

USDC SCAN INDEX SHEET



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

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

BY *Raymer* 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)

**ORDER RE: RESPONSE TO
DEFENDANTS' *EX PARTE*
APPLICATION FOR
CLARIFICATION**

[Doc. No. 37]

On December 3, 2004, this Court granted Plaintiff's application for a preliminary injunction and appointed Dennis R. Murphy as Permanent Receiver. On December 9, 2004, Defendants submitted an *ex parte* application for clarification of the Court's Order and limiting powers of the Receiver. Defendants maintain that the Receiver has "taken several actions that materially undermine Defendants' ability to defend the instant action, threaten the viability of the Fund, and are contrary to the clear intent of the" preliminary injunction Order. (App. at 1.)

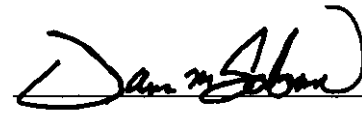
In their *ex parte* application, Defendants request several clarifications from the Court: (1) that Defendant Brock—and not the Receiver—is the person in control of defending this

1 action, including the selection and retention of defense counsel; (2) that the Receiver is
2 prohibited from terminating or otherwise affecting the employment of defense counsel; (3) that
3 the Receiver is required to return original documents to Defendants' premises and is prohibited
4 from interfering with review of such documents by Defendants' attorneys; (4) that the Receiver
5 must provide defense counsel at least five days notice of any intended actions beyond the scope
6 of the Defendants' day-to-day business; and (5) that the Receiver shall conduct the day-to-day
7 business of the Fund.

8 The Court requests Plaintiff's response to this *ex parte* application. Plaintiff shall file
9 and serve such response on or before **December 16, 2004**. A courtesy copy shall be delivered
10 to chambers. The matter will be deemed under submission at this time.

11 **IT IS SO ORDERED.**

12 Dated: 12-10-04



13 **DANA M. SABRAW**
14 United States District Judge

15 CC: ALL PARTIES
16 JUDGE PAPAS