

USDC SCAN INDEX SHEET



CAG 4/24/06 13:35

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

307

DECL.

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FILED
APR 21 2006
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [Signature]

8 Attorneys for Defendants EMVEST MORTGAGE FUND
9 LLC; EMVEST, INC.; and MILON LYLE BROCK,

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 EMVEST MORTGAGE FUND, LLC;
18 EMVEST, INC.; and MILON LYLE
19 BROCK,

20 Defendants.

21 CASE NO. 04 CV 2295 (DMS) (POR)

22 **DECLARATION OF TIMOTHY J.**
23 **CANTY, III IN SUPPORT OF**
24 **DEFENDANTS' OPPOSITION TO**
25 **RECEIVER'S FIFTH VERIFIED REPORT**

26 **Date:** April 28, 2006
27 **Time:** 1:30 p.m.
28 **Judge:** Hon. Dana M. Sabraw
Courtroom: 10

29 [FILED BY FACSIMILE]

30 ORIGINAL

307 cag

1 I, Timothy J. Canty, hereby declare as follows:

2 1. I am the President of Emvest Incorporated and have been since its inception in
3 2002. I am also the President of Emerald Bay Funding, Inc., and have been since its inception in
4 2002. I am also Vice President of Emerald Bay Financial, Inc., and have been since the second
5 quarter of 1998. I have personal knowledge of the facts set forth herein and, if called as a
6 witness, I could and would testify competently to such facts.

7 2. Attached as Exhibit 1 to the Memorandum of Points and Authorities in Support of
8 Defendants' Response to Receiver's Fifth Verified Report is a Summary of Receivership Fees
9 and Expenses that I created using the fee and cost information reported by the Receiver on the
10 website at www.Emvest.Info.

11 3. Attached as Exhibit 2 to the Memorandum of Points and Authorities in Support of
12 Defendants' Response to Receiver's Fifth Verified Report is summary that I created showing the
13 fees paid to the Receiver to date per the Fund's QuickBooks database. I have also summarized
14 information from the financial statements attached to the Receiver's Fifth Verified Report in
15 order to show the amount of additional fees the Receiver seeks to be paid and the amount by
16 which he has under-reported the Accrued Expenses-Receiver on the Fund's March 31, 2006
17 Balance Sheet.

18 4. Attached as Exhibit 3 to the Memorandum of Points and Authorities in Support of
19 Defendants' Response to Receiver's Fifth Verified Report is a summary that I prepared of the
20 fees and costs requested by the Receiver's counsel, the amount that he has been paid to date and
21 the amount that he now seeks to be paid. I pulled these amounts from pages 2 and 3 of the Final
22 Reporting of Counsel's Fees and Costs filed by the Receiver's counsel on April 7, 2006.

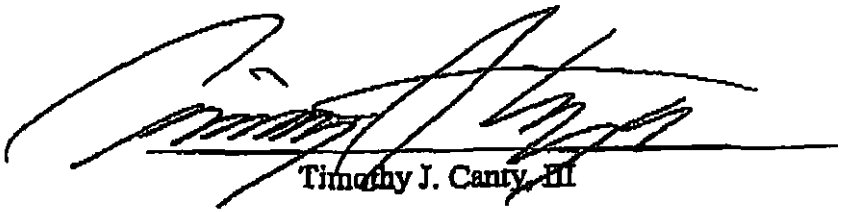
23 5. Attached as Exhibit 4 to the Memorandum of Points and Authorities in Support of
24 Defendants' Response to Receiver's Fifth Verified Report is a true and correct copy of
25 Defendants' counsel's April 17, 2006 letter to the Receiver's counsel.

26 6. Attached as Exhibit 5 to the Memorandum of Points and Authorities in Support of
27 Defendants' Response to Receiver's Fifth Verified Report is a true and correct copy of the
28 Receiver's counsel's April 17, 2005 letter to Defendants' counsel.

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Executed this 21st day of April 2006, at San Diego, California.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.



Timothy J. Canty III

SD:22145331.1

3 **PROOF OF SERVICE**

4 I, Lisa Whitaker, declare:

5 I am a citizen of the United States and employed in San Diego County, California. I am
6 over the age of eighteen years and not a party to the within-entitled action. My business address
7 is Suite 3300, Symphony Towers, 750 B Street, San Diego, California 92101. On **April 21,**
8 **2006**, I served a copy of the within document(s):

9 • **DECLARATION OF TIMOTHY J. CANTY, III IN SUPPORT OF**
10 **DEFENDANTS' OPPOSITION TO RECEIVER'S FIFTH VERIFIED REPORT**

- 11 by transmitting via facsimile the document(s) listed above to the fax number(s) set
12 forth below.
- 13 by placing the document(s) listed above in a sealed envelope with postage thereon
14 fully prepaid, in the United States mail at San Diego, California addressed as set
15 forth below.
- 16 by personally delivering the document(s) listed above to the person(s) at the
17 address(es) set forth below.

18 Molly White, Esq.
19 Susan F. Hannan, Esq.
20 Jose Sanchez, Esq.
21 Securities and Exchange Commission
22 5670 Wilshire Boulevard, 11th Floor
23 Los Angeles, CA 90036
24 Tel. (323) 965-3998 / Fax (323) 965-3908


*Attorneys for Plaintiff SECURITIES
AND EXCHANGE COMMISSION*

25 James R. Felton, Esq.
26 Greenberg & Bass
27 16000 Ventura Blvd., Suite 1000
28 Encino, CA 91436
Tel (818) 986-5687 / Fax (818) 986-6534

*Attorneys for Receiver
DENNIS MURPHY*

I am readily familiar with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
Service on that same day with postage thereon fully prepaid in the ordinary course of business.
I am aware that on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose
direction the service was made. Executed on **April 21, 2006**, at San Diego, California.



Lisa Whitaker