

STATE OF SOUTH CAROLINA
COUNTY OF Horry

Service Corporation of South Carolina,

Plaintiff,

vs.

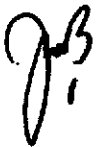
Malibu Pointe Development, LLC,
and Janice B. Musante,

Defendants.

Malibu Pointe Development, LLC,

Third Party Plaintiff,

vs.

 National Bank of South Carolina, N.A. and
Toni Burnette, Kerry Stanko, Thomas P.
Harrall, Robert Castellani, Kevin Castellani,
Stuart Haas, Walter Johnson, Arville
Nichols, John Bernabi, Edward Raliski, Ray
Guinta, Mark Wander, B& A Investments,
Terry Bush, L.J. Rogers, Ronald Rogers,
Mandee Welch, Anthony Honeycutt, Peter
Damen, Steven Damen, Terry Brown,
Dennis Myers, Bruce Bright, Wayne Bright,
Tim Tippman, David McCulloch, Dan
Millard, Kyle Taylor, Brad Conklin, Dawn
Boivin, Douglas Ford, Thomas Hastings,
Michael Mockler, Brett Setzer, John Booher,
Pearla Morris, Thomas Ray, Daniel
McCulloch, John L. Thomas, Featured
Properties, LLC, Gregory Carper, Lawrence
Sclaroff, Robert W. Brooks, Jr., January
Janick, J. Clay Branyon, Joseph Johnson, Jr.,
Stephen Orr, Jr., Roy Clyburn, Jr., Christian
Millitello, Janice Musante, Keith Gottlieb,
Jayne Workman,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-26-1265

**ORDER SUPPLEMENTING
ORDER APPOINTING RECEIVER
ENTERED MARCH 28, 2008**

ORDER CONSOLIDATING ACTIONS

**ORDER REFERRING THE
FORECLOSURE PORTION OF THIS
CASE TO THE MASTER IN EQUITY**

(Non-Jury)

HORRY COUNTY
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MILLANNE HOGGINS
CLERK OF COURT

Date of Hearing: June 3, 2008
Trial Judge: J. Michael Baxley
Plaintiff's Attorney: Richard M. Smith
Defendant's Attorney: Janet Haigler
Receiver: Robert A. Kerr, Jr.
Other Counsel: John E. Copeland, David B. Miller, Randall K. Mullins
F. Miles Adler, Henry F. Sewell, Jr.
Court Reporter: Pamela Ozment-Cartee

THIS MATTER came before the Court on June 3, 2008, at the request of Robert A. Kerr, Jr., Esq., (the "Receiver"), concerning his management and operation of the property for which he was appointed as Receiver by this Court on March 28, 2008 (the "March 28 Order"). The March 28 Order appointed the Receiver to take possession of certain real property located at 1707 Perrin Drive, North Myrtle Beach, South Carolina 29582 (the "Malibu Pointe Property").

The Receiver requested that this Court conduct a hearing in accordance with Paragraph 16 of the March 28 Order which authorizes the Receiver to apply to this Court for further and other instructions and to request such further powers as may be necessary to enable the Receiver to properly carry out the terms of the March 28 Order and fulfill his duties as Receiver. At the outset of the hearing, the Receiver identified several issues for which he requested either further instructions or additional powers from this Court, as follows:

1. The Receiver advised the Court that he had received a written demand from Defendant Malibu Pointe Development LLC ("Defendant Malibu") that the Receiver defend certain lawsuits filed against the Defendant Malibu by certain purchasers of condominium units at the Malibu Pointe Property. A list of these lawsuits (the "Separate Purchaser Lawsuits") is attached hereto as Exhibit "A". The Receiver advised the Court that the parties bringing these lawsuits against Defendant Malibu had also been named as Third Party Defendants by Defendant Malibu in this case and that Defendant Malibu had also filed a Motion to Consolidate the Separate Purchaser Lawsuits (the "Consolidation Motion") with the instant case. The Receiver

advised the Court that he did not think it was either appropriate or within his powers as Receiver to defend the Separate Purchaser Lawsuits on behalf of Defendant Malibu;

2. The Receiver advised the Court that he had encountered difficulties with title insurance companies in signing deeds transferring individual condominium units at the Malibu Pointe Property and requested that this Court clarify that the Receiver had the authority to sign deeds and other documents necessary to close such transactions and to supplement the March 28 Order with language acceptable to the title insurance companies so that the Receiver could transfer insurable title to condominium units;

3. The Receiver advised the Court that Defendant Malibu Pointe had questioned his authority to negotiate the prices at which he could sell condominium units and that there was a current disagreement between the parties concerning the authority of the Receiver to negotiate such prices in accordance with the terms of the March 28 Order;

4. The Receiver requested clarification from the Court regarding his authority and ability to represent the interests of the Defendant Malibu in connection with the Homeowners' Association established for the Malibu Pointe Property prior to his appointment as Receiver; and,

5. Finally, the Receiver requested clarification from this Court as to whether he was required to serve copies of any accountings filed by him with this Court upon all of the Third Party Defendants named herein or whether he could be permitted to post such reports on his website.

Appearing before the Court were the Receiver, counsel for the Plaintiff, counsel for Defendant Malibu, and counsel for certain of the Third Party Defendants.

During the course of the Hearing, Defendant Malibu withdrew its request that the Receiver defend the Separate Purchaser Lawsuits and further requested that it be permitted to

substitute counsel to defend the Separate Purchaser Lawsuits. This latter request was not opposed by any other party appearing at the Hearing.

In addition, it does not appear to the Court that any party appearing at the hearing contests or opposes the Consolidation Motion filed by Defendant Malibu that requests the consolidation of the Separate Purchaser Lawsuits with this lawsuit.

After considering the arguments of counsel, the proffers and evidence submitted, reviewing the file in this matter, and from the pleadings before me,

IT IS ORDERED, ADJUDGED AND DECREED:

1. This Order incorporates by reference this Court's Order of March 28, 2008, which shall remain in full force and effect. To the extent of a conflict between the provisions of this Order and the Order of March 28, the provisions of this Order shall control; however, it is the intent of this Court that the Receiver shall continue to act as Receiver in accordance with all the duties and obligations as set forth in the March 28 Order which are incorporated by reference.

2. The Separate Purchaser Lawsuits are hereby consolidated with this case under the case number set forth in the caption above and the Clerk of this Court is hereby authorized and directed to take all actions and to send all notices as may be necessary to effectuate the consolidation of the Separate Purchaser Lawsuits with this case.

3. It shall be the responsibility of the Defendant Malibu to defend all claims brought in the Separate Purchaser Lawsuits as consolidated herein and the Receiver shall not have any duty or obligation to defend any claims brought against Defendant Malibu.

4. To the extent the Bellamy Law Firm has appeared as counsel for Defendant Malibu in the Separate Purchaser Lawsuits, the Bellamy Firm is hereby relieved of its duties as counsel for Defendant Malibu and the Finkel Law Firm LLC is hereby substituted in its stead.

All further pleadings served or to be served upon Defendant Malibu in this action shall be served upon the Finkel Law Firm LLC.

5. This Court declines to accept complex jurisdiction in this Case at this time and, upon completion of the consolidation of the Separate Purchaser Lawsuits into this action, the Plaintiff's action to foreclose its security interest in the Malibu Pointe Property and any defenses thereto shall be severed from this case and shall be referred to the Horry County Master in Equity, who shall be authorized to make findings of fact and conclusions of law with any appeal directly to the South Carolina Supreme Court. All actions at law, including tort and breach of contract claims for damages, shall remain in this Court in this civil action. The actions at law will remain on the general docket and proceed in the normal fashion and the Clerk of this Court is hereby authorized and directed to take all steps necessary to sever the foreclosure action and to refer it to the Special Master in Equity.

JWS
6. Based upon the representations of the Receiver and due to the changing market conditions in the North Myrtle Beach area, it is apparent to this Court that the Receiver should have wide discretion with respect to his ability to sell condominium units. Accordingly, Paragraph 5 of the March 28 Order is hereby amended as follows:

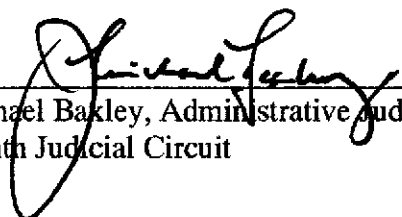
The Receiver is authorized to offer for sale condominium units of the Malibu Pointe Property ("Units") and authorized to sell or convey individual Units at such prices that he deems appropriate in the exercise of his business judgment as Receiver and which are acceptable to the Plaintiff herein. The power granted to the Receiver to sell individual Units at the Malibu Pointe Property shall include, but not be limited to, the power to transact all and every kind of business whatsoever necessary or convenient for the sale of said property, to enter into agreements to sell said Units, to execute and deliver a deed (with covenants of warranty) conveying said Units, to collect all monies for the sale of same, to satisfy liens against the property and to do all things necessary to effectuate the said sale and to execute settlement statements, affidavits, disclosures and all other closing documents and to execute all instruments reasonably required by the buyer(s) for the obtaining of financing for the purchase of same, and to take such other and further actions as may be required to sell the Units, all without the necessity of consent or joinder of the title holder.

7. The Receiver is hereby authorized to exercise any and all rights and duties that Defendant Malibu has with respect to the Malibu Pointe Property and the Malibu Pointe Homeowner's Association, including, but not limited to, the rights and duties granted to Defendant Malibu as Grantor in that certain Master Deed of Malibu Pointe Horizontal Property Regime, recorded in Deed Book 3304, page 1609 ("Master Deed"), and with respect to the Units owned by Defendant Malibu, to vote the interests held by Defendant in the Malibu Pointe Homeowners' Association pursuant to the Master Deed.

8. The Receiver shall not be required to mail copies of his accountings in this case to all of the Third Party Defendants herein but shall post copies of such accountings on his website (www.HagoodKerr.com) so that they are freely available for review by the Third Party Defendants and other parties to this case.

IT IS SO ORDERED.

July 2, 2008.



J. Michael Bakley, Administrative Judge
Fifteenth Judicial Circuit

EXHIBIT A

1. *Ray v. Malibu Pointe Development, LLC*, C/A No. 2008-CP-26-4431