

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

JOYCE W. AND LUKE SHOKERE
AND MICHAEL D. MAYO,

Plaintiffs,

vs.

RESIDENTIAL FUNDING COMPANY, LLC
AND GMAC MORTGAGE, LLC,

Defendants.

Case No. 1116-CV30478

Division 15

**ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

WHEREAS, Joyce W. and Luke Shokere and Michael D. Mayo (the “Named Plaintiffs”) commenced the above-captioned civil action (the “Litigation”) against Residential Funding Company, LLC (f/k/a Residential Funding Corporation) (“RFC”), and GMAC Mortgage, LLC (“GMAC”), as the assignee(s), owner(s), holder(s), trustee(s), servicer(s) or master servicer(s) of the “RFC Related Loans,” as herein defined; and

WHEREAS, the Named Plaintiffs are asserting claims against RFC and GMAC (the “Settling Defendants”) in the Litigation based on certain loan fees and interest payments that the Named Plaintiffs allege the Settling Defendants directly or indirectly charged, contracted for or received in connection with 110 Missouri Second Mortgage Loans (the “RFC Related Loans”) in violation of the Missouri Second Mortgage Loans Act (“MSMLA”), §§ 408.231-408.241 RSMo (the “Claims”); and

WHEREAS, the Named Plaintiffs are asserting the Claims in the Litigation for themselves and for a class of consumer borrowers similarly situated (the “RFC Settlement Class”); and

WHEREAS, the Named Plaintiffs are also plaintiffs and potential members of an uncertified putative class of Missouri second mortgage borrowers in: (1) *DeAnthony Thomas v. U.S. Bank National Association, N.D.*, Case No. 5:11-cv-06013-SOW; and (2) *Michael D. [and Sharron Mayo] v. GMAC Mortgage, LLC, et al.*, Case No. 4:08-cv-00568-W-DGK (the “Missouri Cases”); and

WHEREAS, the Settling Defendants, and each of them, are or have been defendants in one or both of the Missouri Cases; and

WHEREAS, the Named Plaintiffs, respectively, are asserting or were previously asserting directly or through a proposed representative the Claims against the Settling Defendants in the Missouri Cases, together with other similar MSMLA claims that the Named Plaintiffs and other plaintiff-borrowers in the Missouri Cases are asserting against the assignees and servicers of certain second mortgage loans secured by a mortgage or a deed of trust on residential real property located in the state of Missouri, which were either: (a) made by FirstPlus Bank (f/k/a Citizens Thrift and Loan Association) on or after May 16, 1994; or (b) purchased by or assigned to UBS Real Estate Securities, Inc., and which closed, or was a loan for which any interest was paid, on or after June 20, 2002 (the “Missouri Second Mortgage Loans”); and

WHEREAS, the Named Plaintiffs and RFC, on its own behalf and as attorney-in-fact for GMAC Mortgage, LLC, as the assignee(s), owner(s), holder(s), servicer(s) or master servicer(s) of the “RFC Related Loans,” have entered into a “Settlement Agreement and Release” dated October 1, 2011 (the “Agreement”), which memorializes a negotiated and agreed-upon settlement of the Litigation and Claims as between the Named Plaintiffs and the proposed RFC Settlement Class, on one hand, and the Settling Defendants, on the other hand, subject to the approval of the Court (“the Settlement”); and

WHEREAS, the Named Plaintiffs, with the agreement and consent of the Settling Defendants, have commenced the Litigation against the Settling Defendants in order to efficiently resolve the Claims against the Settling Defendants by consolidating the Claims in a single forum; and

WHEREAS, the Named Plaintiffs have filed a *Motion for Preliminary Approval of Class Action Settlement* with the Court.

NOW THEREFORE, upon careful consideration of the *Plaintiffs' Motion for Preliminary Approval of Class Action Settlement*, and after reviewing the Agreement, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The terms of the Agreement, and the Settlement as memorialized therein, are approved preliminarily as fair, reasonable and adequate to the RFC Settlement Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 14 below.

2. The definitions set forth in the Agreement are hereby incorporated by reference into this Order (with capitalized terms as set forth in the Agreement).

3. The Named Plaintiffs and the Settling Defendants have executed the Agreement in order to settle and resolve the Litigation and Claims as between and among the Named Plaintiffs, the proposed RFC Settlement Class, and the Settling Defendants, subject to approval of the Court.

4. Accordingly, for the purpose of a settlement in accordance with the Agreement, and upon review of the *Plaintiffs' Motion for Preliminary Approval of Class Action Settlement*, the Court hereby preliminarily certifies the following class of persons as a settlement class (i.e.,

the “RFC Settlement Class”):

All persons who obtained a “Second Mortgage Loan,” as defined in Mo.Rev.Stat. § 408.231.1, that was secured by a mortgage or a deed of trust on residential real property located in the state of Missouri, and that:

- (1) was made by FirstPlus Bank (f/k/a Citizens Thrift and Loan Association) on or after May 16, 1994 and was thereafter purchased by, assigned to, serviced by or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation); or
- (2) was purchased by or assigned to UBS Real Estate Securities, Inc. and either closed on or after June 20, 2002, or was a loan for which interest was paid on or after June 20, 2002, and which was thereafter purchased by, assigned to, serviced by or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation) or GMAC Mortgage, LLC (formerly GMAC Mortgage Corporation).

5. Pursuant to the Agreement, and for purposes of the Settlement only, the Court finds preliminarily as to the RFC Settlement Class that:

- a. The RFC Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the RFC Settlement Class that predominate over questions affecting only individual members of the RFC Settlement Class;
- c. The claims of the Named Plaintiffs are typical of those of the members of the RFC Settlement Class;
- d. The Named Plaintiffs and Plaintiffs’ Counsel will fairly and adequately represent and protect the interests of the individual members of the RFC Settlement Class; and
- e. Certification of the RFC Settlement Class as proposed is an appropriate method for the fair and efficient adjudication of the controversies between the RFC

Settlement Class and the Settling Defendants with respect to the Claims without prejudice to rights and claims of the Named Plaintiffs and the members of the RFC Settlement Class in the Missouri Cases against any persons, associations and entities other than the Settling Defendants and other “Released Persons.”

6. For the purpose of this preliminary approval, and for all matters relating to the Settlement and the Litigation, until further order of the Court, the Court appoints the Named Plaintiffs as Representatives of the RFC Settlement Class and R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the law firm Walters Bender Strohbahn & Vaughan, P.C., as Counsel for the RFC Settlement Class (“Plaintiffs’ Counsel” or “Class Counsel”).

7. By this Order, the Court hereby exercises subject matter and personal jurisdiction over the RFC Settlement Class for purposes of evaluating the final certification of the RFC Settlement Class and the fairness and adequacy of the Settlement.

8. The Class Mail Notice, as set forth in Exhibit A to the Agreement, is hereby approved.

9. Class Counsel shall mail the Class Mail Notice in a form substantially the same as that set forth in Exhibit A to the Agreement by first-class mail, postage prepaid, to all members of the RFC Settlement Class (as identified on Exhibit E of the Agreement) and any known Chapter 7 bankruptcy trustees of any member of the RFC Settlement Class for any Chapter 7 bankruptcy filed after origination of the class member’s loan. Such mailing shall be made on **November 14, 2010**.

10. The Agreement contemplates a method of notice that (a) protects the interests of the Named Plaintiffs, the RFC Settlement Class, and the Settling Defendants, and each of them,

(b) is the best notice practicable under the circumstances, and (c) is reasonably calculated to apprise the RFC Settlement Class of the pendency of the Litigation and proposed Settlement, the Agreement, and the right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the proposed method of notice is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all applicable requirements of law, including, but not limited to Mo. Rule 52.08 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

11. Prior to the Fairness Hearing, Class Counsel shall serve and file a sworn statement of a person with knowledge, evidencing compliance with the provisions of this Order concerning the mailing of the Class Mail Notice.

12. Any member of the RFC Settlement Class desiring exclusion from the RFC Settlement Class shall mail a request for exclusion (“Request for Exclusion”) to the Parties’ respective counsel. To be valid, the Request for Exclusion must be **received** on or before **December 14, 2011**. Such Request for Exclusion must be in writing and include: (a) the name, address, telephone number and the last four digits of the social security number of the class member seeking to opt out; (b) a statement that the class member and all other borrowers named on the class member’s promissory note are seeking exclusion; (c) the signature of each person who was a party to the promissory note made in connection with the class member’s loan, unless such person is deceased or legally incompetent, in which event the opt out submission shall be signed by said deceased or legally incompetent person’s personal representative or guardian; and (d) a reference to “Shokere v. Residential Funding Company, Case No. 1116-CV30478.” Any member of the RFC Settlement Class who does not timely and properly request to be excluded

from the RFC Settlement Class in full compliance with these requirements shall be included in the RFC Settlement Class and shall be bound by any judgment entered in this action with respect to said Class. Class Counsel and Settling Defendants' Counsel shall promptly furnish each other with copies of any and all Requests for Exclusion that come into their possession.

13. Within a reasonable period after the deadline for submitting Requests for Exclusion, but before the Fairness Hearing, Class Counsel shall file with the Court a sworn statement identifying those persons who submitted timely Requests for Exclusion. The originals of all Requests for Exclusion shall be retained by the Parties.

14. A hearing (the "Fairness Hearing") shall be held before the undersigned at **4:00 p.m. on December 16, 2011**, in Division 15 at the Jackson County Courthouse, 308 W. Kansas, Independence Missouri 64050. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment in the Litigation with respect to the RFC Settlement Class; (c) the application for incentive awards for the services rendered by Named Plaintiffs Joyce W. and Luke Shokere and Named Plaintiff Michael D. Mayo; (d) the application for attorney's fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Fairness Hearing may be postponed, adjourned or continued by Order of the Court without further notice to the RFC Settlement Class.

15. To be considered at the Fairness Hearing, any person who does not timely exclude themselves from the RFC Settlement Class and who desires to file an objection to or otherwise comment on the Settlement shall file any such objections or comments and all supporting pleadings with the Court on or before **December 14, 2011**, with service upon Class Counsel and Settling Defendants' Counsel as provided in the Missouri Rules of Civil Procedure. In his/her objection, an objecting RFC Settlement Class Member must set forth, contain or provide (a)

his/her full name, current address, and telephone number; (b) a statement of each objection asserted; (c) a detailed description of the facts underlying each objection; (d) any loan documents in the objector's possession or control and relied upon as a basis for the objection; (e) if the objector is represented by counsel, a detailed description of the legal authorities supporting each objection; (f) if the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts; (g) if the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present; (h) a statement of whether the objector intends to appear at the hearing; (i) a copy of any exhibits which the objector may offer during the hearing; and (j) reference to "Shokere v. Residential Funding Company, Case No. 1116-CV30478." No Objection to or other comment concerning the Settlement shall be heard unless timely filed and served in accordance with the guidelines as stated herein. Class Counsel and Settling Defendants' Counsel shall promptly furnish each other with copies of any and all written objections to the Settlement that come into their possession.

16. Any attorney hired by an RFC Settlement Class Member at the Class Member's expense for the purpose of making an objection shall file his or her Entry of Appearance on or before **December 14, 2011**. The Entry of Appearance shall be filed with the Clerk of the Court, with a copy served upon Class Counsel and Settling Defendants' Counsel in accordance with the Rules of Civil Procedure.

17. Any RFC Settlement Class Member who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall be forever barred from making any objection to the Settlement, including but not limited to, the

propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement.

18. Any RFC Settlement Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Class Mail Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless, on or before **December 14, 2011**, such person has (a) filed with the Clerk of the Court a notice of such person's intention to appear; and (b) served copies of such notice upon Class Counsel and Settling Defendants' Counsel in accordance with the Rules of Civil Procedure.

19. Any RFC Settlement Class Member may intervene in the Litigation in person, or by counsel if a motion to intervene is filed and served as provided in the Notice. No person shall be permitted to intervene unless, on or before **December 14, 2011**, such person has (a) filed with the Clerk of the Court a valid motion to intervene and (b) served copies of such notice upon Class Counsel and Settling Defendants' Counsel in accordance with the Rules of Civil Procedure.

20. Submissions of the Parties relative to the Settlement, including memoranda in support of the Settlement, applications for attorney's fees and reimbursement of expenses by Class Counsel, and any applications for the payment of services rendered by the Named Plaintiffs shall be filed with the Clerk of the Court on or before **December 9, 2011** with a service copy to Settling Defendants' Counsel.

21. All other events contemplated under the Agreement to occur after entry of this Order and before the Fairness Hearing shall be governed by the Agreement and the Class Mail Notice, to the extent not inconsistent with this Order. Class Counsel and Settling Defendants'

Counsel shall take such further actions as are required by the Agreement.

22. The Parties shall be authorized to make non-material changes to the Class Mail Notice provided Class Counsel and Settling Defendants' Counsel agree and one of the Parties files a notice thereof with the Court prior to the Fairness Hearing.

23. The Litigation is hereby stayed until further order of this Court, other than as may be necessary to effectuate the Settlement and carry out the terms of the Agreement or the responsibilities related or incidental thereto.

24. Although final as to the "Released Claims" against the Settling Defendants and other "Released Persons," the Settlement does not constitute a full and final settlement of all the claims arising from the Missouri Second Mortgage Loans made to the Named Plaintiffs and the members of the RFC Settlement Class. As provided in the Agreement, neither the Litigation nor the dismissal of the Claims asserted therein shall in any way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of the claims of the Named Plaintiffs or the RFC Settlement Class Members against any person, association or entity other than the Settling Defendants and other "Released Persons" as defined in Paragraph 2.19 of the Agreement including, without limitation, the claims currently asserted in the Missouri Cases pursuant to the Missouri Second Mortgage Loans Act, §§ 408.231-408.241 RSMo, against the assignees and servicers of the Missouri Second Mortgage Loans, other than the Settling Defendants and "Released Persons."

25. If Final Approval of the Settlement does not occur, or if the Settlement does not become effective on or before the Effective Date as provided in the Agreement, or if the Settlement is rescinded or terminated for any reason, the Settlement and all proceedings had in connection therewith shall be deemed null and void and without prejudice to the rights of the

Parties before the Settlement was executed and made, and this Order and all other Orders issued pursuant to the Settlement shall be vacated, rescinded, canceled, annulled and deemed “void” and/or “no longer equitable” or set aside for a reason that otherwise “justifies relief” for purposes of Mo. Rule 74.06 or Fed.R.Civ.P. 60(b) as provided in and subject to paragraph 15 of the Agreement.

26. Neither this Order, the Agreement, nor any of their terms or provisions, nor any of the negotiations between the Parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of (i) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion, (ii) the truth or relevance of any fact alleged by Plaintiffs, (iii) the existence of any class alleged by Plaintiffs, (iv) the propriety of class certification if this action were to be litigated rather than settled, (v) the validity of any claim or any defense that has been or could have been asserted in this action or any other litigation; (vi) that the consideration to be given to RFC Settlement Class Members pursuant to the Settlement represents the amount which could be or would have been recovered by any such persons after trial; or (vii) the propriety of class certification in this action or any other lawsuit or proceeding. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, or factual or legal positions of the Settling Defendants, and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary in a proceeding to enforce the terms of this Order, and the Settlement or the Agreement; provided, however, that

this Order and the Agreement may be filed by a Settling Defendant in any action filed against or by the Settling Defendants or any other "Released Person" to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. The Settling Defendants expressly reserve all rights and defenses to any claims and do not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

IT IS SO ORDERED

Date: 11/14/11



CIRCUIT COURT JUDGE