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3-28-2012

Order on Motion to Lift Stay (BRANCH  
BANKING & TRUST)

Melvin K. Westmoreland  
*Superior Court of Fullton County*

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IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

**COPY**

BRANCH BANKING AND TRUST  
COMPANY, )

Plaintiff, )

v. )

TAMPA INVESTMENT GROUP, INC., )  
TAMPA FINANCIAL COMPANY, INC., )  
LEGACY INVESTMENT GROUP, LLC, )  
LEGACY COMMUNITIES, LLC, )  
A/K/A LEGACY COMMUNITIES )  
GROUP, LLC, ET AL., )

Defendants. )

Civil Action File No. 2009CV170995



**ORDER ON MOTION TO LIFT STAY**

This matter is before the Court on Plaintiff's Motion to Lift Stay to Amend Verified Complaint for Limited Purposes of Conforming Pleadings to the Evidence and Asserting Claims that are Subject to a Four Year Statute of Limitations and Request for Expedited Ruling on the Same. Upon consideration of the briefs on the motion and the record in this case, the Court finds as follows:

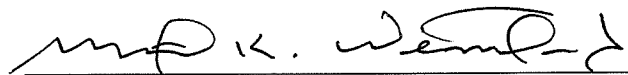
Plaintiff filed its original verified complaint on June 22, 2009. During discovery, Defendants filed a motion for summary judgment on January 29, 2010 and February 24, 2010. In response, Plaintiff filed cross motions on March 8, 2010 and April 2, 2010. Oral arguments were heard on September 8, 2010. On September 20, 2010, this Court issued a ruling ("MSJ Order") on the parties' cross-motions for summary judgment, in part issuing a stay of proceedings in this case pending the outcome of various appeals, including an appeal of the MSJ Order.

On July 1, 2011, the Court of Appeals issued its opinion on the MSJ Order in which it affirmed in part and reversed in part. On July 21, 2011, Defendants filed a petition for certiorari

with the Georgia Supreme Court in connection with the decision of the Court of Appeals on the MSJ Order. The petition for certiorari was granted, and the parties had oral arguments before the Georgia Supreme Court on February 6, 2012. An opinion was issued March 19, 2012, which, in part, remanded the case to the Court of Appeals with direction.

Notwithstanding the fact that the appeal remains pending, Plaintiff is seeking partial relief from the stay in order to amend their verified complaint to assert claims and conform the pleadings to the evidence. Plaintiff argues it will be over four years after Defendants executed certain loan documents before the appeal is resolved and, as a result, their claims will potentially be barred by the four year statute of limitations. This Court has the power to modify its judgments and orders when just cause is shown. See O.C.G.A. § 9-11-60(h). But for the stay entered in the case, Plaintiff would have been permitted to amend its Verified Complaint under O.C.G.A. § 9-11-15(a). Because the four year statute of limitations may bar the claims if the Court waits for the final resolution of the appeal and removal of the stay, it may be prejudicial to deny Plaintiffs motion. As such, the Court GRANTS Plaintiff's request to lift the stay for the limited purpose of asserting claims that are subject to a four year statute of limitations.

**SO ORDERED** this 28th day of March, 2012.

  
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MELVIN K. WESTMORELAND, SENIOR JUDGE  
Superior Court of Fulton County  
Atlanta Judicial Court

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