

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry

Case No. 2008-CP-26-1265

Service Corporation of South Carolina,

Plaintiff,

vs.

Malibu Pointe Development, LLC, and  
Janice B. Musante,

Defendants.

**ORDER APPOINTING A RECEIVER**

FILED  
09 MAR 28 PM 3:48  
CLERK OF COURT

This matter is before the Court on the Motion of Plaintiff Service Corporation of South Carolina ("Plaintiff"), seeking appointment of a Receiver pursuant to the provisions of its loan documents with the Defendant Malibu Pointe Development, LLC ("Defendant"), and S.C.Code Ann. § 15-65-10(1) (2006). Plaintiff's Motion was based upon the Verified Complaint, the loan documents, and Plaintiff's Memorandum of Law in Support of Motion for Appointment of Receiver. The Court finds that all parties who were entitled to receive notice of this hearing received adequate and proper notice.<sup>1</sup> No written objection was filed to Plaintiff's motion, but counsel for Defendant appeared and argued against the relief requested.

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After considering the arguments of counsel, the proffers and evidence submitted, reviewing the file in this matter, including the applicable loan documents, and from the pleadings before me, it appears to the Court's satisfaction that the Plaintiff is the owner and holder of that certain Mortgage dated as of January 25, 2006 in the original principal amount of \$21,000,000.00

<sup>1</sup> Defendant Malibu Pointe filed a motion for a continuance of the hearing, alleging insufficient notice under Rule 6, SCRCPP, and alleging the existence of equitable lien claimants who did not have notice of this hearing. After considering the arguments of counsel and the pleadings before the Court, including the rules, the Court finds that defendant Malibu Pointe did receive timely and adequate notice of today's hearing, and that the all parties who were

("Mortgage"), on the real property that is the subject of this proceeding, which Mortgage was executed and delivered by defendant Malibu Pointe Development, LLC, ("Defendant" or "Malibu Pointe") to Plaintiff as security for the indebtedness evidenced by the Note that is the subject of the pending action. The Court further finds that Plaintiff has instituted the above action to foreclose the Mortgage. The property which is the subject of this proceeding is a condominium project located at 1707 Perrin Drive, North Myrtle Beach, SC 29582 ("Mortgaged Property").

It further appears that the Plaintiff, by reason of provisions contained in the Mortgage, has an apparent right to receive the rents and profits from the Mortgaged Property pending the foreclosure, and is entitled to the appointment of a receiver by reason of said provision for the appointment of a receiver in the Mortgage, as well as the grounds set forth in the Verified Complaint and Memorandum of Law in Support of Motion for Appointment of Receiver filed in connection herewith.

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NOW, THEREFORE, on motion of William H. Short, Jr., attorney for the Plaintiff, but specifically without prejudice to any defenses of any or all Defendants,

IT IS ORDERED, ADJUDGED, AND DECREED:

(1) That Robert A. Kerr, Jr., Esq. of Hagood & Kerr, P.A., be appointed receiver under the provisions of the Mortgage ("Receiver"), to take possession of the Mortgaged Property, and to perform the acts and functions that are more particularly hereinafter set forth, with such appointment to be effective March 19, 2008.

(2) The Receiver is directed to demand and take over from the Malibu Pointe and/or any agent acting for Malibu Pointe, all funds on hand, including all security deposits of all tenants, if any, all contracts for the purchase of individual condominium units and deposits, if any, all rents

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entitled to receive notice did receive notice and have either chosen not to appear (or, in the case of defendant Janice Musante), have notified the Court that they did not object to the relief sought by Plaintiff.

and profits, all bank accounts, and all books of account and any and all other financial records of every character relating to the rents, profits, issues, and expenses of the Mortgaged Property.

(3) Defendant Malibu Pointe and its agents, servants, and employees are ordered to cooperate with the Receiver and appear at such times as may be required to sign such documents as may be necessary to evidence the Receiver's rights, powers, and entitlements with regard to the Mortgaged Property as herein provided, and are ordered to furnish such records and other information as the Receiver may require, and to execute such documents as are necessary or convenient for the continued operation of the Mortgaged Property.

(4) The Receiver is authorized to offer for rent or lease such portions of the Mortgaged Property and other facilities as are available for rent for such periods of time as may be within or extend beyond the period of the Receivership, and to collect all rentals and profits, including revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of the Malibu Pointe or its agents or employees from any and all sources arising from or attributable to the Mortgaged Property, including, without limitation, all receipts, revenues and credit card receipts collected from renters of units, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property (including, without limitation, from the rental of any office space, retail space, unit or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, food and

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beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance (collectively "Rents and Profits").

(5) The Receiver is authorized to offer for sale condominium units of the Mortgaged Property ("Units"), and is authorized to sell individual Units for a sale price that is commensurate with previously sold condominium units on the Mortgaged Property. All net proceeds ("Proceeds") received from the unit sales shall be held in an escrow account by the Receiver pending further order of the Court.

(6) The Receiver is authorized to disburse such funds as may be required from time to time for the management, maintenance, and upkeep of the Mortgaged Property, including utilities, heat, repairs, taxes, insurance, reasonable advertising expenses, and such other expenses as are incident and necessary to the reasonable and efficient management and operation thereof, and the marketing and sale of Units.

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(7) The Receiver is directed to use all reasonable efforts to obtain maximum revenue for the Mortgaged Property and to operate the Mortgaged Property with a view towards protecting the assets of the Mortgaged Property. For this purpose, the Receiver may employ the services of other management companies or agents, and may engage in forms of advertising and promotion.

(8) The Receiver is authorized to employ, discharge, supervise, and pay, on behalf of the Receivership estate all brokers, attorneys, accountants, servants, managing agents, employees, or maintenance and/or service personnel considered by the Receiver to be necessary for the efficient management of the Mortgaged Property, and to facilitate sales of Units.

(9) The Receiver is further authorized and required to perform or cause to be performed all services, in addition to the foregoing, necessary for the management of the Mortgaged Property,

including institution of legal actions in the name of and at the expense of the Receivership estate to enforce the collection of rents, charges, and fees.

(10) The Receiver is appointed and is to act solely as Receiver in connection with the Mortgaged Property and its properties, and is in no sense as Receiver of any individual personal defendant or defendants.

(11) The Receiver is directed, on behalf of the Receivership estate, to procure or maintain, at the expense of the Receivership estate, public liability insurance, workmen's compensation insurance if applicable, and fire and extended coverage insurance, for the protection of the Receiver, the owner of the Mortgaged Property, the Plaintiff, and any other mortgage creditors and lien claimants who are parties defendant, as their interests may appear.

(12) The Receiver shall file with the Clerk of this Court and forward to counsel for the parties monthly accountings certified by the Receiver to be accurate, reflecting all receipts and all disbursements made during the preceding accounting period, applicable to the management of the Mortgaged Property.

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(13) As required by the provisions of S.C. Code Ann. § 15-65-60 (1976), the estimated value of the Mortgaged Property sought to be placed in the hand of the Receiver is fixed at the sum of \$275,000.00 (tax assessors current fair market value); said valuation being solely for the purpose of said Section 15-65-60 (1976) and not for any other purpose. If Malibu Pointe shall, within ten (10) days after the date hereof, file a good and sufficient bond with and approved by the Clerk of this Court in double the value of said Mortgaged Property with sufficient surety as provided by law, then this Order shall thereupon be vacated and be of no effect.

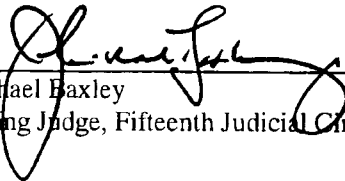
(14) The compensation of the Receiver shall be at an hourly rate of \$250.00 per hour. The Receiver is authorized to deduct from the funds on account in the operating account for the

Mortgaged Property on the 20<sup>th</sup> day of each month his compensation based for the prior month. Any party to this proceeding, or the Receiver, may petition this Court in the future to amend or revise the rate of compensation set forth herein.

(15) The Court finds that the Plaintiff is entitled to payment of all Rents and Profits, and Proceeds, after payment of operational expenses, including the Receiver's monthly compensation at the rate set forth hereinabove. The payment of such net income realized from the Mortgage Property shall be applied, in the sole discretion of the Plaintiff, as a credit against the outstanding balances owed under the Note.

(16) The Receiver may apply to this court for further and other instructions and for such further power as may be necessary to enable the Receiver to properly carry out the terms of this order and fulfill its duties as Receiver.

(17) This Order is not and shall not be construed as an Order adjudicating a default under the Note, Mortgage, or other loan documents involved herein; nor is it an adjudication of any issue involved in the case; any and all issues being hereby specifically preserved for hearing and adjudication at a later date or dates.

  
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J. Michael Baxley  
Presiding Judge, Fifteenth Judicial Circuit

March 25, 2008