

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In Re: *

**Financial Resources Mortgage, Inc. and
C L and M, Inc.** *

Debtor(s) *

**Steven M. Notinger, Chapter 7 Trustee
for Financial Resources Mortgage, Inc.
and C L and M, Inc.** *

(Plaintiff) *

v. *

**Jamie Tebbe, Richard M. Frucci,
Christopher McHallum, Larry Mansfield
James Tebbe, Donald Dodge,
Dodge Financial, Great Land Project
Development, Harry & Thelma Bean,
Beverly & Martin Kopp, Harry &
Priscilla Bean, David Weber, Tammy
Dunn Alan & Susan McIlvene, Scott &
Ellen Wolff, Drexey Smith, Tinker Road
Development, LLC,
and Jessica Manoukian** *

(Defendants) *

**Chapter 7
Case Nos. 09-14565-JMD and
09-14566-JMD
(Jointly Administered)**

Adv. Pro: 09-1184-JMD

**Hearing Date: 12/17/09, 12/21/09
Hearing Time: 9:30 a.m.**

PRELIMINARY INJUNCTION

This matter came before the Court on December 17, 2009 and December 21, 2009, on the Chapter 7 Trustee/Plaintiff’s Motion for a Preliminary Injunction (the “Motion”). The Trustee has agreed and stipulated that the following individuals or entities are either (i) named as defendants in the Motion and appeared at the hearing through counsel or (ii) were not named

as defendants in the Motion but were represented by counsel at the hearing (collectively referred to herein as the “Defendants”):

1. James Tebbe
2. Richard M. Frucci and Linda L. Frucci
3. The Richard M. Frucci Trust
4. The Linda L. Frucci Trust
5. Paul L. Frucci and Lindsay M. Frucci
6. The Square Hill Trust
7. Harry and Priscilla Bean
8. Harry and Thelma Bean
9. Tammy Dunn
10. Martin and Beverly Kopp
11. David DeVeber
12. Scott and Ellen Wolff
13. Alan and Susan McIlvene
15. Sheri Dow
16. James and Cindy Murphy
17. Ronny Bean
18. Harry Bean IV
19. Jay Zito and JLZ Holdings, Inc.
20. Neil and Joyce Soloman
21. K. Richard Reader
22. Drexly Smith
23. Bradley Sams
24. Calvin Mosley, Jr.
25. Andrew Nicholas
26. Anthony and Susan Tebbe
27. Bobby McCray, Jr.
28. Jeremiah Ratliff
29. Albert Johnson
30. Marquand Manuel
31. Henry Domercant
32. Marcel Shipp
33. Knob Creek Partners
34. Jason Jefferson
35. Lonnie Chisenhall
36. Dennis and Shirley Strake
37. LeRon McClain
38. Thomas Spencer
39. Michael G. Mills
40. Charles P. Thomas
41. Paul and Rita Thole
42. Tommy Jackson
43. Avion Black, Jr.

44. Steven Cargile
45. Frank and Molly Omiyale
46. Terence Morris
47. Orlando Scandrlick
48. Christopher Chamberlain
49. Antoine Cason
50. Andrew Benedict
51. Brent and Kelly Sopel
52. Marcus Haislip
53. Johnny Baldwin
54. Jamie and Robin Tebbe
55. Mitchell and Karrie Maier
56. Avion Black
57. Paul DePartout
58. Alan Kirkman
59. Frances Spinale

The Trustee has agreed and stipulated that all other defendants named in the Motion and third parties or entities with a direct or indirect relationship to this proceeding or to the Debtors and who are served with a copy of this Order shall be referred to herein as the “John Doe Defendants”.

The Court having reviewed the Verified Complaint submitted by Plaintiff Trustee Steven M. Notinger (the “Trustee”) and the objections thereto filed with this Court, and having heard the arguments of parties, the testimony of the Trustee, and being advised the Defendants have stipulated to the terms hereof, the following Order is entered:

A. The Trustee has established a likelihood of success in seeking that various loans, mortgages, and other property owned or held by one or more trusts or individuals are property, under section 541 of the Bankruptcy Code. Such property is currently subject to dissipation due to (a) the collection, control and transfer of such property by third parties; (b) law suits in which such property is subject to attachment, levy and execution; and (c) the transfer of such property

by third parties through foreclosure or sale. The Trustee has also established that the estate may suffer irreparable harm if the collection, use and transfer of such property by third parties will not be significantly harmed by the issuance of an injunction limited in time and subject to further order of this Court. The balance of the harms from the issuance of a preliminary injunction favors the bankruptcy estate and the public interest is served by the issuance of the injunction to extend the stay under section 362 of the Bankruptcy Code to such property.

Although each of the Defendants do not consent to the above findings, Defendants do consent to the provisions of this Order.

Accordingly, it is hereby Ordered:

1. All defendants in this matter, including, without limitation, all John Doe Defendants who are served with a copy of this Order (collectively the “Enjoined Parties”), are hereby enjoined from spending, transferring or otherwise dissipating any payments, instruments, property, proceeds, funds and/or accounts in their possession or control on the date such party is served with this Order or received thereafter arising from any payment transactions, collection actions or activities, foreclosures, repossessions, deeds in lieu of foreclosure or similar actions (collectively the “Transaction Proceeds”) with respect to loan transaction and the collateral securing such loan transaction arranged by, funded by, serviced by or otherwise related in any way to C L and M, Inc. (“CLM”) or Financial Resources Mortgage Corp., Inc. (“FRM”) whether the same as a matter of record are held by a trust (a “Trust Loan”) or by an individual, or legal person (a “Non-Trust Loan” and collectively with Trust Loans the “Loans”) even if CLM and/or FRM were merely alleged escrow agents or servicing agents for the Loan;

2. The Enjoined Parties are hereby enjoined from spending, transferring or otherwise dissipating the Transaction Proceeds, and ordered to remit to Steven M. Notinger, the Chapter 7 Trustee (at the address noted in Paragraph 4B) within five (5) business days of receipt of the Order any Transaction Proceeds previously collected and held by them as of the date of the service of this Order or thereafter, unless counsel for any Enjoined Party and the Trustee agree in writing that the funds may be held and accounted for in another manner (an "Escrow Account"). The Trustee has agreed to permit such Transaction Proceeds to be held in a bona fide trust account established and maintained by legal counsel to the Defendants herein and to subsequent John Doe Defendants whose counsel later makes such a written agreement (an "Escrow Agreement"). In any case where an Escrow Agreement is established, the Trustee and legal counsel or firm holding the funds will prepare and send a joint letter to the borrower to the Loan enclosing this Order directing that payment be made to counsel for escrow pursuant to the Escrow Agreement.

3. Subject to the provisions of Paragraph 4, in the event that there is a payoff of a Loan the affected lender, Enjoined Party and/or the Trustee shall, as appropriate, be permitted to execute and deliver mortgage discharges or other lien releases as required. As provided by the provisions of Paragraph 2, any proceeds received from such a refinance or mortgage pay-off shall be paid to the Escrow Account or the Trustee as the case may be.

4. Except as provided for herein, until March 22, 2010, the Enjoined Parties are hereby enjoined from engaging in any of the following activities (a "Collection Action") unless (a) the Enjoined Party first provides ten (10) business days prior written notice to the Trustee (a "Collection Notice") that it intends to take a Collection Action; or (b) the Trustee provides prior written consent to the Collection Action to the Enjoined Party:

A. The commencement or continuation of, including the issuance or employment of process in, any judicial, administrative, or other action or proceeding against a borrower, or other party that is or may be obligated on amounts due on a Loan or is or may be the recipient of a fraudulent transfer or preference or is otherwise liable to the estate on a claim arising under chapter 5 of United States Bankruptcy Code or applicable law. However, if any Enjoined Party shall bring any action against any other third party (other than those parties against such an action would be prohibited under this paragraph), then the following shall apply: (i) the Enjoined Party shall provide notice to the Trustee of the action, including a statement as to why any damages that may be recovered would not constitute property of the bankruptcy estate, within 30 days of the commencement of such action; (ii) any collected, received or attached funds actually collected by the Enjoined Party shall be held in escrow accordance with the provisions of Paragraph 2 hereof; and (iii) the Trustee shall reserve his right to assert that any damages collected in such action are the Property of the bankruptcy estate unless and until he expressly waives said claim or the Court shall otherwise order. Provided, however, that the Trustee shall be deemed to have expressly waived any such claim unless he shall deliver his written intention to the contrary (to the Enjoined Party that is pursuing the claim) within 60 days after his receipt of the aforementioned notice;

B. The settlement, payment, collection, liquidation, foreclosure, deed-in-lieu or any other settlement or other resolution of any note(s), mortgage(s), payment(s), claim(s), action(s) or proceeding(s) related to a Loan.

Any Collection Notice shall include a summary with reasonable detail of the proposed collection activity and shall be sent via email and overnight mail to:

Steven M. Notinger, Chapter 7 Trustee
Donchess, Notinger and Tamposi, PC
547 Amherst St., Suite 204
Nashua, NH, 03063
steve@dntpc.com

with copy to his counsel:

James N. Donchess
Donchess, Notinger and Tamposi, PC
547 Amherst St., Suite 204
Nashua, NH, 03063
jim@dntpc.com

If the Trustee does not wish to consent to the Collection Action identified in the Collection Notice he must, prior to the expiration of the ten (10) business day period, file an objection with the Bankruptcy Court in which case the activity will be stayed and the Enjoined Party may not pursue such action unless or until such objection is overruled by the Bankruptcy Court. The Bankruptcy Court will, subject to court's calendar, schedule a hearing on the objection as promptly as the Court's calendar permits.

5. All Enjoined Parties are hereby ordered to provide to the Trustee on or before January 25, 2010, the following documentation:

A. A copy of any promissory note(s) and mortgage(s) related to any Loan along with a certification that the Enjoined Party has or does not have possession of the promissory note(s);

B. A copy of any cancelled check (both sides) or other evidence of payments or investments made by an Enjoined Party with respect to a Loan;

C. An accounting of all funds or payments received by any Enjoined Party with respect to any Loan; and

D. Correspondence of any nature by and between the enjoined Party and Debtors.

6. This Preliminary Injunction Order shall remain in full force and effect until March 22, 2010, unless extended, after notice and hearing by the Court (the "Injunction Termination Date"). In addition, as to any Enjoined Party failing to comply with the provisions of Paragraph 5, the Injunction Termination Date shall be automatically extended as to such Enjoined Party until the later of sixty (60) days after such party complies with the provisions of Paragraph 5 or March 22, 2009.

7. Unless the parties otherwise agree in writing or the Court orders otherwise, Transaction Proceeds may be distributed from an Escrow Account to the Enjoined Party on the next business day following the Injunction Termination Date, provided, however, if the related Collection Notice is first sent within ten (10) business days of the Injunction Termination Date the distribution, unless otherwise agreed, shall be deemed further stayed until the expiration of such ten (10) day period.

8. For the period commencing March 22, 2010 to June 22, 2010 the Enjoined Parties shall provide the Trustee with a Collection Notice at least ten (10) business days prior to commencing any of the actions in Paragraph 4A or 4B hereof; provided, however, that the Trustee shall not have the right to object to the distribution of the Transaction Proceeds arising from such activity without further order of the Court issued in connection with an Adversary Proceeding naming the Enjoined Party.

9. All non-Debtor parties and Enjoined Parties are hereby enjoined from proceeding, by way of lawsuit or otherwise, against property, trusts or individuals involved in any Loan including, without limitation, any attempts to replace or remove the trustee of any lender trust. This order shall be provided by the Trustee to the Belknap County Superior Court, Belknap County Probate Court and any other Court where there are actions pending which are affected by this Restraining Order, and the Restraining Order shall stay all pending actions for the duration hereof. The interim trustee of several lender trusts, appointed by the Belknap County Probate Court, shall take no further action pursuant to the Probate Court's prior orders. Notwithstanding the provisions of Paragraph 9 above, the beneficiaries under any lender trust may appoint a successor trustee to protect the interests of the trust beneficiaries if, and only if:

A. The beneficiaries provide written notice to the trustee of their intention to appoint a successor trustee and include in the notice the basis on which such appointment is made (for example, vote or consent of beneficiaries); and,

B. As a condition precedent to the effectiveness of any appointment, such appointed successor trustee shall expressly agree to be bound by the terms and provisions of this Order, including, but not limited to, provisions set forth in Paragraph 2; and,

C. To the extent any trust beneficiary or beneficiaries elect to appoint a successor trustee under this section, neither any appointed successor trustee nor any of the trust beneficiaries shall have the right to make any claim against the bankruptcy estate for any administrative expense on account of any actions taken by the successor trustee or any retained professionals; and,

D. The Bankruptcy Trustee, any successor trustee appointed hereunder and any beneficiaries of the lender trusts shall reserve their respective rights and claims as it pertains to whether the assets of any such investor trusts should or should not constitute property of the bankruptcy estate.

10. Notwithstanding anything to the contrary in this order, the Trustee or other interested party may seek to appoint a receiver in the state court actions for the purpose of putting any lenders into bankruptcy in this Court. Further, nothing in this order shall prevent any party from filing an involuntary bankruptcy petition against any of the debtor related entities, trusts or any other relevant party.

11. The Trustee shall be permitted to consent to an Enjoined Party advancing funds for the maintenance, repair, and security of the collateral securing a Loan and agreeing that such advance will be granted super priority status as if such advance was made under section 364(d) if the Collateral or the Transaction Proceeds later are ruled to be property of the estate, but only to the extent of the value of the collateral. If the advance is less than \$10,000 such agreement can be made without further order of the court.

12. The intent of this Order is to give the Trustee time to discover the Debtors' financial transactions while maintaining the status quo with regard to all Loans. This order does not constitute a finding that any particular Loan or the collateral securing the Loan is property of the estate but is entered with the consent of the Defendants. No party has waived any rights or defenses with regard to this matter. Any funds held or collected by the Trustee shall be held subject to any lien, claim or encumbrance as may be later determined by the Court at the request of the Court or any party.

13. If the Trustee desires to extend this Preliminary Injunction he must file a new Motion and Request for Hearing with the Court with appropriate notice to affected parties no later than March 10, 2010.

14. The provisions of this Order do not alter, amend or otherwise modify the automatic stay provided for under Section 362 of the Bankruptcy Code.

SO ORDERED.

Dated: December 22, 2009

/s/ J. Michael Deasy
J. Michael Deasy, US Bankruptcy Judge
For the District of New Hampshire