UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

EDWARD R. WEBB, et al.,

Plaintiffs,

Civil Action No. 3:09-cv-00516-J-34JRK

vs.

GINN FINANCIAL SERVICES, LLP, et al.,

Defendants.
_____/

PLAINTIFFS' OPPOSITION TO MOTION TO STAY DISCOVERY FILED BY DEFENDANTS GINN FINANCIAL SERVICES, LLC; GINN TITLE SERVICES, LLC BAHAMAS SALES ASSOCIATE, LLC; AND EDWARD R. GINN, III (collectively "GINN")

The Ginn Defendants are desperate to avoid producing discovery on the issue of Plaintiff's appraisal fraud claims. Ginn's Motion to Stay Discovery is an effort to prevent Plaintiffs from obtaining discovery necessary to move forward with their appraisal fraud claims. Ginn's Motion to Stay Discovery should be denied because: (1) it will not eliminate the need for discovery on appraisal fraud issues; (2) Ginn has not shown good cause; (3) compared with the purported benefits of a stay, which are illusory, the burden of a stay on Plaintiffs would be significant.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Allegations of the Third Amended Complaint

The Third Amended Complaint ("TAC") alleges Defendants[1] engaged in an appraisal fraud scheme to suborn fraudulently inflated appraisals used to underwrite Plaintiffs' Ginn Sur Mer ("GSM") mortgage loans. The TAC describes in detail how certain defendants suborned fraudulently inflated appraisals from Pomeroy Appraisal Associates for a valuation including

[1] Plaintiffs and Defendant William McCracken filed a Stipulation of Dismissal on November 19, 2010 (Dkt. No. 89), dismissing Defendant McCracken with prejudice.

infrastructure and amenities that did not exist. When Pomeroy refused to provide the requested appraisals without stating that the valuation was "subject to" the completion of the nonexistent infrastructure and amenities, Ginn terminated Pomeroy's services. (TAC ¶¶ 32-59.) Ginn then suborned fraudulently inflated appraisals from a Bahamian appraiser, W. Carver Grant, which used a valuation that included nonexistent infrastructure and amenities. Notwithstanding knowledge that the W. Carver Grant appraisals were based on nonexistent infrastructure and amenities, Bobby Ginn caused Ginn Financial Services ("GFS"), Bahmas Sales Associate ("BSA") and McCracken to utilize the W. Carver Grant appraisals to approve Mortgagor Plaintiffs' GSM mortgage loans and disburse money at the closing of Plaintiffs' lot purchases. (TAC ¶¶ 69-70.) The moment Plaintiffs closed on their GSM lots they were immediately and directly damaged because they purchased lots that were, at the time of closing, worth far less than the fraudulent appraised value.

B. The Appraisal Fraud Cases

This case, filed on June 9, 2009, was the first action alleging appraisal fraud claims against the Ginn Defendants. Appraisal fraud counterclaims were subsequently filed in two other actions in this District, initiated by BSA, for the alleged breach of GSM mortgage notes: (1) *Bahamas Sales Associate, LLC v. Darryl Willis,* Case No. 3: 08-cv-1062-J-25MCR ("*Willis* Action") (Dkt. No. 42 - Counterclaim, dated February 3, 2010); and (2) *Bahamas Sales Associate, LLC v. Donald Cameron Byers*, Case No. 3:08-cv-1012-J-32MCR ("*Byers* Action") (Dkt. No. 64 - Counterclaim, dated February 5, 2010). On May 17, 2010, several additional plaintiffs filed appraisal fraud claims against the Ginn Defendants: *Mark F. Bailey, et al. v. ERG*

Enterprises, LP, et al., Case No. 3:10-cv-422-J-32JRK.[2] The appraisal fraud claims in the *Webb*, *Willis*, *Byers* and *Bailey* cases are substantially identical. The discovery deadlines in this case, as well as the *Willis* and *Byers* cases, are imminent:

***Webb* Case**	Filed June 9, 2009	Discovery Deadline: **February 1, 2011**
***Willis* Case**	BSA Filed November 4, 2008	Discovery Deadline: **January 3, 2011**
***Byers* Case**	BSA Filed October 21, 2008	Discovery Deadline: **February 11, 2011**
***Bailey* Case**	Filed May 17, 2010	No Case Management Order entered.

C. Ginn Discovery in the Appraisal Fraud Cases

Until recently, Ginn failed to take discovery on the appraisal fraud claims in this action, or in the *Willis* and *Byers* cases. (Ballinger Dec., ¶ 2.) Pending discovery in each case now includes:

***Webb* Case**

1) Ginn Requests for Production due December 3, 2010
2) Plaintiff Lot Representative Depositions (9) – January
3) Deposition of Plaintiffs' Expert

***Willis* Case**

1) Ginn Requests for Production due December 9, 2010
2) Willis Deposition – working to provide dates
3) Deposition of Plaintiffs' Expert

***Byers* Case**

1) Ginn Requests for Production due December 9, 2010
2) Byers Deposition – dates provided to Ginn
3) Deposition of Plaintiffs' Expert

[2] The *Bailey* case includes a second claim for fraud, against different Ginn and Lubert-Adler Defendants, arising out of a $675 million Credit Suisse Credit Facility that was used to loot the GSM Subdivision before the *Bailey* Plaintiffs entered into their lot purchase contracts.

Plaintiffs/Counterclaim Plaintiffs intend to provide timely responses to Ginn's requests for production. (Ballinger Dec., ¶ 3.) Plaintiffs' counsel provided Ginn with available dates for depositions of a representative for each Plaintiff lot in the *Webb* case (9 total), for Defendant/ Counterclaim Plaintiff Byers, and for Plaintiffs' Expert Richard Allen. Plaintiffs' counsel is working to find a date for the deposition of Defendant/Counterclaim Plaintiff Willis. (*Id.*, ¶ 4.)

D. Plaintiff /Counterclaim Plaintiff Discovery in the Appraisal Fraud Cases

Plaintiffs/ CC Plaintiffs served limited discovery in the appraisal fraud cases: identical sets of six Requests for Production to the Ginn Defendants in each case. Ginn served ambiguous written responses to Plaintiffs' written discovery and produced some documents. (*Id.*, ¶ 5-6.) Plaintiffs are moving to compel unequivocal written responses and production in all three cases. The Motion to Compel in this case is fully briefed. (*Id.*, ¶ 7.) CC Plaintiff Willis subpoenaed the deposition/documents of dismissed defendant (former Ginn Financial COO) William McCracken. This deposition is cross-noticed in the *Webb*, *Byers* and *Bailey* cases. (*Id.*, ¶ 8.)

***Webb* Case**

1) Plaintiffs' Six Requests for Production
2) Cross-notice for Deposition of William McCracken
3) Deposition of Ginn expert(s)

***Willis* Case**

1) Plaintiffs' Six Requests for Production
2) Subpoena to William McCracken
3) Deposition of Ginn expert(s)

***Byers* Case**

1) Plaintiffs' Six Requests for Production
2) Cross-notice for Deposition of William McCracken

***Bailey* Case**	1) Plaintiffs' Six Requests for Production
	2) Cross-notice for Deposition of William McCracken

II. ARGUMENT

A motion to stay discovery must be viewed within the context of the overall purpose of discovery under the Federal Rules of Civil Procedure: "to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts and, therefore, embody a fair and just result." *S.D. v. St. Johns County School District*, 2009 WL 3231654 at *1 (M.D. Fla. 2009). For this reason, a party seeking to stay discovery bears the burden of showing both: (1) good cause and (2) reasonableness. *Feldman v. Flood*, 176 F.R.D. 651, 652 (M.D. Fla. 1997). Judge Corrigan has elucidated the dangers of motions to stay discovery:

> Such motions are not favored because when discovery is delayed or prolonged it can create case management problems which impede the Court's responsibility to expedite discovery and cause unnecessary litigation expenses and problems. As a result, a request to stay all discovery pending resolution of a motion is rarely appropriate where resolution of the motion will not dispose of the entire case.

Id. (citations omitted).

A. Ginn Fails to Show Good Cause for a Discovery Stay

Although it is not necessary for the Court to decide the underlying motion to dismiss in order to rule on a motion to stay discovery, "[i]t is necessary for the Court to 'take a preliminary peek' at the merits of the motion to dismiss to see if it appears to be clearly meritorious and truly case dispositive." *Id.* (citations omitted). Here, Ginn claims it has "reason to believe that this case will be dismissed," citing this Court's Order granting a Motion to Dismiss on venue grounds in a separate action involving different Ginn Defendants: *Liles, et al. v. Ginn-LA West End*, Case No.

3:08-cv-1217-J-34JRK (Dkt. No. 189.)[3] Ginn argues a stay of discovery is appropriate "in light of the precedent set in the *Liles* action dismissing all of the claims of the very Plaintiffs in this case for improper venue." There are, at least, three significant problems with Ginn's reliance on the *Liles* Order.

First, Ginn fails to acknowledge the existence of a separate contract at issue in the appraisal fraud cases. Plaintiffs' Mortgage Notes with Defendant BSA underlie BSA's breach of contract claims in *Willis* and *Byers*, and Plaintiffs seek to void the Mortgage Notes in all of the appraisal fraud cases. Those Mortgage Notes include a Florida law and venue clause for "any litigation in connection with" the Notes. In light of the venue clause in Plaintiffs'/Counterclaim Plaintiffs' Notes, the *Liles* Order does not apply to the appraisal fraud claims.[4] (Dkt. 79 at 10-11.)

Second, Ginn fails to acknowledge controlling authority (set forth in Plaintiffs' Opposition to Ginn's Motion to Dismiss) on the ability of non-signatories to enforce a contractual venue clause. Ordinarily, a contractual forum selection clause cannot be invoked by a non-signatory to the contract in which the provision appears. *Cooper v. Meridian Yachts, Ltd.*, 575 F.3d 1151, 1169 (11th Cir. 2009). One exception to this general rule, relied upon by Ginn, is equitable estoppel. Ginn ignores 11th Circuit case law, repeatedly cited by Plaintiffs, establishing that: (1) the application of equitable estoppel requires a claim-specific analysis; and (2) only where a plaintiff's claim relies on the terms of a contract and attempts to hold a non-signatory defendant to those terms is the plaintiff bound by a venue clause in that contract. (Dkt. 79 at 6-7.) Third, Ginn's unsupported assertion that the non-signatory defendants are "closely related" to the appraisal fraud claims fails to apply the narrow "closely related" standard as set forth in *Lipcon v. Underwriters at Lloyd's London*, 148 F.3d 1285, 1299 (11th Cir. 1998). (Dkt. No. 79 at 7-9.)

[3] Edward Robert Ginn is the only Ginn Defendant common to this case and the *Liles* case.
[4] Ginn has taken advantage of the Florida law and venue clause in the Plaintiff Mortgage Notes to file the *Byers* and *Willis* actions in this District.

Ginn's "reason to believe" its motion to dismiss will be granted is not good cause for staying discovery in this case. Before a motion to stay discovery is granted the court must determine that the motion to dismiss is so clear "on its face [that] there appears to be an immediate and clear possibility that it will be granted." *Koock v. Sugar & Felsenthal*, 2009 WL 2579307 at *2 (M.D. Fla. 2009) (citing *Feldman*, 176 F.R.D. at 653). For the reasons set forth above, Ginn's Motion to Dismiss on venue grounds suffers serious infirmities. Therefore, Ginn cannot show good cause for staying discovery.[5]

B. Ginn Fails to Show a Discovery Stay is Reasonable in Light of the Other Pending Appraisal Fraud Cases

A court deciding whether to stay discovery pending resolution of a motion to dismiss is charged with balancing "the harm produced by delay in discovery against the possibility that the motion will be granted *and entirely eliminate the need for such discovery.*" *Id*. (Emphasis added). Significantly, a stay of discovery in this case would not eliminate the costs of discovery on appraisal fraud issues. Ginn has not moved to stay appraisal fraud discovery in the *Byers*, *Willis* and *Bailey* cases, where the scope of discovery on the appraisal fraud issues is substantially the same as in this case.

In fact, a motion to stay discovery in the *Byers* and *Willis* cases would face a significant hurdle: BSA initiated the *Byers* and *Willis* lawsuits, and Defendants Byers and Willis alleged appraisal fraud in connection with several affirmative defenses to BSA's claim for breach of the Mortgage Note. (*Willis* Dkt. No. 42; *Byers* Dkt. No. 64.) Even if the Ginn Defendants' Motions

[5] Ginn's reliance on *Chudasma v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997) is misplaced:

> The holding in *Chudasama* does not establish the general rule that discovery should not proceed while a motion to dismiss is pending. In *Chudasama*, the cause of action contested in the motion significantly enlarged the scope of discovery and was "especially dubious." Instead, *Chudasama* and its progeny "stand for the much narrower proposition that courts should not delay ruling on a likely meritorious motion to dismiss while undue discovery costs mount." *Koock*, 2009 WL 2579307 at *2 (quoting *In re Winn Dixie Stores, Inc. ERISA Litigation*, 2007 WL 1877887 at *1 (M.D. Fla. 2007).

to Dismiss the appraisal fraud counterclaims in *Byers* and *Willis* were granted, Defendants Byers and Willis would have the right to take discovery in support of the appraisal fraud allegations underlying their affirmative defenses. Therefore, staying discovery in this case would not relieve BSA, the Plaintiff in *Byers* and *Willis*, of the obligation to respond to discovery on appraisal fraud issues. Likewise, even if the counterclaims were dismissed, a stay would not relieve the other Ginn Defendants, as third-parties, of the obligation to respond to subpoenas seeking documents and testimony on appraisal fraud issues. Because the appraisal fraud issues will be litigated eventually, if not in this Court then in the *Byers* and *Willis* cases, there is no justification for staying discovery in this case. *See St. Johns County School District*, 2009 WL 3231654 at *2 (motion to stay denied where individual defendants would still be subject to discovery regarding Plaintiffs' claims, so that discovery was not avoidable)*; Feldman*, 176 F.R.D. at 653 (where issues for discovery would be litigated eventually in another case, "the main reason for staying discovery – the elimination of unnecessary expenditures of time, money and resources – is less compelling").

In addition, Ginn's claims of burden and expense ring hollow in light of recent action taken by BSA against one of the plaintiffs in the *Bailey* case. Notwithstanding the existence of appraisal fraud allegations in the *Bailey* case and an obligation to file any claim arising out of the same transaction or occurrence (the GSM mortgage loans with Ginn Financial and/or Bahamas Sales Associate) as a compulsory counterclaim in the *Bailey* case, BSA instead filed a separate state court action in New Jersey against one of the Bailey plaintiffs, Steven Bredahl, for breach of contract on two GSM Mortgage Notes. (Ballinger Dec. ¶ 33.) BSA filed its complaint against Mr. Bredahl in New Jersey state court notwithstanding a venue provision in the Mortgage Notes that allows for filing in this District and notwithstanding the fact that BSA's principal place of

business (along with BSA documents and several witnesses) are located in this District. The filing of the New Jersey state court action, which required Mr. Bredahl to retain New Jersey counsel (*Id.*), is the clearest example of forum shopping and harassment. Mr. Bredahl is required to raise any claims against BSA (arising out of his GSM mortgage loans with Ginn Financial and/or Bahamas Sales Associate) in the New Jersey state court action, including his claims for appraisal fraud already pending in the *Bailey* case in this district. Thus, with no apparent regard for the burden and expense involved, BSA is attempting to force Mr. Bredahl to litigate his appraisal fraud claims in two separate venues. Because BSA will be subject to discovery in the *Bredahl* New Jersey case, as well, BSA should not be permitted to avoid its discovery obligations in this case.

C. A Stay of Discovery Would Prejudice Plaintiffs

There are just over two months remaining before the discovery deadline in this case. Limited discovery remains to be completed. Plaintiffs spent substantial sums to employ an expert property appraiser, Richard Allen of Pomeroy Appraisal, who travelled to the Bahamas and provided an Expert Report including appraisals of the Plaintiff Lots (retroactive to the date of purchase). (Ballinger Dec., ¶ 9.)

The Expert Report of Richard Allen, including the retroactive appraisals of the Plaintiff Lots, reveals the stunning extent of the appraisal fraud perpetrated against Plaintiffs and CC Plaintiffs. The TAC alleges that Ginn suborned fraudulently inflated appraisals from W. Carver Grant, which used a valuation that included nonexistent infrastructure and amenities. The retroactive appraisals by Pomeroy Appraisal expose the difference between the appraised values provided by W. Carver Grant and the appraised value of the GSM lots (without including value for nonexistence amenities) as of the dates of Plaintiffs' lot purchases. Set forth below is a summary, for each Plaintiff lot, of the W. Carver Grant Appraisal value (with nonexistent

amenities) and the retroactive Pomeroy Appraisal value (excluding nonexistent amenities). (Ballinger Decl., Ex. A-O.)

Lot	W. Carver Grant Appraisal	Pomeroy Appraisal
Andrews Group (Lot 272)	$1,000,000	$405,000
Cicolani Group (Lot 104)	$1,020,000	$405,000
Josephson (Lot 493)	$750,000	$130,000
Kherkher (Lot 270)	$1,356,000	$405,000
Lammertse (Lot 179)	$886,000	$300,000
Liles (Lot 46)	$1,000,000	$405,000
Van (Lot 203)	None	$100,000
Webb (Lot 261)	$1,400,000	$405,000

The moment Plaintiffs closed on their GSM lot purchases, the amount of property taxes on their GSM lots began to accrue based upon the fraudulently inflated purchase price for those lots. The Bahamian government continues to calculate Plaintiffs' property taxes based on the

inflated prices Plaintiffs paid for their GSM lots. (TAC ¶ 83.) Therefore, Plaintiffs' damages from the appraisal fraud continue to increase, and Plaintiffs would be prejudiced by a stay in this case.

D. The "Agreement of Counsel" Argument is a Red Herring

The puzzling argument that Plaintiffs' counsel somehow tricked Ginn's counsel into not filing an earlier motion to stay discovery is both implausible and irrelevant to the issue whether a stay of discovery is appropriate in this case. Plaintiffs' Motion to Compel addresses Ginn's claim that an "agreement of counsel" somehow limits Ginn's production obligations in this case. In short, however: (1) there was never any "agreement of counsel" to limit Ginn's production to "documents that are located in a defined set of files"; (2) Ginn attempts to distort a meet and confer position taken by Plaintiffs' counsel (that Plaintiffs' document requests "seek narrow categories of documents that are likely to be located in a defined set of files") into a "representation" that Ginn's counsel somehow implausibly relied upon; (3) Ginn fails to articulate what benefit Plaintiffs' counsel obtained in exchange for the nebulous agreement that Ginn would only produce documents from "known discreet files"; (4) while Ginn insists an "agreement of counsel" was reached on September 11, 2010 pursuant to which Ginn agreed not to file a motion to stay, Ginn's counsel continued to threaten to move to stay in October 6 and October 13, 2010 emails. The "agreement of counsel" is a fiction created by Ginn's counsel, unsupported by evidence,[6] in an effort to disguise Ginn's desperate efforts to avoid producing evidence on the merits of Plaintiffs' appraisal fraud claims.

[6] Significantly, in both its Opposition to Plaintiffs' Motion to Compel and in the instant Motion to Stay, Ginn fails to offer admissible evidence, through a declaration of Ginn's counsel or properly authenticated exhibits, of the alleged "agreement of counsel."

E. Ginn's Efforts to Conceal the Identity of Investors in the GSM Mortgage Loans

The TAC alleges Ginn pressured Pomeroy Appraisal to provide appraisals for GSM lots that included value for infrastructure and amenities that did not exist. When Pomeroy provided draft appraisals that included infrastructure and amenities, but made the appraised value "subject to" completion of the infrastructure and amenities, Ginn demanded that Pomeroy remove the "subject to" language. When Pomeroy refused, Ginn terminated Pomeroy's services. (TAC ¶¶ 53-56.) Ginn sent Pomeroy a November 2, 2006 email confirming the termination: "Please cancel all the orders for Bahamas Appraisals. *We have run it by our investors and a "Subject to" valuation is unacceptable.*" (Ballinger Dec., Ex. P (emphasis added).)

One critical issue relating to the appraisal fraud claims is the identity of the investors in mortgage loans that Ginn Financial Services and Bahamas Sales Associate offered to GSM purchasers. After entering into an agreement to dismiss Defendant (and former Ginn COO) William McCracken, Plaintiffs only last week learned the identity of the investors. Mr. McCracken provided a Declaration executed on November18, 2010, that states the following:

- Mr. McCracken assisted in the creation of the Ginn Financial Mortgage Division in 2005, and headed that Division until July 2009. (Declaration of William McCracken, attached to Ballinger Declaration as Ex. Q at ¶ 3.)
- "There were approximately 215 undeveloped lots sold in the The Ginn Company's planned resort community located on Grand Bahama Island – Ginn Sur Mer ("GSM Lots"). Of the GSM Lots sold, approximately 50% were cash buyers, and the others were financed in one of three ways." (*Id.,* ¶ 3.)
- "The majority of the GSM Lots that were financed were financed through GFS's Mortgage Division, with Bahama Sales Associate as the lender ("BSA Loans"). The BSA Loans were

offered for 80 percent loan-to-value. It is my understanding that CapitalSource provided financing for 64 percent of the purchase price, and Lubert-Adler provided financing for 16 percent of the purchase price, totaling the 80 percent financing." (*Id.,* ¶ 4.)

- "Ten or fewer of the GSM Lots that were financed, were financed through GFS, with Lubert-Adler providing the underlying funding. These loans were generally financed at a loan-to-value ratio of less than 80 percent." (*Id.,* ¶ 5.)
- "Six or seven of the GSM Lots that were financed, were financed through Bahamian banks. Of these loans, GFS provided a second mortgage on approximately 3, with Lubert-Adler providing the underlying funding." (*Id.,* ¶ 6.)

The Ginn Defendants have been desperate to conceal the nature and the extent of the investment by Capital Source and Lubert-Adler[7] in Plaintiffs' Mortgage Notes. In response to Plaintiffs' six Requests for Production in this case, Ginn re-produced thousands of pages it had previously produced in the Liles case. (Ballinger Declaration, ¶ 10.) Instead of providing Plaintiffs with bates numbers for Plaintiffs' closing files from the prior production in *Liles* (which could have been deemed produced in this case), and then producing any additional documents requested in this case, Ginn provided an entirely new production in this case. (*Id.*) Ginn's production was obviously designed to impede Plaintiffs' review and analysis of documents and to conceal information as to the involvement of Lubert-Adler and Capital Source.

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[7] Lubert-Adler is the common name for Lubert-Adler Management Co., LP and certain real estate investment funds. In its Motion to Dismiss the Bankruptcy Trustee's Complaint for Fraudulent Transfers relating to the $675 million Credit Suisse Credit Facility, Lubert-Adler stated,

> Lubert-Adler Fund III ("Fund III") and Lubert-Adler Fund IV ("Fund IV") are private equity funds comprised of various investment limited partnerships. Defendant Edward R. Ginn III is a developer of residential resort properties. Prior to 2006, Fund III and Fund IV formed joint ventures with affiliates of Mr. Ginn for the purpose of developing residential communities . . . in Grand Bahama Island (the "Ginn Sur Mer Project") …

In re: Ginn-LA St. Lucie Ltd, LLLP and *In re: Ginn-LA Quail West, Ltd, LLLP*, Bankruptcy Court for the Southern District of Florida, Case No. 08-29769-PGH, Adversary Proceeding No. 10-02976-PGH (Dkt. No. 76 at 1, 4.)

For example:

- Of approximately 5000 pages produced by Ginn in this case, only 5% were new, and 95% of the documents had previously been produced in the *Liles* case. (*Id.*, ¶ 11.)
- Plaintiffs' closing files, previously produced in Liles, were largely reproduced in this case. In this production, however, each Plaintiff closing file was split into multiple documents that were not produced together. Instead, various documents from different Plaintiff closing files were mixed together, shuffled like a deck of cards. (*Id.*, ¶ 12.)
- Certain documents had been pulled out of the Plaintiff closing files for the production in this case. Most conspicuously missing are three Allonges that conveyed the Notes for Plaintiffs Josephson, Liles and Webb to Capital Source. (*Id.*, ¶ 13.)
- When Plaintiffs' counsel wrote to counsel for Ginn to inquire about the missing Allonges, he twice refused to respond substantively, claiming he was confused by the email. (*Id.*, ¶ 14.)
- When Plaintiffs' counsel suggested there should be other documents evidencing the transfer of Plaintiffs' Mortgage Notes to Capital Source, Ginn counsel refused to respond substantively, claiming to be confused by the email. (*Id.*, ¶ 15.)

Ginn's efforts to stay discovery in this case, which began the same day they received Plaintiffs six Requests for Production, are a smokescreen intended to conceal information relating to the investment of Capital Source and Lubert-Adler in Plaintiffs' Mortgage Notes. Ginn should not be permitted to manipulate the discovery process to avoid addressing the appraisal fraud claims on the merits. To the contrary, the discovery period in this case should be extended by 90 days in order to allow Plaintiffs to complete discovery into Capital Source and Lubert-Adler's investment in the Plaintiff Notes, as well as the involvement of those investors in the appraisal fraud scheme alleged in the TAC.

III. Conclusion

For the foregoing reasons Ginn's Motion to Stay Discovery, should be denied.

November 22, 2010 s/ Dana L. Ballinger

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CERTIFICATE OF SERVICE FOR PLAINTIFFS' OPPOSITION TO MOTION TO STAY DISCOVERY FILED BY DEFENDANTS GINN FINANCIAL SERVICES, LLC; BAHAMAS SALES ASSOCIATE, LLC; AND EDWARD R. GINN, III

I HEREBY CERTIFY that on this 22nd day of November 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing and complete service to the following:

Attorney for Defendants ERG Enterprises, LP; Ginn West End GP, LLC; Ginn-LA West End Ltd, LLLP; Ginn-LA CS Borrower, LLC; Ginn-LA Conduit Lender, Inc.; Ginn-LA CS Holding Company; Ginn-LA OBB, Limited-Corp.; Ginn Financial Services; Bahamas Sales Associate, LLC; Ginn Title Services, LLP; and Edward R. Ginn III:

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November 22, 2010

___s/_Dana L. Ballinger_____

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