

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION

Plaintiff,

v.

BRENT BORLAND, BORLAND CAPITAL
GROUP, LLC, and BELIZE
INFRASTRUCTURE FUND I, LLC

Defendants, and

CANYON ACQUISITIONS, LLC, and
ALANA LaTORRA BORLAND,

Relief Defendants

CASE NO. 18-cv-4352 (PCK)

**ORDER GRANTING EMIGRANT RESIDENTIAL, LLC’S
MOTION TO MODIFY ASSET FREEZE ORDER [D.E. 12]**

This Cause having come before the Court on Intervenor EMIGRANT RESIDENTIAL, LLC’S (“EMIGRANT”) Motion to Modify Asset Freeze Order and the Court having considered the Motion, allegations therein, and the Court file,

This Court finds:

Petitioner, EMIGRANT RESIDENTIAL, LLC, has alleged it is a New York Limited Liability Company, formerly known as EMC LLC, resident in Florida, operating and doing business in Palm Beach County, Florida and that Defendant, ALANA LA TORRA-BORLAND, herein “Mortgagor” is justly indebted to EMIGRANT as evidenced by a certain promissory note executed and delivered to EMIGRANT MORTGAGE COMPANY on July 3, 2008, in the amount of \$1,100,000.00, with an adjustable rate of interest.

In order to secure payment of the note identified above, EMIGRANT alleged the Defendant ALANA LA TORRA-BORLAND and BRENT BORLAND executed, and delivered to EMIGRANT MORTGAGE COMPANY, a real estate mortgage, herein the “Mortgage” encumbering certain real property situated in Palm Beach County, Florida, described as follows: 1034 Lewis Cove Road, Delray Beach, Fl. 33483-6513, the legal description of which is:

Lot 63, DELRAY BEACH SHORES, according to the plat thereof, as recorded in Plat Book 23, Page 167, of the Public Records of Palm Beach County, Florida.

Parcel Identification Number: 12-43-46-21-15-000-0630

EMIGRANT further alleged the Mortgage was recorded in the Official Records of Palm Beach County, Florida, on July 8, 2008, in Official Record Book 22745 at Page 1358 and Emigrant’s mortgage was executed long before the SECURITIES AND EXCHANGE COMMISSION (“SEC”) action and associated claims became known.

Based on the aforementioned allegations, the Mortgage of EMIGRANT is a mortgage being a lien superior in dignity to any subsequent right, title, claim, lien or interest arising out of Mortgagor or the Mortgagor’s predecessors in interest. As a secured creditor with a superior interest to the SEC and all other creditors, Emigrant should be entitled to the relief sought herein. *S.E.C. v. Spongetech Delivery Sys., Inc.*, 98 F. Supp. 3d 530, 537 (E.D.N.Y. 2015). The Court notes that the SEC is not opposing the relief sought herein.

On July 8, 2019, in Palm Beach County, Florida, EMIGRANT filed its action to foreclose its mortgage, case number CASE NO.: 50-2019-CA-008754-XXXX-MB. Based on this Court’s Asset Freeze Order, EMIGRANT’S foreclosure action is stayed. By its Motion, EMIGRANT sought limited relief from the Asset Freeze Order, permitting its foreclosure case to go forward and the subject property be sold to the highest bidder. This Court finds the Motion is well taken.

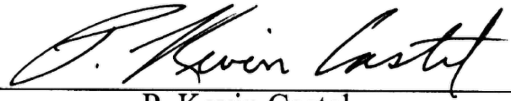
It is Therefore ORDERED and ADJUDGED:

EMIGRANT’S Motion to Modify be and the same is hereby GRANTED. This Court hereby modifies its freeze order, therefore permitting the subject property to be sold by the Palm Beach County Circuit Court in accordance with its regular sale procedures. The Clerk of Palm Beach County Circuit Court may issue title to the successful bidder. Emigrant may be paid if the property is sold to a third party. Any surplus funds shall remain with the Clerk of the Palm Beach County

Circuit Court subject to this Court's modified freeze order, with any surplus funds remaining frozen pending further order of this Court.

The relief granted herein is contingent on the Palm Beach County Circuit Court finding that Emigrant's mortgage is a first mortgage and any Final Judgment of Foreclosure provides that the Palm Beach County Circuit Court acknowledges and agrees to said modified Freeze Order.

SO ORDERED.



P. Kevin Castel
United States District Judge

New York, New York
May 6, 2020