

Guttilla Murphy Anderson, P.C.
City North
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Guttilla Murphy Anderson
Ariz. Firm No. 00133300
Patrick M. Murphy (Ariz. No. 002964)
City North
5415 E. High St., Suite 200
Phoenix, Arizona 85054
Email: pmurphy@gamlaw.com
Phone: (480) 304-8300
Fax: (480) 304-8301

Attorneys for the Receiver

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA ex rel. LAUREN KINGRY, Superintendent of the Arizona Department of Financial Institutions,
Plaintiff,
v.
LANDMARC CAPITAL & INVESTMENT COMPANY,
Defendant.

Cause No. CV2009-020595

RECEIVER'S REPORT ON OBJECTIONS TO THE RECEIVER'S CLAIMS REPORT ON THE WAREHOUSE CREDIT FACILITY CLAIMS

RE: PETITION NO. 43

(Assigned to Judge Sam Myers)

Lauren Kingry, as the court appointed Receiver, reports to the Court on the objections filed with the Receiver to the Receiver's Warehouse Credit Facility Claims.

1 1. On April 15, 2011, the Receiver filed with the Court the Receiver's *Petition No.*
2 *43, Receiver's Claims Report on the Warehouse Credit Facility Claims* ("WCF Claims
3 Report"), which set forth the Receiver's recommendations concerning the eleven (11)
4 Warehouse Credit Facility claims ("WCF Claims") filed with the Receiver. Pursuant to the
5 Court's *Order Establishing Procedures for the Adjudication of Claims, Re: Petition No. 27*
6 ("Order 27") entered on August 6, 2010, objections to the WCF Claims Report were required
7 to be filed with the Receiver on or before May 5, 2011, and 30 days thereafter the Receiver
8 was required to file this report setting forth the objections received to the WCF Claims Report
9 along with the Receiver's response to those objections.

10 2. The Receiver has received only three objections to the WCF Claims Report, all
11 from the same counsel representing three WCF Claimants ("Objecting Parties"). Attached as
12 Exhibit "A" is a copy of those objections. The Receiver and these Objecting Parties have
13 reached agreement on a resolution whereby the Objecting Parties have withdrawn their
14 objections and the Receiver has agreed to several modifications to his previous
15 recommendations, which are more fully described in the *Stipulation Modifying the Receiver's*
16 *Recommendations on the WCF Claims of TBM, Associates, Schupak Family Trust, and Ball*
17 *Trust, Re: Petition 43* between the Receiver and the Objecting Parties attached hereto as
18 Exhibit "B".

19 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

20 1. Approving the Receiver's recommendations set forth in the WCF Claims
21 Report as modified by the attached Exhibit "B";

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

PROOF OF SERVICE

This is to certify that on this 6th day of June, 2011, I electronically transmitted the foregoing document to the Maricopa County Clerk's Office using electronic filing and emailed or mailed by First Class Mail to all persons on the attached Master Service List and mailed by First Class Mail to the following WCF Claimants not on the Master Service List:

Litchfield Funding
1635 N. Greenfield Rd.
Suite 115
Mesa, AZ 85250

Bruce Murray
1 Sutton Farm Drive
Chappaqua, NY 10514

Wesley A. & Marlene White Trust
15118 W. Rounders Dr.
Surprise, AZ 85374-4627

Lazy E, LLC
P.O. Box 10100
Phoenix, Arizona 85064

SEM Investments, LLC
P.O. Box 10100
Phoenix, Arizona 85064

Stoneman Properties LLC Defined Benefit Plan
P.O. Box 10100
Phoenix, Arizona 85064

/s/Patrick M. Murphy
Patrick M. Murphy

MASTER SERVICE LIST

State of Arizona ex rel. v. Landmarc Capital & Investment Company

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2009-020595

(Rev. June 6, 2011)

Lauren Kingry, Superintendent
Department of Financial Institutions
LKingry@azdfi.gov
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Thomas J. Giallanza, Deputy Receiver
TGiallanza@lcmortgage.com
14555 North Scottsdale Road, #340
Scottsdale, AZ 85254

Lawrence J. Warfield, Special Deputy
Receiver
LWarfield@warfieldcpas.com
14555 North Scottsdale Road, #340
Scottsdale, Arizona 85254

Craig Raby
Arizona Attorney General
1275 West Washington
Phoenix, AZ 85007

Patrick M. Murphy
Guttilla Murphy Anderson, P.C.
PMurphy@gamlaw.com
5415 East High St., Ste. 200
Phoenix, Arizona 85054
Attorneys for the Receiver

David T. Maddox
Schmitt, Schneck, Smyth & Herrod, P.C.
davidmaddox@azbarristers.com
1221 East Osborn Road, Suite 105
Phoenix, Arizona 85014-5540
Attorney for Melvin Harter Ministries

Howard Meyers
Burch & Cracchiolo, PA
702 E. Osborn Rd. #200
P.O. Box 16882
Phoenix, Arizona 85014-5281

Lawrence Field
Field Lawdahl, PLLC
LField@fieldlawdahl.com
One East Camelback Road, Suite 860
Phoenix, Arizona 85012

John G. Ryan
JRyan@rrulaw.com;
landrosiuk@rrulaw.com
Troy Dodge
TDodge@rrulaw.com
Tim Dietz
TDietz@rrulaw.com
Ryan Rapp & Underwood, P.L.C.
3200 N. Central Avenue, Suite 1600
Phoenix, AZ 85012-2681
Attorney for TBM Associates, LLC,
Eugene and Lenore Schupak Family
Trust, dated April 4, 1991, Mark A.
Greenberg, Geoff & Katie Ball, Lydia
Ball c/o Dr. Richard Ball, Deborah Ball

Robert N. Brier
bbrier@bihlaw.com
Brier Irish Hubbard & Erhart PLC
2400 E. Arizona Biltmore Cir., # 1300
Phoenix, AZ 85016-2115
Attorney for Scottsdale Financial Centers
Investors, LLC

Neal H. Bookspan
Jaburg & Wilk, P.C.
nhb@jaburgwilk.com
3200 N. Central Avenue, Suite 2000
Phoenix, Arizona 85012
Attorney for J.D. Mellberg Financial, Josh
Mellberg and Landmarc Capital Partners,
LLC

David Crantz
12884 N. 136th Street
Scottsdale, Arizona 85259

David N. Ramras
Ramras Law Offices, PC
David@ramraslaw.com
5060 North 40th Street, Suite 103
Phoenix, Arizona 85018-2140
Attorneys for Oxford Investment Partners,
LLC.

Daniel R. Price
Law Offices of Dan Price
dan@dpricelaw.com
200 Page Mill Road, Suite 150
Palo Alto, California 94306
Attorneys for Oxford Investment Partners,
LLC.

Patrick R. Barrowclough
Atkinson Hamill & Barrowclough, P.C.
Patrick.barrowclough@azbar.org
3550 N. Central, Suite 1150
Phoenix, AZ 85012-2111
Attorneys for Madelene Kepes, Trustee of
The Madelene Kepes Revocable Living
Trust, Dated May 22nd 1984 as Amended

Henk Taylor
Lewis and Roca, LLP
40 North Central Avenue
Phoenix, Arizona 85004-4429
Htaylor@lrlaw.com
Attorney for TBM Associates

Roy Kyle
Lewis and Roca, LLP
One South Church Avenue
Suite 700
Tucson, Arizona 85701-1611
Roy_Kyle@lrlaw.com
Attorney for TBM Associates

Helen and Stephen Gubin Charitable
Remainder Trust and the Gubin Family
Trust dated May 27, 1992
c/o Steve Gubin
2211 East Camelback Road, #906
Phoenix, Arizona 85016
steve@gubin.net

1157-001(85963)

Timothy C. Dietz
tdietz@rrulaw.com

3200 North Central Avenue, Suite 1600
Phoenix, Arizona 85012-2424
PHONE 602.280.1000 FAX 602.265.1495

May 5, 2011

*First Class Mail and
E-Mail (pmurphy@gamlaw.com)*

Patrick M. Murphy
GUTTILLA MURPHY ANDERSON, PC
5415 E. High Street, Suite 200
Phoenix, AZ 85054

*First Class Mail and
E-Mail (tgiallanza@lcmortgage.com)*

LANDMARC RECEIVER
Attention: Tom Giallanza
P.O. Box 14050
Scottsdale, Arizona 85267

Our Clients: TBM Associates, LLC, Schupak Family Trust & Lydia Ball Revocable Trust

*Re: State of Arizona v. Landmarc Capital & Investment Company,
Maricopa County Superior Court, Case CV2009-020595 (J.Myers)*

NOTICE OF OBJECTION AND CONFIRMATION OF EXTENSION

Dear Pat and Tom:

This confirms that you have agreed to extend the deadline for filing a formal objection to Petition 43 until **Friday, May 13, 2011** for Warehouse Credit Facility Lenders TBM Associates, LLC (the "TBM"), the Schupak Family Trust ("Schupak Trust") and the Lydia Ball Revocable Trust ("Ball Trust").

As we have discussed on numerous occasions, my clients' primary objection to Petition 43 is the Receiver's requirement that WCF Lenders reimburse Landmarc for various loan charges and trust shortages before their assets are released to them. That objection is based on the following:

1. These WCF Lenders did not agree to pay loan charges and trust shortages.
2. The express language of the WCF Loan documents require that Landmarc pay all expenses relating to the Collateral (all of which constitute the loan charges and trust shortages).
3. Landmarc is a borrower in default and is liable to WCF Lenders under express provisions of the WCF Loan documents for late charges, default interest, penalties and collection expenses, including, but not limited to, attorneys' fees and costs. The Receiver's position, that a borrower in default would be permitted to escape express remedies afforded the lender and yet require that lender to come out of pocket and reimburse the borrower for expenses incurred in protecting the loan's security, is completely unfounded.
4. Even if the Court were to completely disregard the language of the WCF Loan documents and allow the Receiver's claimed Loan charges and trust shortages, then under Arizona Law the WCF Lenders would be entitled to setoff those amounts against the general unsecured portion of their claim. For example, using the Receiver's numbers for TBM under Petition 43, Exhibit G-10, page 8, the Receiver's loan charges of \$96,418 should be deducted from, rather than added to, TBM's unsecured claim, leaving a balance due TBM in the amount of \$3,781,167.

Patrick Murphy and LANDMARC RECEIVER, Attn: Tom Giallanza
RRU Client: *TBM Associates, LLC, Schupak Family Trust and Lydia Ball Revocable Trust*
Re: *State of Arizona v. Landmarc Capital & Investment Company,*
NOTICE OF OBJECTION AND CONFIRMATION OF EXTENSION
May 5, 2011
Page 2 of 2

5. It's inequitable to require WCF Lenders, which have already incurred substantial losses, to contribute additional funds in order to have their secured interests released. (TBM is facing a \$4 million loss and the Receiver is requesting that the Court order TBM to pay an additional \$100,000 plus to Landmarc.)

TBM, the Schupak Trust and the Ball Trust also have other bases for objecting to Petition 43, including, but not limited to, TBM's claim of 100% interest in the Ireland loan and collateral, all of which will be more particularly set forth in our formal pleading.

As always, I greatly appreciate your cooperation and professionalism. I am hopeful that we are able to resolve these objections without extensive litigation.

Sincerely,

RYAN RAPP & UNDERWOOD, P.L.C.

/s/ Timothy C. Dietz

Timothy C. Dietz

Copied:

Henk Taylor, Esq.
Roy Kyle, Esq.
Lenore Schupak
Lynn Heath
Dr. Richard Ball
Geoff Ball

Internal Copy:

Troy Dodge, Esq.

Guttilla Murphy Anderson

Ariz. Firm No. 00133300

Patrick M. Murphy (Ariz. No. 002964)

City North

5415 E. High St., Suite 200

Phoenix, Arizona 85054

Email: pmurphy@gamlaw.com

Phone: (480) 304-8300

Fax: (480) 304-8301

Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

STATE OF ARIZONA ex rel. LAUREN
KINGRY, Superintendent of the Arizona
Department of Financial Institutions,

Plaintiff,

v.

LANDMARC CAPITAL &
INVESTMENT COMPANY,

Defendant.

Cause No. CV2009-020595

STIPULATION MODIFYING THE
RECEIVER'S RECOMMENDATIONS
ON THE WCF CLAIMS OF TBM,
ASSOCIATES, SCHUPAK FAMILY
TRUST, AND BALL TRUST

RE: PETITION 43

(Assigned to the Honorable Sam Myers)

The Receiver and TBM Associates, LLC ("TBM"), The Eugene and Lenora Schupak Family Trust ("Schupak"), and the Lydia Ball Revocable Trust ("Ball"), by and through their undersigned counsel, stipulate and agree as follows:

1. TBM, Schupak and Ball hereby withdraw all objections to the Receiver's *Petition No. 43, Receiver's Claims Report on the Warehouse Credit Facility Claims* filed on April 15, 2011.

2. The Receiver's recommended valuations for the following interests claimed by TBM are modified as indicated:

a. The estimated valuation in column M of Schedule 2 for TBM's interest in the Ireland loan (#06050394) and REO is adjusted to \$44,788; and

b. The estimated valuation in column M of Schedule 2 for TBM's interest in the Levin loan (#07071140) and REO is adjusted to \$88,400.

3. TBM's liability for loan charges incurred to date of this stipulation for all loans set forth in Schedule 2 to TBM's claim shall be limited to \$29,625.98 payable as follows:

a. The sum of \$21,627.06 to be paid from TBM's Approved % share of the net sale proceeds from the sale of the REO derived from the Ireland loan (#06050394);

b. The sum of \$2,269.90 to be paid from TBM's Approved % share of trust funds held by the Receiver for the Miranda loan (#06090659);

c. The sum of \$5,729.02 to be paid from TBM's Approved % share of the net sale proceeds from the sale of the REO derived from the Stewart loan (#07111829).

4. Schupak's liability for loan charges incurred to date for the Poirier loan (#06030207) shall be limited to the sum of \$8,000 to be paid from Schupak's Approved % share of the net sale proceeds from the sale of the REO derived from this loan.

5. Ball's liability for loan charges incurred to date for the Rednour loan (#07051062), the Campa-Perez loan (#07061095) and the Wedding loan (#07061109) shall be paid by and be limited to the funds held in trust by the Receiver at the time of the distribution of the REO derived from these loans.

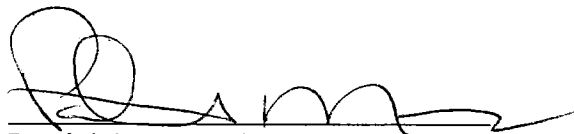
6. The corresponding totals in the Exhibits attached to Petition 43 shall be adjusted to reflect the changes set forth in this Stipulation.

7. TBM, Schupak and Ball shall remain responsible for their Approved % share of all reasonable and necessary expenses of sale of any asset sold by Receiver or his agent to be paid from the claimant's Approved % share of the sale proceeds provided that those sale expenses are approved in advance by claimant or the Court.

8. TBM, Schupak and Ball shall remain responsible for their Approved % share of all expenses relating to the loan/REO paid by Receiver after the date of this stipulation provided the expense or category of expenses is approved in advance by claimant.

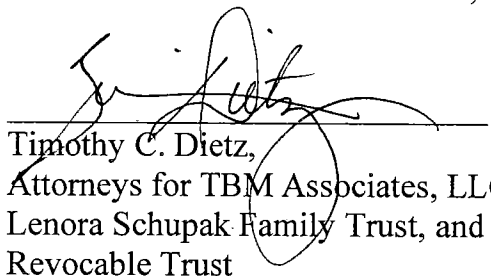
9. Except as provided above, the recommendations of the Receiver contained in *Petition No. 43, Receiver's Claims Report on the Warehouse Credit Facility Claims* remain unchanged.

GUTTILLA MURPHY ANDERSON



Patrick M. Murphy
Attorneys for the Receiver

RYAN RAPP & UNDERWOOD, P.L.C.



Timothy C. Dietz,
Attorneys for TBM Associates, LLC, The Eugene and
Lenora Schupak Family Trust, and the Lydia Ball
Revocable Trust

1157-001(106940)