MIAMI-DADE   THURSDAY, MARCH 9, 2017

OFFICIAL COURT NEWSPAPER OF SOUTH FLORIDA

DailyBusinessReview.com
An ALM Publication   VOL. 91, NO. 185 $2.00

dbr

DAILY BUSINESS REVIEW

HIALEAH WAREHOUSE
ACQUIRED FOR $4M

SEE PAGE A9

Real Estate Finance Company Embroiled in Lawsuit Lauds Denial of Class Certification

Samantha Joseph, *Daily Business Review*

Haber Slade managing shareholder David Haber said the denial was procedural and will likely have little effect on association debt-collection efforts.

A specialty finance company is hailing a federal judge's denial of class certification in a lawsuit against it as a victory for condo and homeowners' associations looking to have new buyers cover delinquent assessments.

But eagle-eyed lawyers, like board-certified real estate attorney Michael Gelfand and Haber Slade managing shareholder David Haber, say the denial was procedural and will likely have little effect on association debt-collection efforts.

"The court merely determined … the plaintiffs didn't meet the requirements to have a class action," Haber said. "It didn't say that what the defendants did was right or equitable."

LM Funding heralded the order as "huge win for homeowners associations and every person who pays their fees and mortgages on time each and every month." It's filed a motion to dismiss, but the litigation is ongoing.

"The claim still survives," Gelfand said.

Publicly traded Tampa-based LM Funding America Inc. says it protects associations against mortgagees who wrongly claim reduced liability under Florida law. It contracts with condo and homeowners' associations, which assign it the right to recover unpaid assessments from delinquent owners or subsequent buyers, and then authorizes collection through a real estate law firm, Business Law Group. It fought back a proposed class action on usury charges from Wilmington Savings Fund Society FSB, an institutional investor that purchases distressed mortgages in default or foreclosure.

Wilmington attempted to gain class certification against LM Funding, CEO Bruce Rodgers and Business Law Group, seeking restitution, declaratory and injunctive relief for alleged unjust enrichment, civil

conspiracy and violations of Florida's Deceptive and Unfair Trade Practices Act. It claimed the finance company knowingly sought to collect more than allowed under safe harbor provisions in Florida condominium statutes created to limit buyers' exposure to pre-existing debt on properties purchased in foreclosure after the housing market collapse. These provisions cap first mortgagees' liability at 12 months' worth of past-due assessments or 1 percent of the original mortgage, whichever is less.

But Wilmington claimed the defendants sought to collect well above those limits as part of their business model. In one instance, it claimed the defendants attempted to collect more than $32,600, instead of $2,265, on a unit with an original mortgage debt of $226,500 and less than $4,300 in unpaid assessments accumulated in the 12 months before foreclosure.

"LMF earns most of its revenue by collecting or recovering the interest, late charges and fees on the outstanding assessments, rather than the outstanding assessments themselves," Wilmington claimed in the lawsuit pending before U.S. District Judge Charlene Edwards Honeywell, who rejected its case for certification.

LM Funding's chief executive celebrated the decision, saying bulk buyers often misrepresent themselves as first mortgage holders, and that the suit had already cost his company upward of $500,000.

"It was a long time coming, but class actions are the slip-and-fall of being a corporation," Rodgers said. "There's no way to know who is entitled to the safe harbor, unless they can show the chain of title. If they claim they are first mortgagees, then show chain of title."

Court records suggest Wilmington proved its standing as first mortgagee, then attempted to sue on behalf of a proposed class of investors, but it failed to gain certification.

"The court did not make any findings as to the merits of the case or the legality of the defendants' conduct," Wilmington's attorney, Brad Barrios of Bajo Cuva Cohen Turkel, said. We'll continue to prosecute the merits of the case on behalf of our client."

…………….