in Case No. 12-12032 (Request for Judicial Notice, Exhibit 3) was administratively consolidated into *In re RESCAP* on May 14, 2016 by one of the “First Day Orders” entered as Doc. 59¹⁰ by the Bankruptcy Court. Request for Judicial Notice, Exhibit 4 is the Withdrawal of Registration of Foreign Corporation (GMAC Mortgage, LLC) filed on June 21, 2016 with the Secretary of State for the State of Alabama. Notwithstanding the withdrawal of its authority to do business in the State of Alabama consistent with its public representation that it had ceased its business operations, GMACM in its own identity and capacity proceeded in the

⁸ The “effective date” of the Second Amended Chapter 13 Plan is defined by item 94 of the definitions at page 18 of Doc. 6065-2 and reads:

94. “Effective Date” means the first Business Day after the Confirmation Date on which no stay of the Confirmation Order is in effect and all of the conditions precedent to the Effective Date specified in Article X.B have been satisfied or waived pursuant to Article X.C.

⁹ Retrievable at <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=1002453> (most recently retrieved on March 15, 2019)

¹⁰ Retrievable at <http://www.kccllc.net/rescap/document/121202012051400000000110>

Alabama Circuit Court to obtain the Ejectment Order.

Because the still-operational “Post-Effective Date” Debtor GMACM caused Petitioner’s Homestead to be seized and for her to be ejected her from possession while the Petition for Writ of Certiorari was pending, Debtor is presently homeless and is staying in a hotel, using funds being provided by family and friends. See Petitioner’s Declaration correcting and modifying her November 29, 2018 Motion for Leave to Proceed In Forma Pauperis dated March 14, 2019 appended hereto as required by Rule 29.

Petitioner could not have raised the substantial and controlling circumstances and substantial grounds raised in this Petition for Rehearing because the ejectment had not taken place and GMACM had not been identified as a “Post-Effective Date Debtors” in the Bankruptcy Court *In re RESCAP*, SBNY Case No. 12-12020 (Doc. 10616¹¹) until February 22, 2019. See also Doc. 10622 filed on March 7, 2019 in which unidentified “Post-Effective Date Debtors” appear¹².

The undersigned counsel, a member of the Bar of this Court, has undertaken the representation of the Petitioner *pro bono*¹³ for purposes of filing this Rule 44.2 Petition for Rehearing.

¹¹ Retrievable at <http://www.kccllc.net/rescap/document/12120201902110000000000002>

¹² Retrievable at <http://www.kccllc.net/rescap/document/12120201903070000000000001>

¹³ Costs of retrieving public records from official sources and court documents on pacer.gov, as well as the costs of printing and delivery of this Petition will be paid by funds provided by third parties and not the Petitioner.

THE RELIEF SOUGHT BY PETITION FOR WRIT OF CERTIORARI

Petitioner seeks a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit (the Eleventh Circuit Court of Appeals) requiring the Court of Appeals to re-instate her appeal from the Order of the United States District Court for the Southern District of Alabama (the Federal District Court) which dismissed her Complaint against the Respondent WITH PREJUDICE in Case No.12-cv-111 (ECF No. 73, Request for Judicial Notice, Exhibit 5), despite Petitioner's *pro se* request not only for the legal remedy of damages but her first and second identified causes of action for the two (2) equitable remedies of quiet title and injunctive relief. Petitioner's claims for legal and equitable relief were pending against GMACM in the United States District Court for the Southern District of Alabama (the Federal District Court) on the Petition Date, having been initiated by the Petitioner *pro se* in the Circuit Court for Mobile, Alabama on January 18, 2012 as Case No. CV-2012-00049 and having been removed to the Federal District Court by GMACM on February 23, 2012. The action then proceeded in the Federal District Court as Case No. 12-cv-111. (Petitioner's requests judicial notice of ECF Nos. 1 and 1-2 in Federal District Court Case No. 12-cv-111, attached to the Request for Judicial Notice as Exhibit 6 and Exhibit 7).

THE QUESTION OF DENIAL OF DUE PROCESS

Among the Questions presented for review in the Petition for Writ of Certiorari by the self-represented Petitioner, is the question of violation of her rights to Due Process guaranteed by the Fifth Amendment to the *United States*

Constitution. That question implicates the effect of the Bankruptcy Court’s June 15, 2012 Order (Doc. 402¹⁴) which continued the automatic stay to prevent Homeowners from bringing claims for damages against any of the fifty-two (52) entities (hereinafter the RESCAP Debtors) in the administratively consolidated Chapter 11 Case titled *In re RESCAP*, SBNY Case No. 12-12020 outside the jurisdiction of the Bankruptcy Court, requiring the filing of a Proof of Claim in Bankruptcy Court only, but allowing the continuation of judicial and nonjudicial foreclosure proceedings against Homeowners, like the Petitioner, throughout the nation by one or more of the RESCAP Debtors.

The Bankruptcy Court’s June 15, 2012 Order (Doc. 402) allowed the RESCAP Debtors a shield while permitting them to use the sword by proceeding in foreclosure. This “Sword and Shield Order” effectively prevented Homeowners from defending against foreclosures commenced and continued by any of the RESCAP Debtors by making any claim for equitable offset of damages against the amount claimed owed to the RESCAP Debtors. In the worst case scenario, represented by Petitioner’s case in the Federal District Court, the “Sword and Shield Order” stayed equitable proceedings in which no damages were being sought because of the over-application of the automatic stay, depriving Homeowners of equitable relief where no damages were sought because damages claims had been concurrently pleaded.

The RESCAP Debtors were admittedly usually acting as agents for third parties in the capacity of mortgage servicing agents (known as “servicers”). In

¹⁴ Retrievable at <http://www.kccllc.net/rescap/document/121202012061500000000025>

many cases the identity of the real party in interest entitled to the benefit of the foreclosure were concealed by the one or more of the RESCAP Debtors, most often GMACM, acting as the concealed agent for the unidentified real party in interest. The servicer's conduct was frequently alleged to involve in violation of various provisions of the Real Estate Settlement Practices Act (RESPA), at 15 U.S.C. sec. 2601, et seq.; the Fair Debt Collection Practices Act (FDCPA), at 15 U.S.C. sec. 1692, et seq.; and other federal and state law in foreclosure proceedings commenced and continued by one or more of the RESCAP Debtors throughout the nation before and after the date of filing of the fifty-two Chapter 11 Petitions by the RESCAP Debtors on the Petition Date, May 14, 2012.

As of the Petition Date, GMACM's own admission at Doc. 600, Statement of Financial Affairs, pages 10-11 and its list of foreclosure actions pending on the Petition Date at pages 26-549¹⁵ of Doc. 600 established that more than 65,000¹⁶ foreclosure cases were being pursued by GMACM, with thousands of case

¹⁵ Retrievable at <http://www.kccllc.net/rescap/document/121202012063000000000101>

¹⁶ Doc. 600 at pages 10-11, addresses Item 4 of the GMACM Statement of Financial Affairs:

Question No. 4: The Debtors made every effort to include on Attachment 4 a complete list of all suits and proceedings to which the Debtors were a party within the one year immediately preceding the Petition Date. However, the Debtors were unable to identify the address of certain opposing counsel for closed cases, and as a result, have scheduled the address as "unknown." The Debtors listed the case number and jurisdiction for these cases. In addition, the Debtors are engaged in the business of originating, selling, and servicing residential real estate mortgage loans on behalf of the Debtors, their affiliates and other third-party investors. In the ordinary course of business and at any time, a number of the mortgage loans the Debtors service are delinquent and in default. As part of the servicing function, the Debtors are required to commence foreclosure proceedings against certain borrowers and, if a foreclosure is not otherwise resolved, to complete the foreclosure sale of the mortgaged property.

involving claims and counterclaims for damages were pending against the RESCAP Debtors, their affiliates, their predecessors and successors in interest throughout the nation. Many many more foreclosure cases were likely anticipated because the RESCAP Debtors were allowed to continue to proceed against Homeowners, while Homeowners damages actions in the foreclosure cases were stayed.

Petitioner's claims, both legal and equitable, against GMACM were pending in the United States District Court for the Southern District of Alabama (the Federal District Court) as 12-cv-111 on the Petition Date. While Petitioner's right to equitable relief was stayed, GMACM pursued its foreclosure claim against the Petitioner by conducting a nonjudicial foreclosure of Petitioner's Homestead on June 1, 2012 while Petitioner's equitable claims were stayed in the Federal District Court by the Order entered on May 31, 2012 (ECF No. 73, Request for Judicial Notice, Exhibit 5). GMACM purported to take title to the subject real estate while Petitioner's equitable action for injunctive relief and declaratory relief for quiet title was stayed in the Federal District Court. GMACM then commenced an action for

The Debtors manage more than **65,000 foreclosure actions** that were commenced either in the name of a Debtor or third-party investors. Attachment 4a to the Statements includes all foreclosure actions commenced where a Debtor owns the underlying mortgage loan or where the borrower-defendant contested the foreclosure by seeking a temporary restraining order or has filed a counterclaim or cross-claim against a Debtor entity.

Foreclosure actions commenced on behalf of third-party investors are not listed in Attachment 4a to the Statements, unless the borrower has contested the foreclosure or filed a counter-claim or cross-claim against a Debtor, because such proceedings are an integral part of the ordinary course of the Debtors' loan servicing business. To the extent a Debtor omitted any suits or proceedings, it will amend its Statement. (Emphasis added.)

eviction against Petitioner on August 21, 2013 in the District Court for Mobile County, Alabama as Case No. CV-2012-90844.00 (Request for Judicial Notice, Exhibit 8), which was denied on July 1, 2013. Thereafter, GMACM pursued the remedy of ejectment in the Circuit Court for Mobile County, Alabama as Case No. CV-2013-902219.00. The Order granting ejectment was eventually granted on February 22, 2017 (Request for Judicial Notice, Exhibit 9) but execution not effected until February 5, 2019 when all of Petitioner's belongings were removed from her Homestead, placed outside, and destroyed or severely damaged by rain.

The damages claim was pursued by the Petitioner as required by several orders of the RESCAP Bankruptcy Court which denied relief from the automatic stay to allow Petitioner to proceed in the Federal District Court resulting in the complete denial of her right to be heard on her requests for equitable relief.

More than three (3) years after GMACM had conveyed all of its assets to the RESCAP Liquidating Trust effective December 17, 2013, GMACM obtained an Order from the granting the remedy of ejectment Petitioner from her Homestead in its own identity and capacity following a Bench Trial ordering Petitioner to vacate her Homestead no later than May 31, 2017. Request for Judicial Notice, Exhibit 9: February 22, 2017 Order of the Mobile County, Alabama Circuit Court. The Mobile County, Alabama Circuit Court's Order was granted while Petitioner's appeal from the Order of Dismissal WITH PREJUDICE of her Complaint seeking both damages and equitable relief in Federal District Court was pending on appeal to the

Eleventh Circuit Court of Appeals in No. 17-12563. See Request for Judicial Notice, Exhibit 10: Docket Report in Appeal No. 17-12563.

On February 22, 2017, Petitioner's appeal to the Eleventh Circuit Court of Appeals from the Federal District Court Order Dismissing her claims against GMACM WITH PREJUDICE was then pending in No. 17-12563. Request for Judicial Notice, Exhibit 10. Execution of the February 22, 2017 Order was not effectuated until February 5, 2019, while the Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals was pending before this Court (Declaration of Petitioner, below).

Petitioner, who appeared *pro se* in the Bankruptcy Court was denied relief from the automatic stay under the "Sword and Shield Order" (Doc. 402). See Doc. 6363¹⁷ reciting her multiple efforts to obtain relief to defend her Homestead in the Federal District Court. Petitioner was then required to proceed *pro se* on her Proof of Petitioner in the Bankruptcy Court to litigate her damages claim while being denied the right to proceed to seek equitable relief by the stay of her Complaint in the Federal District Court entered on May 31, 2012 at ECF No. 23. See Request for Judicial Notice, Exhibit 23: the May 31, 2012 Federal District Court Order staying the Petitioner's entire case in the Federal District Court under the automatic stay under the "Sword and Shield Order" (Bankruptcy Court Doc. 402). Petitioner then

¹⁷ Retrievable at <http://www.kccllc.net/rescap/document/1212020140127000000000013>

to proceeded *pro se* on her Proof of Claim No. 4443¹⁸ in the Bankruptcy Court and when her Proof of Claim No. 4443 was disallowed and expunged (Doc. 6363), her entire Complaint was dismissed WITH PREJUDICE by the Federal District Court (Request for Judicial Notice, Exhibit 5) when only the damages claim had ever been heard and determined.

Petitioner's appeal to the Eleventh Circuit from the Order of Dismissal with Prejudice exemplifies the due process violation which resulted from the Bankruptcy Court's "Sword and Shield Order" and her appeal to the Eleventh Circuit Court of Appeals is not only meritorious because she has never been heard on her equitable remedies, it is the only process by which she can finally receive due process which she has long been denied and from which she now suffers homelessness, loss of almost all of her personal property and loss of her Homestead without due process of law. The simply issue before the Eleventh Circuit Court of Appeals is the denial of due process by not permitting the reinstatement of Petitioner's appeal, which was dismissed for a minor, technical short-coming of apparently filing her Appendix late. The loss of almost all of her property is such an unjust outcome, that it cannot constitutionally be countenanced as being consistent with the Due Process Clause of the Fifth Amendment to the United States Constitution.

¹⁸ Retrievable at <http://www.kccllc.net/rescap/document/1212020120830174630200741>

RELIEF REQUESTED

This Petition for Rehearing on the Order Denying the Petition for Writ of Certiorari asks this Court to grant rehearing under Rule 44.2 and to grant the Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals and to remand the case to the Eleventh Circuit Court of Appeals with instructions to determine the issue of whether Petitioner has been denied Due Process guaranteed by the Fifth Amendment to the *United States Constitution* by the dismissal of her appeal from the dismissal with prejudice, in error by the Federal District Court. Dated at Madison, Wisconsin this 15th day of March, 2018.

AN IMAGE OF THE SIGNATURE BELOW SHALL HAVE THE SAME FORCE AND EFFECT AS THE ORIGINAL

A handwritten signature in cursive script that reads "Wendy Alison Nora". The signature is written in black ink and is positioned above a horizontal line.

Wendy Alison Nora
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**Additional material
from this filing is
available in the
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