

**IT IS ORDERED as set forth below:**



**Date: January 11, 2013**

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**James R. Sacca**  
**U.S. Bankruptcy Court Judge**

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:  
MIT-HIMA, INC.,  
  
Debtor.

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}  
}  
}

CASE No.: 12-64037-JRS  
  
Chapter 11

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**ORDER**

Debtor owned and operated a bed and breakfast facility (the “Property”). After Debtor filed for Chapter 11 protection, the automatic stay was lifted to permit Ameris Bank (“Ameris”)—which held the note and mortgage on the Property—to foreclose on the Property pursuant to the terms of the cash collateral order entered on September 19, 2012. Debtor moved to re-impose the stay in order to sell the property for \$660,000. Ameris objected because it claims to be owed more than \$1,200,000 and asserted that it had an appraisal on the Property for about \$1,000,000. The Court denied the motion to re-impose the stay because it could not approve the terms of a sale that would not pay Ameris in full over its objection.

At the foreclosure sale, Ameris purchased the Property for \$660,000. Debtor asserts that Ameris has now contracted to sell the Property for over \$1,000,000. Debtor also contends that the Property contains personal property belonging to the Debtor, including eighteen rooms of furniture, televisions sets, antiques and other property. According to Debtor, Ameris has not foreclosed on this personal property. Ameris insists that it foreclosed on and purchased both the Property and its contents, having bid \$650,000 for the Property and \$10,000 for its contents. Debtor maintains that Ameris's \$10,000 bid was for the Property's fixtures—not the personal property described above.

After the foreclosure and sale, Ameris filed a petition for confirmation of the foreclosure sale in Fulton County Superior Court (the "Confirmation Action") in order to preserve its rights to a deficiency judgment against Debtor and the guarantor on its note. *Ameris Bank v. Mit-Hima, Inc. and Mitesh Amin*, Civil Action File No. 2012-cv-224623. The Confirmation Action is currently pending in Fulton County Superior Court. Whether Ameris's bid on the Property was for its true value will be the primary issue in the Confirmation Action.

Debtor has now moved for an examination of Ameris Bank pursuant to Federal Rule of Bankruptcy Procedure 2004 [Doc. 42]. According to Debtor's motion, the purpose of this examination would be to discover facts related to appraisals of the property, representations made to the Court with respect to the value of the property, the foreclosure and subsequent disposition of the Debtor's former property. Ameris contends that to the extent that the Debtor seeks information regarding the bid price, the foreclosure procedures, and the true market value of the Property, the proper forum is Fulton County Superior Court via the Confirmation Action.

This matter came on for hearing on January 8, 2013, and counsel for both Debtor and Ameris were present. After listening to the arguments of counsel and considering all matters of

record, it is apparent to the Court that the Debtor is attempting to use Bankruptcy Rule 2004 to do discovery in the Confirmation Action outside the Georgia Rules of Civil Procedure that would be applicable to the Confirmation Action, which is not a proper purpose for a Rule 2004 examination. When the Court inquired into how the Rule 2004 examination could actually affect the bankruptcy case, Debtor's counsel indicated that the examination could be used to determine the extent and value of the Debtor's remaining personal property and whether or not it will be available to creditors. Ameris has not even filed a claim in this case yet, so there is not even a claim to object to at this point, and there may never be any such claim. Accordingly, it is

ORDERED that Debtor's Motion for Examination of Ameris Bank is GRANTED IN PART; Debtor is authorized to conduct a Rule 2004 examination for the limited purpose of determining the extent to which Debtor's personal property was or was not foreclosed on and the extent to which the Debtor has remaining personal property.

[END OF ORDER]