

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

CASE NO. 07-2492-CA

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida
limited liability company, et al.,

Defendants.

RECEIVER'S MOTION TO SET ASIDE CLERK'S DEFAULT

Michael Goldberg, as State Court Appointed Receiver ("Receiver") over M.A.M.C. Incorporated (manager of the Defendant in the instant litigation, M.A.M.C. Windward, LLC ("Windward")), and loan servicer over the named Defendants, Neuberger Berman Trust Company, Lesage Inc., and Barkay Investments, Inc. ("Investor Defendants"), by and through undersigned counsel, moves this Court for an Order Setting Aside the Clerk's Defaults, and as grounds therefore states:

1. On May 20, 2008, undersigned counsel filed a Motion for Enlargement of Time to Respond to the Complaint on behalf of the Receiver, M.A.M.C. Windward and the Investor Defendants, including the above-named Investor Defendants.

2. On June 5, 2008, Luanne M. Rogers, CLAS, CFLA, a Civil Litigation Specialist with Coleman, Hazzard & Taylor, P.A., forwarded to the Clerk's office the attached Defaults. The Defaults were subsequently entered with the Clerk.

3. These Defaults were entered in violation of the applicable rules of Civil Procedure which provide:

When a party against whom affirmative relief is sought has failed or serve any paper in the action, the party seeking relief may have the Clerk enter a default against the party failing to serve or file such paper. Rule 1.500(a), Fla.R.Civ.P. (2008).

Any Clerk's action may be suspended or altered or rescinded by the Court upon motion. Rule 1.60, Fla.R.Civ.P.

4. The purpose of the entry of a default is to speed the cause along and prevent dilatory or procrastinating defendants from impeding the plaintiff from establishment of his claim is not a procedure intended to furnish the advantage to the plaintiff so that a defense may be defeated or a judgment reached without difficulty that arises from a contest from the Defendant. The policies of the law favors adjudication of claims on the merits. *North Shore Hospital, Inc. v. Barber*, 143 S.2d 849 (Fla. 1962).

5. In this case the Plaintiff has yet to serve all of the defendants and therefore there is no prejudice to the motion to enlarge time and there was no legal basis for entry of the defaults.

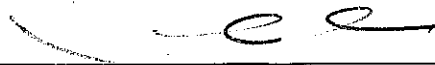
WHEREFORE, the Receiver moves for the Court to set aside the Defaults improperly entered against Neuberger Berman Trust Company, Lesage Inc., and Barkay Investments, and for such other and additional relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 24th day of June 2008, to: **J. Michael Coleman, Esquire**, *Attorneys for Plaintiff*, 2640 Golden Gate Parkway, Suite 304, Naples, Florida 34105.

Respectfully submitted,

BERGER SINGERMANN
Attorneys for Defendants
1000 Wachovia Financial Centre
200 South Biscayne Boulevard
Miami, Florida 33131
Phone: (305) 755-9500
Fax: (305) 714-4340

By: 

JAMES D. GASSENHEIMER
Florida Bar No. 959987
E-Mail: jgassenheimer@bergersingerman.com

1149094-1

COLEMAN, HAZZARD, & TAYLOR, P.A.
ATTORNEYS AT LAW

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June 5, 2008

Charlotte County Clerk of Court
Attn: Circuit Civil
350 E. Marion Avenue
Punta Gorda, FL 33951

Re: Goodman, Trustee v Preserve at Windward
Case No. 07-2492-CA
Our File No. 5126-19

Dear Clerk:

Enclosed are three Motion for Clerk's Default and three Order of Default, which we have prepared, in the above-referenced matter. As of this date, we have still not received any response from Defendants, LESAGE INC., NEUBERGER BERMAN TRUST CO., and BARKAY INVESTMENTS, INC., with regard to this action. Therefore, if the Order of Default meets with your approval, please execute the Orders and provide conformed copies to us in the enclosed self-addressed envelope.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

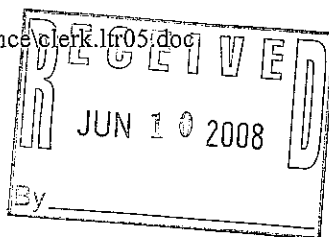


Luanne M. Rogers, CLAS, CFLA
Civil Litigation Specialist

Enclosures

Copy to: Client, All Counsel

M:\Goodman\Preserve\Correspondence\clerk.ltr05.doc



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA

CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

MOTION FOR DEFAULT

Plaintiff, KENNETH D. GOODMAN, TRUSTEE, moves for an entry of default by the Clerk against Defendant, NEUBERGER BERMAN TRUST CO., for failure to serve any paper on the undersigned or file any paper as required by law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was furnished by U.S. Mail to James D. Gassenheimer, Esq., and Monica F. Klein, Esq., The Gassenheimer Law Firm, 307 Continental Plaza, 3250 Mary Street, Coconut Grove, FL 33133, and James P. S. Leshaw, Esq., Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, this 9th day of June, 2008.

COLEMAN, HAZZARD & TAYLOR, P.A.

By: 

J. Michael Coleman, Esq.

Florida Bar No. 606618

Attorneys for Plaintiff

2640 Golden Gate Parkway

Suite 304

Naples, FL 34105

(239) 298-5200

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA

CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

DEFAULT

A default is entered against Defendant, NEUBERGER BERMAN TRUST CO., for failure to serve or file any pleadings on Plaintiff or with this Court within the time required by law.

BARBARA T. SCOTT
CLERK OF THE COURT

Date: _____

By: _____
As Deputy Clerk

Conformed copies to:

J. Michael Coleman, Esq.,
James D. Gassenheimer, Esq.,
Monica F. Klein, Esq.,
James P. S. Leshaw, Esq.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
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CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

MOTION FOR DEFAULT

Plaintiff, KENNETH D. GOODMAN, TRUSTEE, moves for an entry of default by the Clerk against Defendant, LESAGE INC., for failure to serve any paper on the undersigned or file any paper as required by law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was furnished by U.S. Mail to James D. Gassenheimer, Esq., and Monica F. Klein, Esq., The Gassenheimer Law Firm, 307 Continental Plaza, 3250 Mary Street, Coconut Grove, FL 33133, and James P. S. Leshaw, Esq., Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, this 4th day of June, 2008.

COLEMAN, HAZZARD & TAYLOR, P.A.

By: 

J. Michael Coleman, Esq.
Florida Bar No. 606618
Attorneys for Plaintiff
2640 Golden Gate Parkway
Suite 304
Naples, FL 34105
(239) 298-5200
(239) 298-5236 telefax

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA

CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

DEFAULT

A default is entered against Defendant, LESAGE INC., for failure to serve or file any pleadings on Plaintiff or with this Court within the time required by law.

BARBARA T. SCOTT
CLERK OF THE COURT

Date: _____

By: _____
As Deputy Clerk

Conformed copies to:

J. Michael Coleman, Esq.,
James D. Gassenheimer, Esq.,
Monica F. Klein, Esq.,
James P. S. Leshaw, Esq.

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA

CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

MOTION FOR DEFAULT

Plaintiff, KENNETH D. GOODMAN, TRUSTEE, moves for an entry of default by the Clerk against Defendant, BARKAY INVESTMENTS, INC., for failure to serve any paper on the undersigned or file any paper as required by law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was furnished by U.S. Mail to James D. Gassenheimer, Esq., and Monica F. Klein, Esq., The Gassenheimer Law Firm, 307 Continental Plaza, 3250 Mary Street, Coconut Grove, FL 33133, and James P. S. Leshaw, Esq., Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, this 4th day of June, 2008.

COLEMAN, HAZZARD & TAYLOR, P.A.

By: 

J. Michael Coleman, Esq.

Florida Bar No. 606618

Attorneys for Plaintiff

2640 Golden Gate Parkway

Suite 304

Naples, FL 34105

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

DEFAULT

A default is entered against Defendant, BARKAY INVESTMENTS INC., for failure to serve or file any pleadings on Plaintiff or with this Court within the time required by law.

BARBARA T. SCOTT
CLERK OF THE COURT

Date: _____

By: _____
As Deputy Clerk

Conformed copies to:

J. Michael Coleman, Esq.,
James D. Gassenheimer, Esq.,
Monica F. Klein, Esq.,
James P. S. Leshaw, Esq.