

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

IN RE:

Chapter 11

BRASOTA MORTGAGE COMPANY, INC., CASE NO: 8:05-bk-06215-KRM  
d/b/a Brasota Mortgage Company (LEAD CASE)  
FUNDING MANAGEMENT CORPORATION, CASE NO: 8:05-bk-06218-KRM  
CASE NO: 8:05-bk-02798-KRM  
(Jointly Administered)

Debtors.

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**ORDER GRANTING CHAPTER 11 TRUSTEE'S MOTION FOR (1) *NUNC PRO TUNC* SUBSTANTIVE CONSOLIDATION OF DEBTORS - BRASOTA MORTGAGE COMPANY, INC., FUNDING MANAGEMENT CORPORATION - AND NON-DEBTOR AFFILIATES, BRASOTA MORTGAGE COMPANY AND BMC REALTY, INC.; AND (2) PRESERVATION OF AVOIDANCE POWERS**

These cases came before the Court on June 8, 2005, upon final hearing on a Motion for (1) *Nunc Pro Tunc* Substantive Consolidation of Debtors - Brasota Mortgage Company, Inc., Funding Management Corporation - and Non-Debtor Affiliates, Brasota Mortgage Company and BMC Realty, Inc.; and (2) Preservation of Avoidance Powers (the "Motion" - Doc. 81) filed by GERARD A. MCHALE, JR., Chapter 11 Trustee (the "Trustee"). The Court having taken evidence and heard argument of counsel makes the following findings:

A. This Court has jurisdiction over the Motion and the Debtors (Brasota Mortgage Company, Inc. ("Brasota Inc.") and Funding Management Corporation ("Funding")) and non-debtor parties (Brasota Mortgage Company, a partnership ("BMC"), and BMC Realty, Inc. ("BMC Realty")) identified in

the Motion (collectively the "Entities"). Neither BMC nor BMC Realty has filed a response to the Motion. Gloria Morrison has executed and delivered to the Trustee a Disassociation from BMC.

B. Proper notice of the Motion and the hearings thereon has been given to all interested parties in accordance with the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court.

C. There is substantial identity between the Entities proposed for substantive consolidation.

D. Substantive consolidation is necessary to avoid some harm or to realize some benefit.

E. Creditors of the Entities have not relied solely on the credit of one of the Entities.

F. There is an absence of credible financial statements for the Entities.

G. There is a unity of interests or ownership between the Entities.

H. It is legally and practically impossible to segregate or ascertain the individual assets or liabilities of the respective Entities.

I. There have been transfers of assets between the Entities without the formal observance of corporate formalities.

J. The assets and business functions of the Entities have been commingled and are inextricably intertwined.

K. The Entities operated out of a single physical location in Bradenton, Florida.

L. No objecting creditor has shown that it will be prejudiced by substantive consolidation or *nunc pro tunc* substantive consolidation.

M. The economic prejudice of continued separateness outweighs the economic prejudice, if any, of substantive consolidation.

N. Substantive consolidation yields benefits offsetting the harm, if any, it may cause to any creditors or parties in interest.

O. These estates will benefit from *nunc pro tunc* substantive consolidation.

Accordingly, based on the foregoing findings and for the reasons stated orally and recorded in open court, it is -

**ORDERED** as follows:

1. The Motion is hereby granted as set forth herein. The Receiver's Limited Objection (Doc. 122) is hereby overruled.

2. Substantive consolidation is hereby granted with respect to the Entities *nunc pro tunc* to February 18, 2005.

3. The assets and liabilities of the Entities shall be pooled for the benefit of all creditors and the Entities

shall be treated as one economic entity for purposes of these bankruptcy cases.

4. Any person or entity in the possession, custody or control of any asset in the name of any of the Entities or the state court receivership estates, including any financial institution, shall immediately transfer and deliver such asset to the Trustee. In connection therewith, the Trustee and any such person or entity is hereby authorized and directed to execute any document reasonably necessary to effectuate the transfer and delivery.

5. The Trustee shall have standing and authority to assert or prosecute any claim or cause of action in favor of any of the Entities or these estates, including avoidance actions, for the benefit of all creditors.

6. No avoidance powers shall be eliminated by the substantive consolidation. Avoidance powers are expressly preserved including the preservation of avoidance claims by the formerly separate estates. The filing date of the original involuntary petition - February 18, 2005 - shall be the controlling date for the purpose of any avoidance actions.

7. The Court makes no determination at this time as to whether BMC was in fact a valid partnership or legal entity. The Court has also made no determination as to the

ownership of BMC or as to any partners of BMC, if, in fact, BMC is a partnership.

8. Notwithstanding the foregoing, solely for purposes of Section 543(c), the "commencement of the case" shall be deemed April 4, 2005 for Brasota Inc. and Funding and June 8, 2005 for BMC Realty and BMC; provided, however, the Receiver and his professionals shall file final applications for approval and payment of all fees incurred and reimbursement of costs for all work done in connection with any of the Entities or as Receiver both prior to and subsequent to the commencement of the receivership, which applications shall be subject to the exclusive jurisdiction and approval of this Court.

9. The Court makes no determination as to the nature of any creditor's transactions with or claims against any of the Entities. This Order shall not be construed to render moot, inadmissible or irrelevant any evidence of differences among creditors, or differences in transactions by creditors with any of the Entities.

**DONE AND ORDERED** in Tampa, Florida on June 9, 2005.

  
K. Rodney May  
United States Bankruptcy Judge

Copies to:  
LBR 1007-2 Parties in Interest List

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