

Ira J. Metrick, Esquire  
 57 West Main Street  
 Freehold, New Jersey 07728  
 Attorney for Defendants, Brian and Bonnie McCann

IN RE APPLICATION BY GMAC  
 MORTGAGE, LLC, TO ISSUE  
 CORRECTED NOTICES OF INTENT TO  
 FORECLOSE ON BEHALF OF IDENTIFIED  
 FORECLOSURE PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY  
 CHANCERY DIVISION  
 OCEAN COUNTY

DOCKET NO. F-025354-12

*Civil Action*

OBJECTION TO ORDER  
 TO SHOW CAUSE

Defendants, Brian and Bonnie McCann, subject of applicant's Order to Show Cause and defendant in Docket No. F-27828-08, object to GMAC Mortgage, LLC's Order to Show Cause for the following reasons:

Objection: First and foremost, GMAC has no basis to serve a new NOI, because they are no longer the Note Holder. In response to a Notice in Lieu of Subpoena to have a representative of GMAC appear for trial in the Defendants' foreclosure case, GMAC v. McCann, Docket No. F-27828-08, Counsel for the Plaintiff provided correspondence dated February 20, 2013, admitting that GMAC is not the Note Holder. Specifically, the correspondence states, "I am in receipt of your subpoena for the testimony of Michael S. Batson. I object to the subpoena as GMAC Mortgage, LLC is no longer the holder of the Note and Mortgage. We will produce a representative from Green Tree Servicing that can testify appropriately but cannot produce a witness which we have no control over." (Exhibit A)

Notwithstanding the objections that follow, GMAC is no longer a party interest under Rule 4:26-1 Rule 4:26-1 which provides in pertinent part that "[e]very action must be prosecuted in the name of the real party in interest[.]" This rule is "ordinarily determinative of standing to

prosecute an action.” *Pressler, Current N.J. Court Rules, comment 2.1 on R. 4:26-1 (2008)*. “[T]o have standing, a party must have ‘a sufficient stake and real adverseness with respect to the subject matter of the litigation[.]’ ” *Town of Secaucus v. Hudson County Bd. of Taxation*, 133 N.J. 482, 491-92, 628 A.2d 288 (1993) (quoting *N.J. Chamber of Commerce v. N.J. Election Law Enforcement Comm'n*, 82 N.J. 57, 67, 411 A.2d 168 (1980)). “A financial interest in the outcome of litigation is ordinarily sufficient to confer standing.” *Assocs. Commercial Corp. v. Langston*, 236 N.J.Super. 236, 242, 565 A.2d 702 (App.Div.), *certif. denied*, 118 N.J. 225, 570 A.2d 979 (1989). GMAC no longer possess such standing and therefore the complaint should be dismissed.

Objection: The corrected Notice of Intent to Foreclose served on Defendants dated January 22, 2013 is still defective.

The Notice of Intent to Foreclose dated January 22, 2013 and served on Bonnie McCann, states that the mortgage loan on defendants’ property, located at 20 Rhode Island Drive, Jackson, New Jersey “held by GMAC Mortgage, LLC.” (“GMACM”). The fair Foreclosure Act requires that the Notice of Intent to Foreclose specifically list the name of the lender. A “holder” of the note is a Uniform Commercial Code term. It is not the equivalent of the name of the lender. Therefore, Plaintiff’s corrective Notice of Intent to Foreclose is defect and fails to fulfill the requirements of the Fair Foreclosure Act and the Guillaume case.

Objection: GMAC Mortgage, LLC was never the lender.

Plaintiff’s corrective Notice of Intent to Foreclose states that Defendants loan is “held by GMAC Mortgage, LLC.” It further states that GMACM is also “the servicer of this mortgage.” This is incorrect and untruthful. This loan was sold to and is currently held by Fannie Mae (See

Attached Exhibit B). GMACM is not the holder of the loan and, for all intents and purposes, may not be the rightful servicer of the loan as no service agreement is provided. The OTSC does not mention, refer or reference Fannie Mae as the owner or holder of any loan included in GMACM's application. Ignoring momentarily the blatant standing issue, it is clear that the corrective NOI filed by GMACM and served on Defendant January 22, 2013 is still completely deficient and noncompliant with the Fair Foreclosure Act and the court's ruling in *Guillaume*. *Guillaume* states that strict compliance with the requirements of the Fair Foreclosure Act is necessary and that substantial compliance is insufficient. Plaintiff's "corrected NOI" still fails to provide defendant with the name of the actual owner of the loan. The holding in *US Bank, N.A.v. Guillaume*, 209 N.J. 449 (2012) agreed with the decision in *Laks* that the FFA requires the NOI to list the name and address of the Lender (defined to mean the original mortgagee or its assigns) in addition to providing contact information for the loan servicer. Plaintiff corrective NOI fails to comply with this requirement.

Objection: Plaintiff's OTSC and corrective Notices of Intent to Foreclose continue to be defective by naming the improper party as Plaintiff. GMACM has never had standing to include Defendant in this massive and sweeping OTSC to serve corrected NOI's.

According to Plaintiff's complaint in foreclosure, this loan originated with Homecomings Financial LLC FKA Homecomings Financial Network Inc. The *mortgage* was assigned from MERS to GMAC Mortgage on July 17, 2008. Then a corrective assignment was executed on April 13, 2009. However, Fannie Mae was the owner of the loan at the time of both assignments, had as is evidenced by the Federal Government sponsored Fannie Mae loan look-up website. (Exhibit B)

Should the Court follow the ruling in *BAC Home Loans v. Durelli*, the new servicer, Green Tree, would need to possess a valid assignment of mortgage prior to them being qualified to appear in this matter and serve a new NOI. In that case, the Court recognized, "It is a general rule of equity that real parties in interest must be joined and an assignee of a debt is a real party in interest." (Citing *Zurcher v Modern Plastic Machinery Corp.*, 24 NJ Super. 158, 163 (App. Div. 1952.)) Based upon the fact that there has been no assignment to Green Tree, no party has authority to serve a new NOI, except Fannie Mae.

There is no dispute that the Defendants have been provided with notice that the servicing of their loan has been transferred to Green Tree Servicing, LLC as of February 1, 2013. (Attached as Exhibit C is the notice from GMAC to the Defendants regarding the change in servicer.). Pursuant to *BAC v. Durelli*, a servicer with who has been properly authorized by the GSE to pursue foreclosure, and who received a properly authenticated assignment of mortgage is permitted to act as a Plaintiff in a residential foreclosure. However, now that GMAC is no longer the servicer, and there is no assignment of mortgage to Green Tree, the question arises as to who is the proper party to attempt to enforce the obligations under the mortgage loan. While the Defendants disagree with the Court's decision in *BAC v. Durelli*, if the Court chooses to agree with the findings, GMAC should not be permitted to issue a corrective NOI and remain as the Plaintiff, if they will not continue as the Servicer in the Defendants' foreclosure action. At a minimum, the new NOI should be in the name of Fannie Mae and the Complaint should be amended to reflect that Green Tree is the Plaintiff.

Objection: The language of the proposed Notice of Intent to Foreclose is misleading.

The mortgagors identified in the Order to Show Cause are defendants in active foreclosure litigation with the debt accelerated as due in full. However, the proposed corrective NOI indicates that the mortgagor is in a pre-foreclosure status, that the debt may be accelerated, and that the servicer will start a mortgage foreclosure action upon the failure to forward the amount indicated. The NOI provides that if the default is not cured by February 26, 2013 GMACM "...intends to exercise its right to accelerate the mortgage payments..." It later says "[E]ven if a foreclosure is started; you have the right to reinstate your account until a judgment in foreclosure is entered." However, because the foreclosure is commenced, the amount to reinstate would increase to include counsel fees and costs associated with the foreclosure litigation.

These notices are not tailored to the situation at hand and are written in a manner that is confusing to the mortgagor. The majority of the persons affected by the Order to Show Cause have not retained counsel and will be misled and seriously prejudiced by the language in the corrected NOI's. It appears that the moving party is merely attempting to use judicial resources to approve a proposed form for future notices without regard for the deficiencies they are currently encountering. As the Court is aware the foreclosure process has been full of improperly process foreclosures including improper service of process and the fact that Plaintiff does not even own the loan. To allow a broad and sweeping corrected NOI without regarding to standing and service issues would unduly prejudice homeowners.

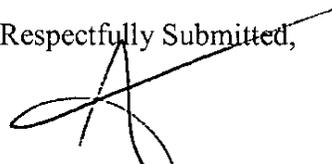
Objection: To allow a sweeping corrected NOI filed by parties who have failed to prove any legal right to the mortgage or note by its very act violates the Fair Foreclosure Act.

The Fair Foreclosure Act contains specific language indicating that the Notice of Intent must be mailed to defaulting homeowners *prior* to the filing of the foreclosure complaint. The

Act uses the word “*shall* ” It does not provide for exceptions or alternative options. As the court is aware, he who seeks equity must do equity. However, GMACM seeks to file a massive sweeping corrected NOI, just weeks before it knew that it would cease being the Note Holder. This proves it violated the Fair Foreclosure Act. To allow such an act to occur completely defeats the purpose, intent and protections provided to homeowners through the Fair Foreclosure Act.

For the reasons stated above and for those reasons that may be raised in any additional objections, it is respectfully requested that GMAC Mortgage LLC’s Order to Show Cause be denied in its entirety and/or denied as to the specifically identified homeowners, Brian and Bonnie McCann. It is also respectfully requested the counsel fees be awarded in favor of the identified homeowners for bringing this action against parties during a time when GMAC admits it is not the holder of any Fannie Mae mortgage Notes.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Ira J. Metrick', written over a horizontal line.

Ira J Metrick, Esquire

Dated: February 23, 2013

# **EXHIBIT A**

**PHELAN HALLINAN & DIAMOND, PC**

400 Fellowship Road, Suite 100

Mount Laurel, NJ 08054

856-813-5500

Fax: 856-813-5501

Vladimir Palma@phelanhallinan.com

Vladimir Palma, Esquire  
Ext. 7559

Representing Lenders in  
Pennsylvania and New Jersey

February 20, 2013

Brian McCann and Bonnie McCann  
c/o Ira J. Metrick, Esquire  
57 West Main Street  
Freehold, NJ 07728

RE: GMAC Mortgage, LLC vs. Brian McCann, et al.  
Docket No. F-27828-08  
Our File No. GMAC-2161  
Property Address: 20 Rhode Island Drive, Jackson, New Jersey 08527

Dear Mr. Metrick,

I am in receipt of your subpoena for the testimony of Michael S. Batson. I object to the subpoena as GMAC Mortgage, LLC is no longer the holder of the Note and Mortgage. We will produce a representative from Greentree Servicing that can testify appropriately but cannot produce a witness which we have no control over.

Should you have any questions or concerns please do not hesitate to contact our office

Very truly yours

*Vladimir Palma*

Vladimir Palma, Esquire  
VP / tow

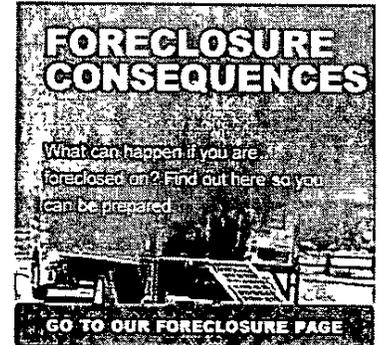
# **EXHIBIT B**

[Home](#)

## Fannie Mae Loan Lookup Results: Match Found

It appears that Fannie Mae owns your loan based on the information you entered:

**BRIAN MCCANN**  
20 RHODE ISLAND DR  
JACKSON, NJ 08527  
Last 4 Digits of Social Security Number: \*\*\*\*\*  
Fannie Mae Loan Acquisition Date: **12-01-2006**  
Mortgage Company: **GMAC MORTGAGE, LLC**



### Results—Our Records Indicate

- Your loan was acquired by Fannie Mae on or before May 31, 2009. Knowing the Fannie Mae Loan Acquisition Date is important because some programs, such as HARP, are available only on loans acquired by Fannie Mae on or before May 31, 2009.
- Your mortgage company is **GMAC MORTGAGE, LLC**.
- You may be eligible for the [Home Affordable Refinance Program \(HARP\)](#) or for the [Home Affordable Modification Program \(HAMP\)](#)—or other programs available exclusively for Fannie Mae borrowers.

### Next Steps:

To help you find the option(s) that might be best for your situation, please answer the questions below.

Have you been delinquent on your mortgage in the past 12 months?  Yes  No

*Note: In this case, "delinquent" means you have paid your mortgage payment late by 30 days or more at any time in the last 6 months. Or, that you had more than one late payment or made a payment more than 30 days late in the 6-month period prior to the last 6 months.*

Do you anticipate having difficulty paying your mortgage in the near future (next 2-3 months)?  Yes  No

[Get Options](#)

### Other Steps You Can Take:

#### Get Help Now

Contact a Fannie Mae Mortgage Help Center for free housing counseling and assistance with your mortgage.

#### Explore [KnowYourOptions.com](#)

Review the useful information and tools on this site to learn more about your options.

# **EXHIBIT C**

# GMAC Mortgage

January 22, 2013

01/17/13 08 30 3 000005 20130122 14981103 GREEN TREE 1 02 DUM 149811000 150647 1 T  
BRIAN MCCANN  
BONNIE MCCANN  
20 RHODE ISLAND DRIVE  
JACKSON NJ 08527-1447



RE: GMACM Account Number 0470884123  
Green Tree Account Number 62083861  
Property Address 20 RHODE ISLAND DRIVE  
JACKSON NJ 08527

Dear BRIAN MCCANN and BONNIE MCCANN,

Effective February 1, 2013, the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold, or transferred from GMAC Mortgage, LLC (GMAC Mortgage) to Green Tree Servicing LLC (Green Tree). The assignment, sale or transfer of servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Because your current servicer, GMAC Mortgage, is the subject of a bankruptcy proceeding, federal law requires either your current servicer or your new servicer to send you this notice not more than 30 days after the effective date of the transfer of the servicing of your loan.

GMAC Mortgage sincerely appreciates your business and our first priority is to ensure a smooth transfer of your account servicing to Green Tree. If you have any questions regarding the transfer, please contact Customer Care toll-free at 800-766-4622.

Telephone Inquiries/Correspondence: Prior to February 1, 2013, any questions relating to the transfer of servicing should be directed to GMAC Mortgage. After February 1, 2013, you should contact Green Tree. Please use the telephone numbers and addresses, listed below, when contacting GMAC Mortgage or Green Tree.

GMAC Mortgage  
PO Box 780  
Waterloo, IA 50704-0780  
800-766-4622  
6.00 a.m. - 10:00 p.m. CT M-F and 8.00 a.m. - 2:00 p.m. Sat

Green Tree  
Attn: Customer Service  
PO Box 6172  
Rapid City, SD 57709-6172  
1-800-643-0202 (call collect if not toll-free)  
7:00 AM - 8:00 PM CST M-F, 7:00 AM - 1:00 PM CST Saturday

Notice Regarding Payments: The date GMAC Mortgage will stop accepting payments from you is January 31, 2013. The date that Green Tree will start accepting payments from you is February 1, 2013. Send all payments due on or after that date to Green Tree's Payment Processing Department at the address below:

Green Tree Servicing LLC  
PO Box 94710  
Palatine, IL 60094-4710



Optional Insurance: The transfer of servicing rights may affect the term or the continued availability of mortgage life or disability or any other type of optional insurance. If you have taken advantage of any of our optional insurance plans or optional products, this service will not transfer to Green Tree. You will receive a letter under separate cover providing further direction.

RESPA Notice: You should be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a qualified written request to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgement within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number and your reasons for the request.

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that section. You should seek legal advice if you believe your rights have been violated.

#### Additional Information:

As of January 15, 2013, the current principal balance is \$337,683.39, the current escrow balance is -\$29,704.48, the current interest rate is 6.875%, the total monthly payment is \$2,685.57 (does not include optional products) and the next due date is 6/1/2008.

**Electronic Payments:** If your monthly payment is currently being automatically deducted through any of GMAC Mortgage's electronic payment programs, this service will most likely continue. If your program will be continued, a confirmation letter will be sent to you under separate cover.

**Government Allotment/Bill Pay Service:** If you currently make your payment through a third-party entity (e.g., a government allotment or a bank's bill pay service), please advise them of your new account number and change the payee to Green Tree. In the event of payee or payment changes, it is your responsibility to notify the third-party of the new payee and/or new payment amount.

**GMAC Mortgage's Website Payment Program:** If you have been using the pay on demand services on GMAC Mortgage's website, this service will be deactivated on February 1, 2013. Additional payment services available through Green Tree can be found at [www.gtservicing.com](http://www.gtservicing.com).

**Escrow Account:** If you have an escrow account, GMAC Mortgage will send you an escrow history statement within 45 days. The statement will reflect escrow deposits, disbursements and balances for the period of time we serviced your account since the last escrow analysis. The transferring escrow balance with our company will be reflected on this statement.

**Year-End Statement:** You will receive a year-end statement for 2013 from GMAC Mortgage reflecting the account activity for the time we serviced your account this year. Green Tree should provide their own statement for the period of time they serviced your account this year. You will need to combine these two statements for income tax purposes.

If you are currently involved in a bankruptcy proceeding or have been discharged of your personal liability for the repayment of this debt, this notice is being provided for informational purpose only. It is not an attempt to hold you personally responsible for the debt and applies only to the lien on your property and not to you personally.

It has been our pleasure to service your account. We wish you a successful relationship with Green Tree.

Customer Care

Loan Servicing  
GMAC Mortgage

**RECEIVED**

**FEB 26 2013**

Ira J. Metrick, Esquire  
57 West Main Street  
Freehold, New Jersey 07728  
Attorney for Defendants, Brian and Bonnie McCann

**SUPERIOR COURT  
CLERK'S OFFICE**

IN RE APPLICATION BY GMAC  
MORTGAGE, LLC, TO ISSUE  
CORRECTED NOTICES OF INTENT TO  
FORECLOSE ON BEHALF OF IDENTIFIED  
FORECLOSURE PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
OCEAN COUNTY

DOCKET NO. F-025354-12

*Civil Action*

CERTIFICATION OF SERVICE

Ira J. Metrick, of full age, hereby certifies as follows:

1. I am the attorney for the Defendants, Brian and Bonnie McCann, in the above captioned matter.

2. On February 23, 2013, I caused the original of the within documents to be sent to the Clerk, Superior Court of New Jersey, Foreclosure Processing Services, Attention: Objection to Notice of Intention to Foreclose, PO Box 971, Trenton, New Jersey; and simultaneously sent a copy via priority mail to:

Honorable Paul Innes, P.J.Ch.  
Superior Court of New Jersey  
Mercer County Courthouse, First Floor  
175 South Broad Street  
Trenton, NJ 08650

D. Brian O'Dell, Esq.  
Bradley Arant Boult Cummings LLP  
1819 Fifth Avenue North  
Birmingham, AL 35203  
Attorney for Plaintiff

Phelan, Hallinan & Diamond, PC  
400 Fellowship Road, Suite 100  
Mt. Laurel, NJ 08054

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED:

2/23/13

IRA J. METRICK

Attorney for Defendants, Brian and Bonnie  
McCann

**RECEIVED**

**FEB 26 2013**

**SUPERIOR COURT  
CLERK'S OFFICE**  
IRA J. METRICK  
Member of NY & NJ Bars  
Email [ira@metrickesq.com](mailto:ira@metrickesq.com)

**Ira J. Metrick**  
ATTORNEY AT LAW, LLC  
57 WEST MAIN STREET  
FREEHOLD, NJ 07728  
TEL. (732) 863-1660 FAX: (732) 462-7003

\*Of Counsel  
CHRISTINE M. FRIEDMAN  
Member of NJ & DE Bars

February 23, 2013

Via Overnight Mail  
Clerk, Superior Court of New Jersey  
Foreclosure Processing Services  
Attn: Objection to Notice of Intention to Foreclose  
25 W. Market Street  
P.O. Box 971  
Trenton, NJ 08625

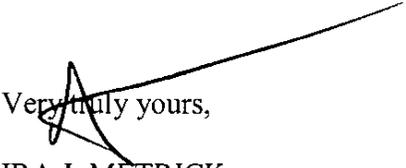
IN RE: Application by GMAC Mortgage, LLC, to Issue Corrected Notices of Intent to  
Foreclose on Behalf of Identified Foreclosure Plaintiffs  
Docket No. F-025354-12

Dear Sir/Madam:

Please be advised that this office represents Defendants, Brian and Bonnie McCann, with regard to the above captioned matter. Enclosed herewith please find the original of Defendant's objection to the Order to Show Cause.

Kindly file same and return a filed copy via email to [Ira@metrickesq.com](mailto:Ira@metrickesq.com).

Thank you for your attention in this matter.

  
Very truly yours,

IRA J. METRICK

IJM:af  
Enc.  
Cc: Client  
The Honorable Paul Innes, P.J. Ch.  
D. Brian O'Dell, Esq.  
Phelan, Hallinan & Diamond, PC.