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5 Attorneys for Receiver
Dennis Murphy
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,
12

13 Plaintiff,

14 v.

15 EMVEST MORTGAGE FUND, LLC;
EMVEST, INC.; and MILON LYLE
BROCK,
16

17 Defendants.
18

CASE NO.: 04CV2295-DMS (LSP)

JUDGE: Hon. Dana M. Sabraw

**RECEIVER'S RESPONSE TO
MOTION FOR
RECONSIDERATION FILED BY
ECV DEVELOPMENT, LLC**

CTRM: H
DATE: May 31, 2007
TIME: 2:00 p.m.

Disc. Cut-off: November 10, 2005
Motion Cut-off: November 10, 2005
Trial Date: January 3, 2006
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22 The Receiver, Dennis Murphy, submits his response to the Motion for
23 Reconsideration filed by ECV Development, LLC as follows:

24 **I.**

25 **PRELIMINARY STATEMENT**

26 The motion for reconsideration filed by ECV sets forth various facts which
27 ECV claims support its right to a claim of hundred of thousands of dollars against
28 Emvest. What the motion does not detail is the existence of both a former state court
action as well as former and current bankruptcy proceedings where the issue raised by



1 action as well as former and current bankruptcy proceedings where the issue raised by
2 ECV has already been determined. As set forth below, ECV's claims have already
3 been adjudicated. As a result, the Receiver contends that ECV's claim was properly
4 denied.

5 **II.**

6 **STATEMENT OF FACTS**

7 ECV's claim arises out of 23 loans made by Emerald Bay to Olive XXIII
8 ("Olive") back in August, 2002. The loans were secured by certain real property
9 located in El Centro, California ("Property"). When Olive failed to make required
10 payments under the loans, Emerald Bay sought a non-judicial foreclosure. The day
11 before the scheduled foreclosure sale, Olive filed a Chapter 11 bankruptcy. (Request
12 for Judicial Notice, Ex. "A".) The beneficial ownership in the loans was transferred
13 by Emerald Bay to Emvest Mortgage Fund, LLC.

14 Olive's first bankruptcy was dismissed on June 24, 2004. Shortly thereafter,
15 title to the Property was transferred to AtVantage and then to ECV Development.
16 (Request for Judicial Notice, Ex. "A".) Shortly after that, ECV filed an action in state
17 court in San Diego alleging that the underlying loans from Emvest were invalid.
18 Although in initial preliminary injunction was granted, the Defendants filed a
19 summary judgment matter alleging that ECV lacked standing to file the action.

20 In granting summary judgment in May, 2006, the trial court found that ECV
21 lacked standing to sue for damages. (Request for Judicial Notice, Ex. "B".) Judgment
22 consistent with the Order on Summary Judgment was entered on June 19, 2006.
23 (Request for Judicial Notice, Ex. "C".) One month later, Olive XXIII filed a Chapter
24 11 bankruptcy proceeding. In July, 2006, ECV filed its own Chapter 11 proceeding.
25 A notice of appeal of the Order granting summary judgment has also been filed by
26 ECV. (Request for Judicial Notice, Ex. "A".) In September, 2006, Olive's
27 bankruptcy proceeding was dismissed. (Request for Judicial Notice, Ex. "D".) In
28 November, 2006, the ECV bankruptcy proceeding was dismissed. (Request for

1 Judicial Notice, Ex. "E".)

2 III.

3 ARGUMENT

4 A. The Receiver Properly Denied the Claim.

5 As can be seen from the Statement of Facts set forth above, the Superior Court
6 has already determined that ECV lacks standing to pursue claims for damages against
7 the Defendants, including Emvest. The matter is now on appeal. Moreover, ECV's
8 bankruptcy proceeding has been dismissed.

9 The Receiver has not technically been a party to any of these prior cases
10 although Emvest, Inc. was a party to the State Court Action. Given that the State
11 Court found that ECV lacked standing to pursue its claims for damages, the Receiver
12 feels justified in denying what appear to be the same claims brought by ECV within
13 this Action. The Receiver understands that the matter is on appeal. However, at this
14 time, the most current and outstanding Court decision supports the lack of standing on
15 ECV's part to obtain any relief. As a result, the Receiver has denied the claim.

16 In addition, on or about February, 2006, Emvest Mortgage Fund, LLC
17 transferred all of its right, title and interest in the Loans to Emvest Mortgage Fund II,
18 LLC. (Declaration of James R. Felton ("Felton Decl."), ¶ 2, Ex. "A". Thus, Emvest
19 Mortgage Fund, LLC is no longer the beneficiary to the Loans. The Receiver
20 understands that ECV may still allege that Emvest or Emvest Mortgage Fund caused
21 harm to ECV, but the Receiver simply wanted the Court to be aware that the Fund no
22 longer holds any beneficial interest in the Loans.

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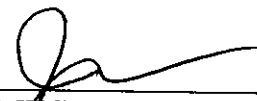
III.

CONCLUSION

Based upon the State Court Judgment, the Receiver believes that it was proper for him to deny ECV's claim.

Dated: May 9, 2007

GREENBERG & BASS
A Registered Limited
Liability Partnership

By: 

JAMES R. FELTON
Attorneys for Receiver,
Dennis Murphy



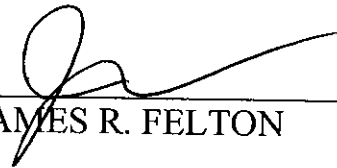
DECLARATION OF JAMES R. FELTON

I, James R. Felton, declare as follows:

1. I am an attorney duly licensed to practice law in this Court and am a partner in the law firm of Greenberg & Bass, counsel to the Receiver, Dennis Murphy, in this matter. The facts recited in this declaration are known to me of my own personal knowledge and if called upon to testify as a witness, I could and would competently testify thereto.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Promissory Note Endorsement and the Assignment of Deed of Trust both dated February 8, 2007 with reference to monies originally borrowed by Olive XXIII, LLC.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of May, 2007 at Encino, CA.



JAMES R. FELTON

G&B
GREENBERG & BASS LLP

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Promissory Note Endorsement

LOTS 1-24 OLIVE XXIII, LLC.

LOAN No. E20846

Reference is hereby made to the promissory Note dated AUGUST 27, 2002 in the amount of \$134,000.00 executed by:

OLIVE XXIII, LLC.

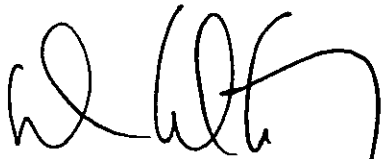
For value received, the undersigned hereby grants, endorsement and transfers, without recourse to:

EMVEST MORTGAGE FUND II LLC., A CALIFORNIA LIMITED LIABILITY COMPANY,

AS TO AN UNDIVIDED 100% INTEREST

All beneficial interest under said Promissory Note together with the money due and become due thereon with interest and all rights accrued or to under said Promissory Note.

Date: 2/8/07



EMVEST MORTGAGE FUND LLC.
BY: DENNIS M. MURPHY - RECEIVER

EXHIBIT A

6

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

NAME EMERALD BAY FINANCIAL, INC.
ADDRESS 591 CAMINO DE LA REINA STE. 928
CITY SAN DIEGO
STATE & ZIP CA, 92108

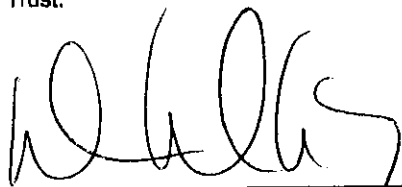
LOTS 1-24 OLIVE XXIII, LLC LOAN No. E20846

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
EMVEST MORTGAGE FUND II LLC., A CALIFORNIA LIMITED LIABILITY COMPANY

All beneficial interest under that certain Deed of Trust dated August 27, 2002 executed by OLIVE XXIII, LLC or (s), LENDERS RECONVAYANCE, INC., A CALIFORNIA CORPORATION Trustee, and Recorded on SEPTEMBER 13, 2002, Instrument No. 2002-023383- RE-RECORDED SEPTEMBER 8, 2003 AS INSTRUMENT No. 03-026993 AND RE- RECORDED APRIL 7, 2004 AS INSTRUMENT No. 04-010019 in the Official Records in the County Recorder's office Of IMPERIAL California, AS DESCRIBED IN SAID DEED OF TRUST. TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated 6/8/07 2007

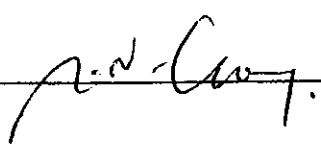


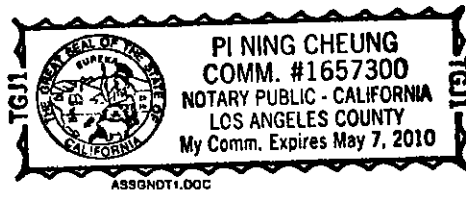
EMVEST MORTGAGE FUND LLC
BY: DENNIS M. MURPHY - RECEIVER

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES J.S.S.

On Feb 8, 2007, ~~2007~~ before me, PI-NING CHEUNG - NOTARY PUBLIC (here insert name and title of the officer), personally appeared DENNIS M. MURPHY, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **16000 Ventura Boulevard, Suite 1000, Encino, California 91436.**

On May 9, 2007, I served the foregoing document described as **RECEIVER'S RESPONSE TO MOTION FOR RECONSIDERATION FILED BY ECV DEVELOPMENT, LLC** on the interested parties in this action.

- by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

- BY REGULAR MAIL:** I deposited such envelope in the mail at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

- BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was deposited with delivery fees thereon fully prepaid.
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 9, 2007, at Encino, California.


Margaret Tyndall

SERVICE LIST

United States Securities and Exchange Commission
v. Emvest Mortgage Fund, et al.
Case No. 04CV2295-DMS(LSP)

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