

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

IN RE:

Case No. 6:05-bk-06110-ABB  
11 U.S.C. § 304 Proceeding

MARINER INTERNATIONAL  
BANK, LTD.,

Debtor in a Foreign Proceeding  
\_\_\_\_\_ /

MARCUS WIDE,  
not individually, but solely as the  
duly appointed liquidator for  
Mariner International Bank, Ltd.,

Petitioner,

v.

SANDY MAGID, as successor  
Trustee of the Alta Trust  
dated June 30, 1999, CHALLENGE  
FINANCIAL SERVICES, LLC f/k/a  
VANCLEAVE ENTERPRISES, LLC,  
and CHALLENGE REALTY, INC.,

Respondents.  
\_\_\_\_\_ /

**ORDER AND CITATION OF CONTEMPT  
AGAINST CHALLENGE FINANCIAL  
SERVICES, LLC AND CHALLENGE  
REALTY, INC. FOR FAILING TO COMPLY  
WITH COURT ORDER, PROVIDING FOR  
OPPORTUNITY TO PURGE CONTEMPT,  
AND SCHEDULING  
FURTHER HEARING TO CONSIDER  
FURTHER RELIEF**

THIS CAUSE came on for hearing on April 25, 2006 (the "Hearing") pursuant to that certain Order (a) Granting Petitioner's Motion to Compel Challenge Financial Services, Inc.<sup>1</sup> and Challenge Realty, Inc.'s Compliance With Final Judgment, (b) Directing They Show Cause Why They Should Not Be Held in Contempt; and (c) Scheduling Further Hearing dated March 15, 2006 ("March 15th Order"). The Court has considered

<sup>1</sup> Challenge Financial Services, LLC is referred to as Challenge Financial Services, Inc. in various pleadings.

the record in this matter and the arguments of counsel.

**Background**

By way of background, this Court has already found and determined [which findings were memorialized in the March 15th Order] that:

A. In September 2001, Challenge Realty, Inc. ("Challenge Realty") and Mariner International Bank, Ltd. ("Mariner") entered into that certain "Mortgage Loan Assignment In Exchange For Cancellation of Promissory Note Agreement" ("Mortgage Assignment Agreement") by which Challenge Realty assigned to Mariner a pool of mortgage loans (including promissory notes, mortgages or deeds of trust and the like) ("Mortgage Loan Pool") in exchange for the cancellation of a promissory note from Challenge Realty to Mariner. As part of that transaction, Mariner agreed pursuant to that certain Loan Servicing Agreement to allow Challenge Financial Services, LLC ("Challenge Financial") to service the Mortgage Loan Pool for a fee. Copies of the Mortgage Assignment Agreement and Loan Servicing Agreement were attached to the Motion.

B. On April 20, 2005, Marcus A. Wide was duly appointed the liquidator for Mariner International Bank, Ltd. (the "Liquidator") by the High Court of St. Vincent and the Grenadines.

C. Since his appointment, neither the Liquidator nor Mariner has received any monies from Challenge Realty or Challenge Financial in connection with the Loan Servicing Agreement, the Mortgage Loan Pool, or otherwise.

D. On May 31, 2005, the Liquidator commenced this ancillary proceeding under then §304 of the Bankruptcy Code seeking, among other things, turnover from Challenge Realty and Challenge Financial of all assets of Mariner including the documents supporting the Mortgage Loan Pool and the monies derived there from ("Mortgage Pool Receipts").

E. On October 3, 2005, this Court issued its Final Judgment in this action which provided that:

**Alta Trust, challenge Financial Services, LLC f/k/a VanCleave Enterprises, Inc., and Challenge Realty shall promptly, and in no event more than 30 days from the date of this Order, turn over to the Liquidator or his agents all assets of Mariner or the estate of Mariner of which they have possession including but not limited to instruments, documents, mortgages, or chattel paper (“Mariner Assets”).**  
[emphasis added]

F. The Liquidator provided documentation evidencing that Challenge Realty and Challenge Financial received Mortgage Pool Receipts both prior to and subsequent to the entry of the Final Judgment and have failed to turn such monies over to the Liquidator.

By way of further background, the March 15th Order:

A. Instructed and directed Challenge Realty and Challenge Financial (the “Challenge Entities”) to fully comply with the Final Judgment;

B. Ordered the Challenge Entities to “provide an accounting to the Liquidator and his counsel detailing (a) the amount and date of receipt for all Mortgage Pool Receipts received by them from each of the borrowers in the Mortgage Loan Pool, (b) the amount, date of disbursement, and nature of disbursement, for all disbursements of the Mortgage Pool Receipts, (c) the last known balances on each of the loans of the Mortgage Loan Pool (including without limitation any refinancings, compromises, settlements, or restructurings of any of such loans),” (emphasis added); and

C. Ordered the Challenge Entities to “show cause ... why they should not be held in contempt of court for their failure to comply with the Final Judgment and, if applicable, their failure to comply with the terms of” the March 15th Order.

#### **Events After Entry of the March 15th Order**

Prior to the April 7th due date, the Challenge Entities provided to the Liquidator and his counsel documents purporting to evidence the receipt by them of Mortgage Pool Receipts; however, as of the April 7th due date, the

Challenge Entities provided no accounting as to the disbursement of Mortgage Pool Receipts as required by the March 15th Order.

Subsequent to the April 7th due date, the Challenge Entities provided to the Liquidator’s counsel correspondence and some documentation purporting to support an assertion that all of the Mortgage Pool Receipts received by the Challenge Entities were remitted to the United States government in connection with a criminal forfeiture action in the Western District of Wisconsin styled United States of America v. David Hampton Tedder, Case No. 02-CR-105-C (“Tedder Forfeiture Action”). Two Orders from the Forfeiture Action were presented to the Court at the Hearing.

#### **The Hearing**

At the Hearing, the Challenge Entities conceded that they received a small amount [approximated by the Challenge Entities as \$3,600] of Mortgage Pool Receipts after the issuance of the Final Judgment and that such amount was not remitted to the Liquidator as provided in the Final Judgment.

The Challenge Entities asserted at the Hearing that all of the other Mortgage Pool Receipts [approximated by the Challenge Entities as \$850,000] were not put in a segregated account as required by the Loan Servicing Agreement, were commingled into one or more accounts with other funds of the Challenge Entities, and were subsumed within the payments made by the Challenge Entities to the United States pursuant to Orders in the Tedder Forfeiture Action [approximated by the Challenge Entities as \$1.8 Million]. The Challenge Entities did not provide, or offer to provide, their bank statements or their books and records, demonstrating the tracing of the Mortgage Pool Receipts to the payments made to the United States in the Tedder Forfeiture Action.

Accordingly, it is **ORDERED, ADJUDGED, and DECREED** that:

1. The Challenge Entities are hereby cited for contempt for their violation of the Final Judgment by failing to remit to the Liquidator the Mortgage Pool Receipts received by them after the issuance of the Final Judgment.

2. The Challenge Entities are hereby cited for contempt for their violation of the March 15th Order by failing to provide an accounting of the disbursements of the Mortgage Pool Receipts.

3. The Court shall consider the appropriate relief needed in order to coerce the Challenge Entities' full compliance with the Final Judgment and the March 15th Order at a hearing to be held on **August 16, 2006 at 11:00 a.m.** at the United States Bankruptcy Court, Middle District of Florida, Orlando Division, 135 West Central Boulevard, 5th Floor, Courtroom A, Orlando, FL 32801. Such hearing may be canceled if the Liquidator agrees that the Challenge Entities have purged their contempt as set forth below or the matter is otherwise resolved by agreement.

4. The Challenge Entities may purge their contempt as stated in paragraph 1 by providing **by or before 5:00 p.m. on August 4, 2006:** a detailed accounting of the Mortgage Pool Receipts received by them after the issuance of the Final Judgment along with evidence of the tendering of payment to the Liquidator of such amounts.

5. The Challenge Entities may purge their contempt as stated in paragraph 2 by producing to the Liquidator **by or before 5:00 p.m. on August 4, 2006:** (a) copies, within their possession, custody, or control, of their bank account statements from August 2001 [one month prior to the Loan Servicing Agreement] until November 2005 [one month after the Final Judgment] for each account in which Mortgage Pool Receipts were ever deposited; (b) a copy in electronic form (i.e. copied onto a CD-ROM) of the Challenge Entities' entire internal accounting file including their general ledgers; and (c) an affidavit or sworn declaration by someone with personal knowledge detailing when, why, and how the Challenge Entities' became subject to Orders in the Tedder Forfeiture Action along with copies of all correspondence between or among the Challenge Entities, David Hampton Tedder, and the United States of America regarding the Tedder Forfeiture Action.

6. The Liquidator is authorized to take examinations under F.R.B.P. 2004 and/or depositions in aid of the Final Judgment against the Challenge Entities or any other person or entity in furtherance of determining the disposition by the Challenge Entities or others of the

Mortgage Pool Receipts or funds or property traceable to the Mortgage Pool Receipts.

Dated this 13<sup>th</sup> day of July, 2006.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge

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