

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

CIVIL DIVISION

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.

**NOTICE OF APPEARANCE AND NOTICE OF ADOPTION
OF PRIOR ANSWER AND AFFIRMATIVE DEFENSES**

BERGER SINGERMAN and JAMES D. GASSENHEIMER, hereby enter their Appearance as Counsel for Michael I. Goldberg, as Receiver over MAMC Windward, LLC, M.A.M.C. Incorporated, and on behalf of the Second Mortgage Holders (as that term is defined in the Complaint), who have been served with process (hereinafter collectively referred to as the "Defendants"), and hereby request that copies of all pleadings, correspondence, notices, etc., be sent to:

James D. Gassenheimer, Esquire

BERGER SINGERMAN

1000 Wachovia Bank Building

200 South Biscayne Boulevard

Miami, Florida 33131

Direct Line: (305) 714-4383

Telephone: (305) 755-9500

Facsimile: (305) 714-4340

E-Mail: jgassenheimer@bergersingerman.com

Additionally, hereby give notice of appearance on behalf of the additional 2nd mortgage holders as that term is defined in the Complaint, and adopt as their answer and affirmative defenses the attached previously filed answer and affirmative defenses.

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

2. The additional served parties are:
- (a) Scott J. Modist
 - (b) Deborah Modist
 - (c) James B. Jones
 - (d) Sharon L. Jones
 - (e) Jonathan Tepper
 - (f) Samuel M. Meline, DMD
 - (g) Kenneth Flanz
 - (h) Douglas Winfield Clanton

Respectfully submitted,

BERGER SINGERMAN
Counsel for Receiver, Michael Goldberg
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By: 

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ARIADNA HERNANDEZ
Florida Bar No. 020953
ahernandez@bergersingerman.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail, Federal Express (Overnight Mail to the Clerk's Office) and U.S. Mail on this **18th day of March 2008**, to **J. Michael Coleman, Esquire, Attorneys for Plaintiff**, COLEMAN HAZZARD & TAYLOR P.A., 2640 Golden Gate Parkway, Suite 304, Naples, Florida 34105.

Respectfully submitted,

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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,

CASE NO. 07-2492-CA

Plaintiff,

v.

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

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Michael I. Goldberg, as Receiver over MAMC Windward, LLC, M.A.M.C. Incorporated, and on behalf of the Second Mortgage Holders (as that term is defined in the Complaint), who have been served with process (hereinafter collectively referred to as the "Defendants"), by and through undersigned counsel, files this answer and affirmative defenses to the Kenneth D. Goodman Trustee Complaint ("Complaint"), and states:¹

1. Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 1 of the Complaint.
2. Admitted.
3. Admitted.
4. Denied.

¹ The Receiver and undersigned counsel do not file an answer on behalf of the defendants identified as the Percentage Interest Borrowers who have been served. The Receiver is in the process of hiring separate counsel to represent these interests.

5. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 5 of the Complaint.

6. Denied.

7. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 7 of the Complaint.

8. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 8 of the Complaint.

9. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 9 of the Complaint.

10. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 10 of the Complaint.

11. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 11 of the Complaint.

12. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 12 of the Complaint.

13. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 13 of the Complaint.

14. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 14 of the Complaint.

15. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 15 of the Complaint.

16. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 16 of the Complaint.

17. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 17 of the Complaint.

18. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 18 of the Complaint.

19. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 19 of the Complaint.

20. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 20 of the Complaint.

21. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 21 of the Complaint.

22. M.A.M.C. Windward LLC admits that it owns real property in Charlotte County, Florida, but denies the remaining allegations contained in paragraph 22 of the Complaint.

COUNT I
PROMISSORY NOTE

23. The Defendants restate the responses to the allegations as contained in paragraphs 1-9 above.

24. The Defendants admit that this purports to be an action for damages in excess of \$15,000, exclusive of interest, costs, and attorneys' fees, but deny that any damages exist.

25. Denied.

26. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 26 of the Complaint.

27. Paragraph 5 of the Promissory Note attached to the Complaint as Exhibit "A" speaks for itself.

28. Admitted.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 35 of the Complaint.

36. Denied.

The Defendants deny that the Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 36 of the Complaint.

COUNT II
FORECLOSURE AS TO CONDOMINIUMS

37. The Defendants restate the responses to the allegations as contained in paragraphs 1-4, and 6-22 above.

38. The Defendants admit that this purports to be an action to foreclose a mortgage on real property in Charlotte County, Florida.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Admit.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 50 of the Complaint.

51. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 51 of the Complaint.

52. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 52 of the Complaint.

53. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 53 of the Complaint.

54. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 54 of the Complaint.

55. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations in paragraph 55 of the Complaint.

56. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 56 of the Complaint.

57. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 57 of the Complaint.

58. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 58 of the Complaint.

59. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 59 of the Complaint.

60. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 60 of the Complaint.

61. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 61 of the Complaint.

62. The Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 62 of the Complaint.

63. Denied.

64. Denied.

The Defendants deny that Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 64 of the Complaint.

COUNT III
FORECLOSURE AS TO PARCEL ONE-VACANT LAND

65. The Defendants restate the responses to the allegations as contained in paragraphs 1-4, 6-9, and 19-22 above.

66. The Defendants admits that this purports to be an action to foreclose a mortgage on real property in Charlotte County, Florida.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Admit.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 78 of the Complaint.

79. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 79 of the Complaint.

80. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 80 of the Complaint.

81. The Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 81 of the Complaint.

82. Denied.

83. Denied.

The Defendants deny that Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 83 of the Complaint.

COUNT IV
FORECLOSURE AS TO PARCEL TWO-VACANT LAND

84. The Defendants restate the responses to the allegations as contained in paragraphs 1-4, 6-9, and 19-22 above.

85. The Defendants admit that this purports to be an action to foreclose a mortgage on real property in Charlotte County, Florida.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Admit.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 97 of the Complaint.

98. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 98 of the Complaint.

99. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 99 of the Complaint.

100. The Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 100 of the Complaint.

101. Denied.

102. Denied.

The Defendants deny that Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 102 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Defendants have 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 the Defendants.

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 the Defendants.

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

The Defendants have acquired the services of Berger Singerman, P.A. and each 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

M.A.M.C. Incorporated does not have the authority to accept service of process on behalf of any of the Percentage Interest Borrowers and the Second Mortgage Holders as those terms are defined in the Complaint.

Twelfth Affirmative Defense

The Complaint should be dismissed for failure to join indispensable party Mitchell Morgan.

Thirteenth Affirmative Defense

M.A.M.C. Incorporated lacked the corporate authority to assign the interests of the Percentage Interest Borrowers.

Fourteenth Affirmative Defense

M.A.M.C. Incorporated lacked the corporate authority to obligate the Percentage Interest Borrowers to the Promissory Note attached as Exhibit "A" to the Complaint.

Fifteenth Affirmative Defense

The interests collaterally assigned in Exhibit "C" of the Complaint on July 14, 2006 were extinguished by a sale of the property in bankruptcy under 11 USC § 363 subsequently confirmed under a plan of reorganization under 11 USC § 1129 on October 25, 2006.

Sixteenth Affirmative Defense

MAMC Windward LLC took title free and clear of all liens by virtue of a Trustees deed which is superior in interest to all liens recorded prior to the date of the deed, said liens having been extinguished by a sale of the real property in Bankruptcy.

Respectfully submitted,

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By:  _____

FOR
 JAMES D. GASSENHEIMER
 Florida Bar No. 959987

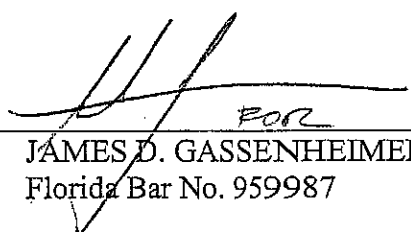
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this 1st day of August 2008, to: **J. Michael Coleman, Esquire, Attorneys for Plaintiff**, COLEMAN HAZZARD & TAYLOR P.A., 2640 Golden Gate Parkway, Suite 304, Naples, Florida 34105.

Respectfully submitted,

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By: _____


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