

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: CACE08018154 (08)

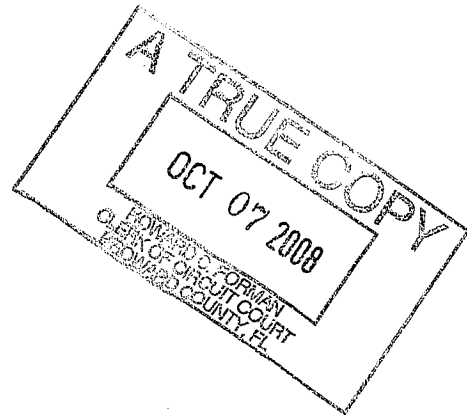
JERICHO ALL-WEATHER
OPPORTUNITY FUND, L.P., a Delaware
limited partnership,

Plaintiff,

vs.

515 SEABREEZE, LLC, a Florida
corporation, et al.,

Defendants.



ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Michael I. Goldberg, on behalf of and as Receiver over M.A.M.C. Incorporated d/b/a Berman Capital Management (“MAMC”), by and through undersigned counsel, files this answer and affirmative defenses to the Complaint in this action, and states:

1. Defendant MAMC is without sufficient knowledge, and therefore denies the allegations contained in paragraph 1 of the Complaint.
2. The allegations contained in paragraph 2 of the Complaint are not directed toward Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 2 of the Complaint.
3. Denied.

5. The document attached as Exhibit "A" to the Complaint speaks for itself. MAMC denies the allegations contained in paragraph 5 of the Complaint to the extent that they conflict with Exhibit "A" to the Complaint.

6. The document attached as Exhibit "B" to the Complaint speaks for itself. MAMC denies the allegations contained in paragraph 6 of the Complaint to the extent that they conflict with Exhibit "B" to the Complaint.

7. The documents attached as Exhibit "C" and Exhibit "D" speak for themselves. MAMC denies the allegations contained in paragraph 7 of the Complaint to the extent that they conflict with Exhibit "C" and Exhibit "D" to the Complaint.

8. The allegations contained in paragraph 8 of the Complaint are not directed toward Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 8 of the Complaint.

9. Denied.

10. The allegations contained in paragraph 10 of the Complaint are not directed toward Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 10 of the Complaint.

COUNT I – ACTION ON PROMISSORY NOTE

11. MAMC restates the responses to the allegations as contained in paragraphs 1-10 above.

12. MAMC admits that this purports to be an action for damages in excess of \$15,000, exclusive of interest, court costs, and attorneys' fees. MAMC otherwise denies the allegations contained in paragraph 12 of the Complaint.

13. The document described as the Note and attached as Exhibit "A" to the Complaint speaks for itself. MAMC denies the allegations contained in paragraph 13 of the Complaint to the extent that they conflict with Exhibit "A" to the Complaint.

14. The allegations contained in paragraph 14 of the Complaint are not directed toward Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 14 of the Complaint.

15. The allegations contained in paragraph 15 of the Complaint are not directed towards Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 15 of the Complaint.

MAMC denies that the Plaintiff is entitled to any of the relief sought in the Wherefore clause following paragraph 15 of the Complaint.

COUNT II – FORECLOSURE OF FIRST MORTGAGE

16. MAMC restates the responses to the allegations as contained in paragraphs 1-15 above.

17. MAMC admits that this purports to be an action to foreclose a mortgage on property located in Broward County, Florida. MAMC otherwise denies the allegations contained in paragraph 17 of the Complaint.

18. The document described as the Note and attached as Exhibit "A" to the Complaint speaks for itself. MAMC denies the allegations contained in paragraph 18 of the Complaint to the extent that they conflict with Exhibit "A" to the Complaint.

19. The allegations contained in paragraph 19 of the Complaint are not directed towards Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 19 of the Complaint.

20. The allegations contained in paragraph 20 of the Complaint are not directed toward Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 20 of the Complaint.

21. The allegations contained in paragraph 21 of the Complaint are not directed toward Defendant MAMC, and thus, MAMC does not respond to this allegation. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 21 of the Complaint.

22. The allegations contained in paragraph 22 of the Complaint are not directed towards Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 22 of the Complaint.

23. Denied.

MAMC denies that the Plaintiff is entitled to any of the relief sought in the Wherefore clause following paragraph 23 of the Complaint.

COUNT III – ACTION ON SECURITY AGREEMENT

24. MAMC restates the responses to the allegations as contained in paragraphs 1-15 and 18-21 above.

25. The document described as the Mortgage and attached as Exhibit “B” to the Complaint speaks for itself. MAMC denies the allegations contained in paragraph 25 of the Complaint to the extent that they conflict with Exhibit “B” to the Complaint.

26. The allegation contained in paragraph 26 of the Complaint are not directed towards Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 26 of the Complaint.

27. The allegations contained in paragraph 27 of the Complaint are not directed towards Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 27 of the Complaint.

MAMC denies that the Plaintiff is entitled to any of the relief sought in the Wherefore clause following paragraph 27 of the Complaint.

COUNT IV - ACTION ON GUARANTIES

28. MAMC restates the responses to the allegations as contained in paragraphs 1-15 and 18-21 above.

29. The documents described as the Unconditional Guarantees attached as Exhibit “F” to the Complaint speak for themselves. MAMC denies the allegations contained in paragraph 29 of the Complaint to the extent that they conflict with Exhibit “F” to the Complaint.

30. The allegations contained in paragraph 30 of the Complaint are not directed towards Defendant MAMC, and thus, MAMC does not respond to these allegations. MAMC is otherwise without sufficient knowledge, and therefore denies the allegations contained in paragraph 30 of the Complaint.

MAMC denies that the Plaintiff is entitled to any of the relief sought in the Wherefore clause following paragraph 30 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

MAMC has been discharged from any and all duties, responsibilities and liabilities on the Promissory Note.

Second Affirmative Defense

Plaintiff should be estopped from enforcing any rights arising from its business transaction with MAMC.

Third Affirmative Defense

Plaintiff waived any rights arising from its business transaction with the Defendants.

Fourth Affirmative Defense

The Plaintiff's duty to act in good faith was a condition precedent to the bringing of each Count of the Complaint. That condition precedent has not occurred, or been performed, and has not been waived by MAMC.

Fifth Affirmative Defense

The Plaintiff is barred from recovery, because it gave no consideration or there was a failure of its consideration.

Sixth Affirmative Defense

The Plaintiff has failed to mitigate its damages, if any.

Seventh Affirmative Defense

The Plaintiff's claims are barred in that the transaction between the parties is a usurious transaction and the interest allegedly charged, including all closing costs, prepayment penalties and payments made on the entire outstanding loan as opposed to interest payments made only on the amounts disbursed, is a greater rate of interest than is allowed by Florida law and the Plaintiff had the intent to willfully and knowingly take more than the legal rate of interest for the use of the money loaned.

Eighth Affirmative Defense

The Plaintiff is not entitled to the total amount of the money loaned pursuant to the Promissory Note, plus interest, costs and attorney's fees. The Plaintiff, to the extent that the Court does determine a default thereunder, is only entitled to a judgment based on the total of the monies actually advanced on the loan and properly expended in the course of construction. The Plaintiff in this action has not advanced the full amount of the monies upon which it seeks a judgment. The Plaintiff is only entitled to a judgment based upon the funds actually paid out by the Plaintiff, not the entire loan amount.

Ninth Affirmative Defense

MAMC, via the Receiver, has acquired the services of Berger Singerman, P.A. and is obligated to pay Berger Singerman, P.A. a reasonable fee for services rendered. The Defendants, jointly and severally, demand an award of attorney's fees and costs in defense of this action.

Tenth Affirmative Defense

The Plaintiff is barred from recovery on its Complaint in whole or in part, due to its own unclean hands.

Eleventh Affirmative Defense

MAMC has a superior in interest to all liens recorded prior to the date of the deed. Further, MAMC has an interest superior to the Plaintiff's interest in the subject property.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail (jst@fcohenlaw.com) and U.S. Mail on this **7th day of October 2008**, to: **James S. Telepman, Esquire, Attorneys for Plaintiff**, COHEN, NORRIS, SCHERER, WEINBERGER & WOLMER, P.A., 712 U.S. Highway One, Suite 400, (M/A: P.O. Box 13146), North Palm Beach, Florida 33408-7146.

Respectfully submitted,

BERGER SINGERMANN
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By: 

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Florida Bar No. 606421

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