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3:04-CV-02295 SEC V. EMVEST MORTGAGE FUND

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ROBERT A. COCCHIA, ESQ. (SBN 172315)
B. LUKE PISTORIUS, ESQ. (SBN 190690)
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Facsimile: (619) 595-5450

Attorneys for Defendants EMVEST MORTGAGE FUND,
LLC; EMVEST, INC.; and MILON LYLE BROCK

FILED

04 DEC -9 PM 2: 16

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.

CASE NO. 04 CV 2295 DMS (LSP)

DECLARATION OF B. LUKE PISTORIUS
IN SUPPORT OF EX PARTE
APPLICATION FOR ORDER
CLARIFYING DECEMBER 3, 2004
ORDER AND LIMITING POWERS OF
PERMANENT RECEIVER

ORIGINAL

[Handwritten mark]

1 I, B. Luke Pistorius, declare as follows:

2 1. I am an attorney at law licensed to practice before the Courts of the State of
3 California and have been admitted to practice in the United States District Court for the Southern
4 District of California. I am an attorney with the law firm of McKenna Long & Aldridge LLP,
5 counsel for Defendants in this action. I have personal knowledge of the following facts and, if
6 called and sworn as a witness, could and would competently testify thereto.

7 2. Attached as Exhibit A is a true and correct copy of a December 7, 2004 letter from
8 the Permanent Receiver, Dennis M. Murphy, to Defendants' accounting consultant, J. Stephen
9 Hawkins, transmitted on December 7, 2004 at 4:29 p.m. (16:29) purporting to terminate Mr.
10 Hawkins' services.

11 3. On December 8, 2004, I spoke telephonically to James R. Felton, Esq., counsel for
12 Mr. Murphy, on multiple occasions. In one of these conversations, Mr. Felton expressed to me
13 Mr. Murphy's position that Mr. Murphy, as Permanent Receiver, holds the power to terminate
14 defense counsel, and that based on this position, Mr. Murphy intended to terminate this Firm's
15 representation of Defendants. Mr. Felton also informed me that it is Mr. Murphy's position that
16 the December 3, 2004 Order gave Mr. Murphy complete control over the Fund and Emvest, Inc.

17 4. In one or more of the December 8, 2004 telephone conversations referenced
18 above, I informed Mr. Felton that this Firm and Mr. Hawkins require the documents taken by Mr.
19 Murphy on December 8, 2004 in order to further Defendants' defense. I further informed Mr.
20 Felton that Defendants consider their need for these documents to be urgent.

21 5. In the afternoon of December 8, 2004, Mr. Felton and I spoke telephonically
22 concerning Mr. Murphy's intent to terminate the services of this Firm and Mr. Hawkins. Mr.
23 Felton informed me that Mr. Murphy had agreed not to go forward with those terminations
24 immediately, but that Mr. Murphy wanted to meet with this Firm and Mr. Hawkins prior to
25 making any such decisions.

26 6. On December 7, 2004, after 5:00 p.m., Mr. Felton and I spoke telephonically. In
27 that conversation, Mr. Felton asked me whether the Court had issued a ruling on the SEC's
28 Application for Preliminary Injunction and Appointment of A Receiver, and I informed Mr.

1 Felton that the December 3, 2004 Order had issued. In this conversation, Mr. Felton agreed to
2 provide this Firm with prior notice of and an opportunity to object to any actions Mr. Murphy
3 intended to take that are outside the conduct of ordinary, day-to-day business.

4 7. Attached as Exhibit B is a true and correct copy of a letter sent by me to Mr.
5 Felton, copied to Ms. White at the SEC, informing him of Defendants' intention to file this Ex
6 Parte Application.

7 I declare under penalty of perjury under the laws of the United States of America and the
8 State of California that the foregoing is true and correct.

9 Executed on December 9, 2004, at San Diego, California.

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B. Luke Pistorius

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DENNIS M. MURPHY
Certified Public Accountant
Certified Insolvency and Reorganization Accountant

630 N. Rosemead Blvd., Suite 100
Pasadena, CA 91107

Telephone: (626) 794-0288
Facsimile: (626) 794-7298

FAX TRANSMITTAL -- PLEASE DELIVER IMMEDIATELY

DATE: 12/7/04	CLIENT CODE:
TO: L. Stephen Hawkins, CPA	
FAX NO: 858-794- 9728 9729	
FROM: DENNIS Murphy, CPA	
NUMBER OF PAGES TO FOLLOW THIS COVER PAGE: 4	
COMMENTS: yr: EMVEST	

If your facsimile machine has any difficulty receiving this document, or if you do not receive the indicated number of pages, please call (626) 794-0288.

NOTICE: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IT MAY CONTAIN INFORMATION WHICH IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, NOR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

DENNIS M. MURPHY
 Certified Public Accountant
 Certified Insolvency & Restructuring Advisor

Stephen J. Baumgartner
 Dickson Hung, C.P.A.
 Douglass L. Montgomery
 Ed Cantrell

December 7, 2004

L. Stephen Hawkins, CPA
 437 Highway 101, #203
 The Beach Walk
 Solano Beach, CA 92075
 Facsimile: 858-794-9726

SENT VIA FAX & U.S. MAIL

**Re: United States Securities & Exchange Commission
 vs.
 Emvest Mortgage Fund, LLC, Emvest, Inc. and Milton Lyle Brock
 Appointment of Permanent Receiver
 Discontinuance of Service**

Dear Mr. Hawkins:

I have been appointed the permanent receiver in the above-captioned case and have included a copy of the order as signed December 3, 2004 by Judge Dana M. Sabraw for your notice and files.

Effective immediately, your services shall no longer be required regarding the entities listed below and we ask that you submit a final statement itemizing your time and a description of the work performed so that we may arrange for your adequate and just compensation. In addition, we are aware that funds have been advanced and we ask that the unused portion be returned with a full accounting of moneys spent.

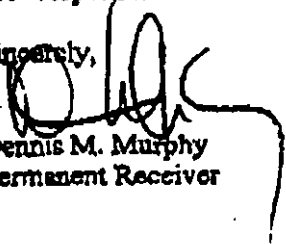
All records, documents, books and financial data whether on paper, diskettes, or on accounting, spreadsheet, word processing or email software for any or all of the following persons or entities should be downloaded or forwarded electronically to this office and immediately:

1. Emvest, Inc.
2. Emvest Mortgage Fund, LLC
3. Milton Lyle Brock

630 North Rosemead Blvd., Suite 100 • Pasadena, CA 91107
 Tel: (626) 794-0288 • Fax (626) 794-7298
 E-mail: dnmurphy@lx.netsem.com

An inventory of all such books and records in your possession should be provided to us via email within a reasonable amount of time

We understand you may have questions and concerns regarding this matter and we await your response. Please do not delay in contacting us as soon as you are able to do so.

Sincerely,

Dennis M. Murphy
Permanent Receiver

DENNIS M. MURPHY
Certified Public Accountant
Certified Insolvency & Restructuring Advisor

12/07/2004 16:02 FAX

Trial Unit PRO

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DEPUTY
Signature

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**

CASE NO. 04cv2295-DMS(LSP)

Plaintiff,

vs.

**ORDER GRANTING
PLAINTIFF'S APPLICATION
FOR A PRELIMINARY
INJUNCTION AND
APPOINTMENT OF A
PERMANENT RECEIVER**

**EMVEST MORTGAGE FUND, LLC,
EMVEST, INC., and MILON LYLE
BROOK,**

Defendants.

On December 3, 2004, the Court heard argument on Plaintiff's application for a preliminary injunction and appointment of a permanent receiver. Attorneys Molly M. White, Susan F. Haman, and Alla N. Patel appeared for Plaintiff the United States Securities and Exchange Commission ("SEC"). Attorney Robert A. Coochle appeared for Defendants Emvest Mortgage Fund, LLC; Emvest, Inc.; and Milon Lyle Brook. Dennis M. Murphy, Court-appointed temporary receiver, appeared in person and with his counsel, James R. Felton. Attorney David R. Clark appeared for related non-party Unified Mortgage Service, Inc. The Court has now considered the arguments of counsel and the issues presented in the pleadings. For the reasons discussed below, the SEC's application is GRANTED.

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04CV2295

12/07/2004 15:05 FAX

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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: 12-3-04


DANA M. SABRAW
 United States District Judge

cc: ALL PARTIES
 JUDGE PAPAS



McKenna Long
& Aldridge^{LLP}
Attorneys at Law

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B. LUKE PISTORIUS
(619) 595-8015

EMAIL ADDRESS
lpistorius@mckennalong.com

December 9, 2004

VIA FACSIMILE AND U.S. MAIL

James R. Felton, Esq.
Greenberg & Bass
1600 Ventura Blvd., Suite 1000
Encino, CA 91436

Re: **Securities and Exchange Commission v. Emvest Mortgage Fund, LLC, et al.**, United States District Court Case No. 04CV2295-DMS (LSP)
Client-Matter No. 23908-0003

Dear Mr. Felton:

As you are aware through our telephone conversations yesterday, Mr. Murphy's unannounced visit to Defendants' offices raised significant issues that must be addressed immediately: (1) Mr. Murphy has purported to terminate the services of J. Stephen Hawkins, Defendants' CPA and defense consultant; (2) Mr. Murphy has purported to terminate this Firm's representation of Defendants; and (3) Mr. Murphy has removed original documents from the premises to his offices in Pasadena, thereby rendering it impossible for Mr. Hawkins to conduct further analysis of Defendants' financial condition.

Mr. Murphy's actions are disturbing in at least two respects. First, Mr. Murphy's actions are directly contrary to your assurances to me in our December 7, 2004 telephone conversation, wherein you agreed that prior to taking any actions beyond conducting the ordinary day-to-day business of the Fund, you and your client would advise us of Mr. Murphy's intentions and allow us time to object or otherwise respond. You also agreed that to the extent agreement could not be reached, the parties would address any unresolved issues to the Court for resolution.

Second, Mr. Murphy's actions directly and irreparably prejudice Defendants' ability to defend themselves against the SEC's claims. By firing Defendants' outside counsel (this firm) and independent accountant (retained specifically for this litigation), Mr. Murphy will render Defendants defenseless.¹ This conduct puts Mr. Murphy's independence and objectivity into

¹ You have informed me that Mr. Murphy has backed down from his intent to immediately terminate the defense team pending his ability to "interview" us and Mr. Hawkins. In light of Mr. Murphy's conduct thus far, we view these interviews as pretextual and mere formality.

serious question. As you know, Mr. Murphy owes fiduciary duties to the Fund and to the Court to preserve assets and to protect investors. His responsibilities do not include assisting the SEC's case by intentionally undermining Defendants' defense.

Be advised that we are today filing an Ex Parte Application for an Order Clarifying the December 3, 2004 Order and Limiting the Receiver's Powers as follows:

- (1) That the Court clarify that Mr. Murphy is not in charge of Defendants' defense;
- (2) That the Receiver be prohibited from terminating or otherwise affecting the employment of Defendants' attorneys or consultants retained in connection with their defense of *SEC v. Emvest Mortgage Fund, LLC, et al.*;
- (3) That the Receiver be required to return original documents to Defendants' premises, and that the Receiver be prohibited from interfering with any review of said documents by Defendants' attorneys or consultants;
- (4) That the Receiver be required to notify Defendants' counsel, in writing, on at least five business days' notice, of any intended actions that are beyond the conduct of the ordinary, day-to-day business of the Fund or Emvest, Inc. (e.g., the termination of employees, the termination of vendors, etc.); and
- (5) That the Receiver be required to conduct the daily business of the Fund.

We have not reserved a hearing date. We are informed by Judge Sabraw's chambers that the Court will not set a date and time for the ex parte appearance until after receipt of the papers. We are further informed that the Court will apprise all parties as to the hearing date and time.

Very truly yours,

McKENNA LONG & ALDRIDGE LLP



B. Luke Pistorius

BLP:rd

cc: Molly White, Esq. (via fax)