

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

ZEINAB ISSA, AND ALI BARAKAT,
HUSBAND AND WIFE,

PLAINTIFFS,

- Vs -

GMAC, INC., A DELAWARE CORPORATION
ET AL.,

DEFENDANTS.

CT. OF APPEALS DOCKET NO. 300506

LOWER CT. NO. 10-004439-CZ

**MOTION FOR REHEARING
AND
TO AVOID COSTS**

RECEIVED
2011 FEB 25 PM 4:25
COURT OF APPEALS
DETROIT OFFICE
LARRY S. ROYSTER
CLERK

PUCKETT & FARAJ, PC

Haytham Faraj (P-72581)
P.O. Box 1016
Dearborn, Heights Michigan 48127
(760) 521-7934
Haytham@puckettfaraj.com
ATTORNEY FOR PLAINTIFFS
Zeinab Issa and Ali Barakat

MOTION FOR REHEARING AND TO AVOID COSTS

Plaintiffs/Petitioners, by and through their undersigned counsel, filed a Notice of Appeal on October 4, 2010 from a final judgment entered on September 13, 2010 from the Third Circuit Judicial Court of Wayne County in the State of Michigan, by District Judge John H. Gillis, Jr.

Plaintiffs/Petitioners subsequently commenced settlement discussions with Defendants and all indications were that the matter would be promptly resolved.¹

Defendants, through counsel, requested that Plaintiffs/Petitioners resubmit loan modification documents to complete a permanent loan modification. Plaintiffs/Petitioners submitted these documents nearly six (6) weeks ago. Defendants have since discontinued all

¹ See (Exhibit - A).

1 communication with Plaintiffs/Petitioners counsel and to date, have overtly refused to provide
2 updates any regarding the status of the proposed settlement agreement.

3 Upon the Plaintiffs/Petitioners' information and belief, Defendants have attempted to
4 settle in bad faith and did not intend to honor the proposed settlement.

5 Defendants' counsel assured Plaintiff/Petitioners that a draft settlement agreement was
6 forthcoming on November 23, 2010 and then requested additional documentation before
7 abandoning settlement efforts, as evidenced by Plaintiff/Petitioners' repeated inquiries which
8 went unanswered (the same way its client ignored its obligation to honor the Plaintiff/Petitioners'
9 fully-executed HAMP loan modification upon which this appeal is premised).

10 Accordingly, Plaintiff/Petitioners hereby request that this honorable court reinstate the
11 claim of appeal to allow Plaintiffs/Petitioners to file an appellate brief. Plaintiff/Petitioners
12 further request that assessed costs in this matter (\$250.00) be avoided.

13
14 **RESPECTFULLY SUBMITTED THIS 25th DAY OF FEBRUARY 2011.**

15
16 **PUCKETT & FARAJ, PC**

17
18
19 **BY: /s/Haytham Faraj**
20 **Haytham Faraj (P-72581)**
21 P.O. Box 1016
22 Dearborn, Heights Michigan 48127
23 (760) 521-7934
24 Haytham@puckettfaraj.com
25 ATTORNEY FOR PLAINTIFFS
26 *Zeinab Issa and Ali Barakat*
27
28
29
30
31
32
33
34
35
36



Nick Hadous <nhadous@hadousco.com>

Issa Settlement

14 messages

David Chami <daclaw3@gmail.com>

Fri, Sep 24, 2010 at 8:02 PM

To: TSchehr@dykema.com

Cc: Nick Hadous <nhadous@hadousco.com>, Haytham Faraj <farajh@gmail.com>

Mr. Schehr,

At the bottom of this email is the offer that was submitted by Ms. Ramin on behalf of GMAC. Ms. Ramin later indicated that there was a balloon payment of some \$30+ thousand dollars that would be owed at the end of the 40 year term. We did not, as you suggested, summarily reject this offer. We in fact proposed a counter offer; one that we feel was a reasonable settlement of the Plaintiffs' claims.

At this point, I have spoken with the Plaintiffs and they would like to propose one of the two following scenarios as a settlement of their claims. Please be informed that in order to preserve our rights, the Plaintiffs have asked that we file the appeal of the circuit court decision while we try to work this out.

Proposed Settlement I: Lump sum buyout of the mortgage at \$85,000.00. The plaintiffs have indicated that they have access to these funds (through family) in order to settle the lien/debt in full.

Proposed Settlement II: A 40 year loan with no balloon payment. A fixed rate at 3.5% for the duration of the loan and a waiver of all fees and interest that have been incurred since the Plaintiffs began the loan modification process. Plaintiffs agree to use the principle balance that was due as of February 1, 2010 less any accrued interest incurred due to the loan modification process.

Please let us know what your client would like to do.

Best Regards,

David Chami
313-204-8484

----- Forwarded message -----

From: Ramin, Nasseem <NRamin@dykema.com>

Date: Tue, Jun 22, 2010 at 12:57 PM

Subject: GMAC/Issa - Proposed Modification Terms

To: Haytham Faraj <haytham@puckettfaraj.com>, nhadous@hadousco.com

Cc: "Schehr, Thomas" <TSchehr@dykema.com>

Below are the terms for the proposed modification. Please keep in mind that all proposed terms are subject to final GMAC approval and a final written agreement.

Modified UPB Rate Term Payment Start Date

\$161,789.47	2%	60 months	\$489.94	8/1/2010
\$147,900.71	3%	12 months	\$569.20	8/1/2015
\$145,474.20	4%	12 months	\$652.86	8/1/2016
\$143,421.53	5%	12 months	\$740.24	8/1/2017
\$141,669.94	5.250%	384 months	\$762.42	8/1/2018

- Term extended to 40 years
- The payment does not include the monthly escrow payment, currently \$441.24.
- Total Capitalized: \$8,865.47 (\$313.13 in escrow advances and inspections; \$30.00 in foreclosure fees and costs; \$ 1,328.40 in interest for the 12/09-7/10 payments of \$7,193.34)

- Principal Forbearance Amount: \$31,475.46 (does not accrue interest)

Please let me know if you have any questions.

Best,
Nasseem

Nasseem Ramin
Associate
Dykema
400 Renaissance Center
Detroit, MI 48243
Phone: 313.568.5326
Fax: 313.568.6701
nramin@dykema.com
www.dykema.com

David Chami <daclaw3@gmail.com>

Wed, Oct 27, 2010 at 3:37 PM

To: TSchehr@dykema.com

Cc: Nick Hadous <nhadous@hadousco.com>, Haytham Faraj <farajh@gmail.com>

Mr. Schehr,

I have not heard back from you regarding the proposed settlement options listed below. Have you had a chance to discuss these options with your client? Please let me know as soon as possible.

Best Regards,

David Chami
313-204-8484

[Quoted text hidden]

Schehr, Thomas <TSchehr@dykema.com>

Thu, Oct 28, 2010 at 5:51 PM

To: David Chami <daclaw3@gmail.com>

Cc: Nick Hadous <nhadous@hadousco.com>, Haytham Faraj <farajh@gmail.com>

David, regarding a loan modification, the terms that GMAC originally offered in the email below are the best it can do. Regarding a lump sum short payoff, GMAC would need to have a broker price opinion for the property, which would include an interior inspection. If you want to explore the lump sum short payoff, please let me know and GMAC's vendor for the inspection will contact you to schedule a time.

Thomas M. Schehr
Dykema
400 Renaissance Center, 35th Floor
Detroit, MI 48243
(313) 568-6659
(313) 568-6658 (fax)
tschehr@dykema.com
www.dykema.com

From: David Chami [<mailto:daclaw3@gmail.com>]

Sent: Wednesday, October 27, 2010 3:37 PM

To: Schehr, Thomas

Cc: Nick Hadous; Haytham Faraj

Subject: Re: Issa Settlement

[Quoted text hidden]

****Notice from Dykema Gossett PLLC:**

To comply with U.S. Treasury regulations, we advise you that any discussion of Federal tax issues in this communication was not intended or written to be used, and cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein.

This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately.

Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

DYKEMA

David Chami <daclaw3@gmail.com>

Thu, Oct 28, 2010 at 6:19 PM

To: "Schehr, Thomas" <TSchehr@dykema.com>

Cc: Nick Hadous <nhadous@hadousco.com>, Haytham Faraj <farajh@gmail.com>

Mr. Schehr,

I have done some preliminary work to determine the value of the property and believe that a BPO would likely come back between \$100,000 and \$125,000 dollars. Either way our clients would not be able to make a lump sum payoff for anything greater than the \$85,000 that was offered. That said, I have spoken with the clients and they are willing to accept the offer that was provided in the prior email. They are prepared to begin making the payment as soon as we can get the paperwork together. Please let me know when this can be arranged. I expect that there will be no other "fees" added to the back end of the deal above and beyond any payments that were missed since the deal was originally offered.

David Chami

[Quoted text hidden]

Schehr, Thomas <TSchehr@dykema.com>

Fri, Oct 29, 2010 at 8:37 AM

To: David Chami <daclaw3@gmail.com>

Cc: Nick Hadous <nhadous@hadousco.com>, Haytham Faraj <farajh@gmail.com>

David, I will prepare the paperwork and forward to you for review. As you know, no settlement is final until our clients have signed a formal and final settlement agreement.

Tom

From: David Chami [mailto:daclaw3@gmail.com]

Sent: Thursday, October 28, 2010 6:20 PM

[Quoted text hidden]

[Quoted text hidden]

Nick Hadous <nhadous@hadousco.com>

Tue, Nov 16, 2010 at 12:17 PM

To: "Schehr, Thomas" <TSchehr@dykema.com>

Cc: David Chami <daclaw3@gmail.com>, Haytham Faraj <farajh@gmail.com>

Mr. Schehr:

Please update regarding a permanent modification. We are going to be running into deadlines soon.

Thanks,

Nick

[Quoted text hidden]

--

HADOUSCO, PLLC

Offices in Dearborn, MI and Scottsdale, AZ

Nick N. Hadous

Admitted:

- State Bar of Arizona
- State Bar of California
- United States District Court,
Eastern District of Michigan

Direct: 313.415.5559

Office: 313.846.6300

Fax: 313.846.6358

Email: nhadous@hadousco.com
www.hadousco.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that, to the extent that this communication or any attachment addresses a tax matter, it was not written to be (and may not be) relied upon to (i) avoid tax-related penalties under the Internal Revenue Code; or (ii) promote, market or recommend to another party any transaction or matter addressed herein or in any such attachment.

CONFIDENTIALITY NOTICE: This email message and all attachments transmitted with it are intended solely for the use of the addressees and may contain legally privileged, protected or confidential information. If you have received this message in error, please notify the sender immediately by email reply and please delete this message from your computer and destroy any copies.

David Chami <daclaw3@gmail.com>

Tue, Nov 23, 2010 at 12:06 PM

To: "Schehr, Thomas" <TSchehr@dykema.com>

Cc: Haytham Faraj <farajh@gmail.com>, Nick Hadous <nhadous@hadousco.com>

Tom,

I can only assume that after nearly a month your clients have made a decision with respect to this settlement. In either case, I would appreciate a response to my email one way or the other.

Regards,

David Chami

[Quoted text hidden]

Schehr, Thomas <TSchehr@dykema.com>

Tue, Nov 23, 2010 at 12:36 PM

To: David Chami <daclaw3@gmail.com>

Cc: Haytham Faraj <farajh@gmail.com>, Nick Hadous <nhadous@hadousco.com>

I expect to send you a draft agreement soon.

From: David Chami [mailto:daclaw3@gmail.com]

Sent: Tuesday, November 23, 2010 12:07 PM

To: Schehr, Thomas

Cc: Haytham Faraj; Nick Hadous

Subject: Re: Issa Settlement

[Quoted text hidden]

Schehr, Thomas <TSchehr@dykema.com>

Mon, Nov 29, 2010 at 11:38 AM

To: David Chami <daclaw3@gmail.com>

Cc: Haytham Faraj <farajh@gmail.com>, Nick Hadous <nhadous@hadousco.com>

David: Because your clients are requesting a loan modification as part of a proposed settlement, they need to fill out the attached financial analysis. Please return to me at your earliest convenience.

Tom

From: David Chami [mailto:daclaw3@gmail.com]

Sent: Tuesday, November 23, 2010 12:07 PM

To: Schehr, Thomas

Cc: Haytham Faraj; Nick Hadous

Subject: Re: Issa Settlement

[Quoted text hidden]

 **Financial_Analysis.pdf**
1269K

David Chami <daclaw3@gmail.com>

Mon, Nov 29, 2010 at 3:23 PM

To: "Schehr, Thomas" <TSchehr@dykema.com>

Cc: Haytham Faraj <farajh@gmail.com>, Nick Hadous <nhadous@hadousco.com>

Tom,

This looks like another loan mod application (everything your clients are requesting has already been provided to them). We are settling a lawsuit, not applying for a loan mod. The loan modification is not part of the settlement...it is the settlement.

Nothing in my clients original application has changed...if your clients would like to see current pay stubs I am happy to provide those. Everything else remains the same as it was in June of 2009 when you clients approved our clients for a modification. I appreciate your efforts to bring this to a final resolution.

Regards,

David Chami

[Quoted text hidden]

Schehr, Thomas <TSchehr@dykema.com>

Thu, Dec 9, 2010 at 1:59 PM

To: David Chami <daclaw3@gmail.com>

Cc: Haytham Faraj <farajh@gmail.com>, Nick Hadous <nhadous@hadousco.com>

David, a resolution is more complicated than that. Fannie Mae is involved. If your client wants to resolve the matter, he has to fill out the package as requested. If nothing has changed, it shouldn't be a problem to fill out the package. If he still balks at filling out the package, we'll take that as an indication that he is no longer interested in trying to resolve the matter and simply proceed with the appeal.

From: David Chami [mailto:daclaw3@gmail.com]

Sent: Monday, November 29, 2010 3:24 PM

[Quoted text hidden]

[Quoted text hidden]

David Chami <daclaw3@gmail.com>
To: "Schehr, Thomas" <TSchehr@dykema.com>
Cc: Haytham Faraj <farajh@gmail.com>, Nick Hadous <nhadous@hadousco.com>

Thu, Dec 9, 2010 at 2:26 PM

I have forwarded the package to the clients for completion and should be able to return it to you by Monday the 13th. Our objective is to reach a final resolution.

If your client decides against a modification with the terms we discussed, we will likely proceed with the appeal.

[Quoted text hidden]

David Chami <daclaw3@gmail.com>
To: Nick Hadous <nhadous@hadousco.com>

Fri, Feb 25, 2011 at 12:17 PM

[Quoted text hidden]

David Chami <daclaw3@gmail.com>
To: Nick Hadous <nhadous@hadousco.com>

Fri, Feb 25, 2011 at 12:18 PM

----- Forwarded message -----
From: **Schehr, Thomas** <TSchehr@dykema.com>
Date: Thu, Dec 9, 2010 at 10:59 AM
Subject: RE: Issa Settlement
[Quoted text hidden]



Nick Hadous <nhadous@hadousco.com>

Issa v. GMAC, Inc. (Ct. of Appeals No. 300506)

David Chami <daclaw3@gmail.com>

Fri, Feb 25, 2011 at 12:18 PM

To: Nick Hadous <nhadous@hadousco.com>

----- Forwarded message -----

From: Nick Hadous <nhadous@hadousco.com>

Date: Tue, Jan 18, 2011 at 12:27 PM

Subject: Issa v. GMAC, Inc. (Ct. of Appeals No. 300506)

To: "Schehr, Thomas" <TSchehr@dykema.com>

Cc: David Chami <daclaw3@gmail.com>, Haytham Faraj <haytham@puckettfaraj.com>

Mr. Schehr:

Can you please update us regarding the status of a permanent loan modification in the above referenced matter? Mrs. Issa has been calling for the past few weeks but we have been unable to provide her with any update.

Thanks,

Nick

--

HADOUSCO, PLLC

Offices in Dearborn, MI and Scottsdale, AZ

Nick N. Hadous

Admitted:

- State Bar of Arizona
- State Bar of California
- United States District Court,
Eastern District of Michigan

Direct: 313.415.5559

Office: 313.846.6300

Fax: 313.846.6358

Email: nhadous@hadousco.com

www.hadousco.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that, to the extent that this communication or any attachment addresses a tax matter, it was not written to be (and may not be) relied upon to (i) avoid tax-related penalties under the Internal Revenue Code; or (ii) promote, market or recommend to another party any transaction or matter addressed herein or in any such attachment.

CONFIDENTIALITY NOTICE: This email message and all attachments transmitted with it are intended solely for the use of the addressees and may contain legally privileged, protected or confidential information. If you have received this message in error, please notify the sender immediately by email reply and please delete this message from your computer and destroy any copies.

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

<p>ZEINAB ISSA, AND ALI BARAKAT, HUSBAND AND WIFE,</p> <p style="text-align: center;">PLAINTIFFS,</p> <p style="text-align: center;">- Vs -</p> <p>GMAC, INC., A DELAWARE CORPORATION ET AL.,</p> <p style="text-align: center;">DEFENDANTS.</p>	<p>CT. OF APPEALS DOCKET No. 300506</p> <p>LOWER CT. No. 10-004439-CZ</p> <p style="text-align: center;">PROOF OF SERVICE</p>
--	--

PUCKETT & FARAJ, PC
Haytham Faraj (P-72581)
P.O. Box 1016
Dearborn, Heights Michigan 48127
(760) 521-7934
Haytham@puckettfaraj.com
ATTORNEY FOR PLAINTIFFS
Zeinab Issa and Ali Barakat

PROOF OF SERVICE

I certify under penalty of perjury that on February 25, 2011, I served copies of the Motion for Rearing and to Avoid Costs by Email and by First-Class Mail upon:

Dykema Gossett, PLLC
Thomas Schehr (P-54391)
Peter M. Kellett (P-34345)
400 Renaissance Center, 35th Floor
Detroit, Michigan 48243-1668
*Attorneys for Defendants GMAC Inc., and
GMAC Mortgage, LLC*

By: _____

Nick N. Hadous

COURT OF APPEALS
DETROIT OFFICE
LARRY S. ROYSTER
CLERK

2011 FEB 25 PM 4: 25

RECEIVED