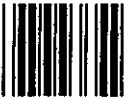


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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *Caumet* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

vs.

EMVEST MORTGAGE FUND, LLC,
EMVEST, INC., and MILON LYLE
BROCK,

Defendants.

CASE NO. 04cv2295-DMS(LSP)

**TEMPORARY RESTRAINING
ORDER AND ORDERS:
(1) FREEZING
DISTRIBUTIONS; (2)
APPOINTING A TEMPORARY
RECEIVER;
(3) PROHIBITING THE
DESTRUCTION OF
DOCUMENTS;
(4) EXPEDITING DISCOVERY;
(5) REQUIRING
ACCOUNTINGS; (6) ORDER
TO SHOW CAUSE RE
PRELIMINARY INJUNCTION
AND APPOINTMENT OF A
PERMANENT RECIEVER;
AND (7) SETTING BRIEFING
SCHEDULE**

On November 16, 2004, the Court heard Plaintiff Securities and Exchange Commission's ("SEC") *ex parte* application for a temporary restraining order and other related orders. Attorneys Susan Hannan and Molly White appeared for Plaintiff. Attorney Robert Cocchia appeared for Defendants Emvest Mortgage Fund, LLC; Emvest, Inc.; and Milon Brock ("Defendants"). The Court, having considered the SEC's complaint, *ex parte*

1 in Emvest Mortgage Fund, LLC. This Order shall not be construed as an all-encompassing
2 “asset freeze,” but rather prohibits only distributions made to investors from fund assets—as
3 either a return on principal or as a return of the investors’ original capital. This distribution
4 freeze relates to all accounts at any bank, financial institution or brokerage firm, all certificates
5 of deposit, and other funds or assets, held in the name of, for the benefit of, or over which
6 account authority is held by Emvest Mortgage Fund, LLC or Emvest, Inc., or any trust,
7 partnership, joint venture, person or entity affiliated with them (including subsidiaries),
8 including but not limited to the following accounts:

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10 <u>Bank Name</u>	<u>Account Name</u>	<u>Account No.</u>
11 Union Bank of California (“UBC”)	Emvest Mortgage Fund, LLC	0820031849
12 UBC	Emvest Mortgage Fund, LLC	7341136179
13 UBC	Emvest, Inc.	7340027870
14 UBC	Emvest, Inc.	7341133499
15 UBC	Emvest, Inc.	7340025347

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17 **IV.**

18 IT IS FURTHER ORDERED that Dennis M. Murphy is appointed as temporary
19 receiver of Emvest Mortgage Funds, LLC and Emvest, Inc., and their subsidiaries and
20 affiliates, with full powers of an equity receiver, including (but not limited to) full power of
21 all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise
22 controlled), choses in action, books, records, papers, and other real or personal property,
23 including notes, deeds of trust, and other interests in real property belonging to, managed by,
24 or in the possession or control of Emvest Mortgage Fund, LLC, and Emvest, Inc., and any
25 other of their subsidiaries and affiliates, and that Mr. Murphy is immediately authorized,
26 empowered, and directed to:

- 27 A. access and to take custody and control of all funds, assets, collateral, premises
28 (whether owned, leased, occupied, or otherwise controlled), choses in action,

1 books, records, papers, and other real property, including notes, deeds of trust,
2 and other interests in real property of or managed by Emvest Mortgage, LLC and
3 Emvest, Inc., and their subsidiaries and affiliates, with full power to sue,
4 foreclose, marshal, sell, liquidate, collect, receive, and take into possession all
5 such property;

6 B. control and to be added as the sole authorized signatory for all accounts of
7 Emvest Mortgage Fund, LLC and Emvest, Inc., and their subsidiaries and
8 affiliates, including all accounts over which Emvest Mortgage Fund, LLC or
9 Emvest, Inc., and any of their officers, employees or agents, have signatory
10 authority, at any bank, title company, escrow agent, financial institution, or
11 brokerage firm, which has possession, custody, or control of any assets or funds
12 of Emvest Mortgage Fund, LLC or Emvest, Inc., or which maintains accounts
13 over which Emvest Mortgage Fund, LLC and Emvest, Inc., and/or any of their
14 officers, employees, or agents have signatory authority;

15 C. conduct such investigation and discovery as may be necessary to locate and
16 account for all assets of, or managed by, Emvest Mortgage Fund, LLC; Emvest,
17 Inc.; and their subsidiaries and affiliates, and to employ attorneys, accountants,
18 and other persons to assist in such investigation and discovery;

19 D. take such action as is necessary and appropriate to preserve and take control of
20 and to prevent the dissipation, concealment, or disposition of any assets or, or
21 managed by, Emvest Mortgage Fund, LLC; Emvest, Inc.; and their subsidiaries
22 and affiliates;

23 E. make an accounting, as soon as practicable, to this Court and the SEC of the
24 assets and financial condition of Emvest Mortgage Fund, LLC and Emvest, Inc.,
25 and the assets under their management, including all notes, deeds of trust, and
26 other interests in real property, and to file the accounting with the Court and
27 deliver copies to all parties;

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- 1 F. make such payments and disbursements from the funds and assets taken into
2 custody, control, and possession or thereafter received by him, and to incur, or
3 authorize the making of such agreements as may be necessary and advisable in
4 discharging his duties as temporary receiver;
- 5 G. employ attorneys, accountants, and others to investigate and (where appropriate)
6 to pursue and prosecute all claims and causes of action of whatever kind which
7 may now or hereafter exist as a result of the activities of Emvest Mortgage Fund,
8 LLC or Emvest, Inc., or their past or present employees or agents;
- 9 H. access, monitor, and redirect all mail (including email) of Emvest Mortgage
10 Fund, LLC and Emvest, Inc., in order to review such mail which he deems
11 relevant to the business of these companies, and the discharging of his duties as
12 receiver;
- 13 I. exercise all of the lawful powers of Emvest Mortgage Fund, LLC and Emvest,
14 Inc., and their officers, directors, employees, representatives, or persons who
15 exercise similar powers and perform similar duties.

16 **VII.**

17 IT IS FURTHER ORDERED that Defendants shall, within five days of the date this
18 Order is issued, prepare and deliver to the SEC a detailed schedule of all their assets, including
19 all real and personal property exceeding \$5,000 in value, and all bank, securities, futures, and
20 other accounts identified by institution, branch address, and account number. The accountings
21 shall include a description of the source(s) of all such assets. Such accountings shall be filed
22 with the Court and copies shall be delivered to the SEC's Pacific Regional Office at 5670
23 Wilshire Boulevard, 11th Floor, Los Angeles, California, 90036. After completion of these
24 accountings, Defendants shall each produce to the SEC's Pacific Regional Office, at a time
25 agreeable to the SEC, all books, records, and other documents supporting or underlying their
26 accountings.

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1 **VIII.**

2 IT IS FURTHER ORDERED that except otherwise ordered by this Court, Defendants
3 and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those
4 persons in active concert or participation with any of them, who receive actual notice of this
5 Order, by personal service or otherwise, are temporarily restrained from directly or indirectly:
6 destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any
7 manner, any documents, including all books, records, computer programs, computer files,
8 computer printouts, correspondence, memoranda, brochures, or any other documents of any
9 kind in their possession, custody, or control, however created, produced, or stored (manually,
10 mechanically, electronically, or otherwise), pertaining in any manner to Defendants.

11 **IX.**

12 IT IS FURTHER ORDERED that Defendants and their subsidiaries and affiliates, and
13 their officers, agents, servants, employees, and attorneys, and any other persons who are in
14 custody, possession, or control of any assets, collateral, books, records, papers, notes, deeds
15 of trust, or other interests in real property, or other property of, or managed by Emvest
16 Mortgage Fund, LLC and Emvest, Inc., shall forthwith give access to and control of such
17 property to the temporary receiver.

18 **X.**

19 IT IS FURTHER ORDERED THAT no officer, agent, servant, employee, or attorney
20 of Defendants or their subsidiaries or affiliates shall take any action or purport to take any
21 action, in the name of or on behalf of Emvest Mortgage Fund, LLC or Emvest, Inc., or any of
22 the subsidiaries or affiliates, without the written consent of the temporary receiver or order of
23 this Court.

24 **XI.**

25 IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency
26 of this receivership, all clients, investors, trust beneficiaries, note holders, creditors, claimants,
27 lessors, and all other persons or entities seeking relief of any kind (in law or equity) from
28 Emvest Mortgage Fund, LLC; Emvest, Inc.; or their affiliates and subsidiaries, and all other

1 management, or control by the temporary receiver of the funds, assets, collateral, premises, and
2 choses in action described above.

3 **XIII.**

4 The Court reserves ruling on which party or parties shall be responsible for the payment
5 of costs, fees, and expenses of the temporary receiver incurred in connection with the
6 performance of his duties described in this Order, including the costs and expense of those
7 persons who maybe employed by the temporary receiver to assist him in carrying out his duties.
8 The receiver shall maintain detailed records of all expenses incurred in conducting the
9 receivership, such as salaries, rent, and any other reasonable operating and liquidating
10 expenses. At the preliminary injunction hearing, the Court shall determine whether the
11 receivership fees shall be paid by Defendants or by the SEC.

12 **XIV.**

13 IT IS FURTHER ORDERED that no bond shall be required in connection with the
14 appointment of the temporary receiver. Except for an act of gross negligence, the temporary
15 receiver shall not be liable for any loss or damage incurred by any of the Defendants, their
16 officers, agents, servants, employees, attorneys, or by any other person, by reason of any act
17 performed or omitted to be performed by the temporary receiver in connection with his duties
18 and responsibilities.

19 **XV.**

20 IT IS FURTHER ORDERED that representatives of the SEC are authorized to have
21 continuing access to inspect or copy any of the corporate books and records and other
22 documents of Emvest Mortgage Fund, LLC and Emvest, Inc., and their subsidiaries and
23 affiliates, and to have continuing access to inspect their funds, property, assets, and collateral,
24 wherever located.

25 **XVI.**

26 IT IS FURTHER ORDERED that the SEC's application for expedited discovery is
27 GRANTED and that the SEC may request documents and take depositions of non-parties upon
28 oral examination subject to two calendar days notice pursuant to Fed. R. Civ. P. 30(a), 34, &

1 45. The SEC may take more than one deposition at the same time; depositions of the
2 Defendants may be taken on any day, including Saturdays and Sundays, subject to two calendar
3 days notice, including notice given personally, by facsimile, or by electronic mail. Depositions
4 are not to be taken on the upcoming Thanksgiving Holiday (Thursday, November 25 or Friday,
5 November 26, 2004). The SEC may take more than ten depositions.

6 **XVII.**

7 IT IS FURTHER ORDERED that this temporary restraining order shall expire at 12:00
8 p.m on Friday, December 3, 2004, unless, for good cause shown, it is further extended.
9 Defendants have agreed to this date, which falls beyond the ten days prescribed in Fed. R. Civ.
10 P. 65(b).

11 **XVIII.**

12 IT IS FURTHER ORDERED that on **Friday, December 3, 2004**, at **10:30 a.m.**, the
13 Defendants shall appear before this Court to show cause why (1) a preliminary injunction
14 should not be granted in accordance with the prayer for relief contained in the SEC's
15 complaint, and (2) a permanent receiver should not be appointed in accordance with the prayer
16 for relief contained in the SEC's complaint.

17 Any declarations, affidavits, points and authorities, or other submissions in support of,
18 or in opposition to, the issuance of such an order shall be filed with the Court and served on
19 the opposing party on or before **Wednesday, November 24, 2004**, at **12:00 p.m.** The opposing
20 party must be in actual receipt of such papers by this time.

21 Any reply papers shall be filed with the Court and served on the opposing party on or
22 before **Tuesday, November 30, 2004**, at **4:30 p.m.** The opposing party must be in actual receipt
23 of such papers by this time.

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XIX.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IT IS SO ORDERED.

Dated: 11-16-04



DANA M. SABRAW
United States District Judge

CC: ALL PARTIES
JUDGE PAPAS