

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

CASE NO. 07-43672 CA 09

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
and DANA J. BERMAN, as Owner and
Managing Member,

Defendants,

and

DB ATLANTA, LLC, a Florida Limited
Liability Company, *et al.*

Relief Defendants.

**ORDER GRANTING RECEIVER'S MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT AND ENTRY
OF BAR ORDER ENJOINING LENDERS AND RECEIVERSHIP CREDITORS
FROM PROSECUTING CLAIMS AGAINST DANA BERMAN, MITCHELL MORGAN
AND BERMAN MORTGAGE CORPORATION'S INSURANCE COMPANY**

This matter came before the Court on 1/26, 2015, upon the hearing on the Motion for Approval of Settlement Agreement and Entry of Bar Order Enjoining Lenders and Receivership Creditors From Prosecuting Claims Against Dana Berman, Mitchell Morgan and Berman Mortgage Corporation's Insurance Company (the "Insurance Company") (the "Motion"), filed by Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation ("BMC") and M.A.M.C. Incorporated ("MAMC") and Relief Defendants

DB Atlanta, LLC, *et al.*¹ The Court, having reviewed the Motion and the Settlement Agreement, heard argument of counsel, finding good cause exists for the entry of this Order, and being otherwise fully advised in the premises, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. On December 11, 2007, the Florida Office of Financial Regulation filed a complaint (the "Complaint") seeking an injunction against BMC, MAMC, Dana J. Berman ("Berman") (collectively, the "Defendants") and other related entities (the "Relief Defendants") and requesting appointment of a receiver (the "Receivership Action").

B. The Complaint alleged that BMC and MAMC sold unregistered securities in the form of fractionalized interests in mortgages, operated as an unregistered securities dealer, made misrepresentations to investors, and misapplied investors' monies in connection with the funding of commercial mortgage loans.

C. The Complaint also alleged that BMC and MAMC obtained at least \$192,000,000 from more than 700 individual investors (the "Lenders"). The Lenders' monies were used to fund the acquisition and construction of commercial real estate projects, many of which are incomplete or in default.

D. By Order dated December 11, 2007 (the "Receivership Order"), Michael I. Goldberg was appointed as Receiver over the assets of BMC, MAMC, and the Relief Defendants (hereinafter, the "Receivership Defendants").

E. The Receiver is authorized to receive and collect all sums of money due and owing to the Receivership Defendants. Moreover, the Receiver has standing to institute, defend

¹ The Relief Defendants are DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC, Normandy Holdings III, LLC, Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC.

or compromise court proceedings as may in his judgment be necessary or proper for the collection, preservation and maintenance of Receivership assets and/or on behalf of the Receivership Defendants.

F. The Insurance Company issued a claims-made Miscellaneous Professional Liability Insurance Policy to BMC with initial effective dates between May 10, 2007 and May 10, 2008 (the "2007 Policy"). Over the years, other policies were issued to BMC by the Insurance Company.

1. In October 2007, when the 2007 Policy was still in effect, Robert Revitz, as Trustee of the Robert Revitz Trust, sued BMC, MAMC and Berman seeking declaratory relief and money damages (the "Revitz Action"). The Revitz Action was enjoined from proceeding by the Receivership Order, and remains stayed.

G. On May 29, 2009, a putative class action was filed by Goldberg, in his capacity as *"Court Appointed Receiver for the Benefit of Investors in Projects Mortgaged Through Berman Mortgage Corporation and Mortgage Asset Management Corporation"* and on behalf of Jerilynn Gidney, individually and in her capacity as *"Trustee, and/or Through Power-of-Attorney, and on behalf of all other Lenders similarly situated"* ("Gidney"), against Berman and Morgan, alleging that the actions of Berman and Morgan had resulted in the loss of millions of dollars in loans (the "Class Action"). The Class Action, which recently was amended, has not been certified as a class action by any court.

H. The Insurance Company is defending Berman and Morgan in the Class Action pursuant to a reservation of rights. The Insurance Company, in doubt as to its rights and obligations pursuant to the contents of the policy(ies) it issued in light of the allegations in the Class Action, initiated a declaratory judgment action. (the "Declaratory Judgment Action").

I. Thereafter, on or around October 16, 2009, Berman petitioned for relief under Chapter 7 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the Southern District of Florida, and listed as an asset of the bankruptcy estate potential claims against the Insurance Company. Marcia T. Dunn ("Dunn") was appointed as the bankruptcy trustee for Berman's estate.

J. Following two mediations and protracted settlement discussions, the parties to the Class Action, the Declaratory Judgment Action and Dunn have analyzed and evaluated the risks and uncertainties attendant to their various claims and have decided to settle the Class Action, the Declaratory Judgment Action and the pending claims in Berman's bankruptcy on the terms and conditions more fully set forth and memorialized in the Settlement Agreement provided to the Court, *in camera*, and mailed to each of the Lenders listed on the attached Exhibit "A" and the Receivership Creditors listed on the attached Exhibit "B".

K. The Court finds that the Receiver has the authority to enter into the Settlement Agreement with Berman, Morgan, Gidney, Dunn and the Insurance Company.

L. The Court finds that as a result of the Settlement Agreement, the policy(ies) issued by the Insurance Company are fully exhausted.

M. The Court finds that the Settlement Agreement is in the best interest of the Receivership Defendants.

N. The Court finds that notice of the Motion, Settlement Agreement and the proposed entry of the Order Permanently Enjoining Prosecution of Claims Against Berman, Morgan and the Insurance Company (the "Bar Order"), have been provided to all parties who have filed a Notice of Appearance in this case, the Insurance Company, the Lenders, the

Receivership Creditors, Dunn, and all other parties who would be enjoined pursuant to the Bar Order (collectively, the "Noticed Parties").

O. The Court finds that prior to approval of the Motion and entry of this Order, the Noticed Parties had an opportunity to review the Motion and the relief requested therein, discuss the matters addressed in the Motion with their attorney, attend the Court hearing on approval of the Motion and provide the Court with their comments and/or objections.

P. The Court finds that this Order is necessary and appropriate in order to achieve the finality and repose that is contemplated and an essential term of the Settlement Agreement and that good cause therefore exists for the entry of this Order.

Q. Accordingly, the terms of the Settlement Agreement and this Order are binding on the Receiver, Gidney, BMC, MAMC, the Insurance Company, Berman, Morgan, Dunn, the Lenders and Receivership Creditors, and inure to the benefit of the employees, agents, registered representatives, associated persons, predecessors in interest, successors in interest, heirs and assigns of the Receiver, Gidney, BMC, MAMC, the Insurance Company, Berman, Morgan, Dunn, the Lenders and Receivership Creditors, and it is

ORDERED and ADJUDGED that:

1. The Motion is GRANTED. The Settlement Agreement is approved, ratified and its terms are incorporated herein.

2. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

3. All parties identified on the attached Exhibits A and B, including their successors, heirs, assigns, affiliates, and privies (the "Enjoined Parties"), shall unless otherwise expressly excluded from the terms of the Release or as set forth below, be *permanently* barred and enjoined

from filing, commencing, prosecuting, conducting, or continuing in any manner, directly, indirectly, derivatively, or in any other capacity, any suit, action, or other proceeding (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against Berman, Morgan and the Insurance Company, for or as a result of any and all liabilities, judgments, rights, claims, cross-claims, counterclaims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description arising under common law, rule, regulation or statute, whether arising under state or federal laws, whether presently known or unknown that the Enjoined Parties now have, ever had or may claim to have in the future arising out of, related to, or which was or could have been asserted against Berman, Morgan and the Insurance Company, arising out of, related to, or resulting from policy(ies) issued by the Insurance Company to BMC, the Class Action, the Revitz Action, the Declaratory Judgment Action, any bad-faith action, or arising out of Berman's and Morgan's employment with BMC and MAMC, or arising out of Berman's and Morgan's conduct with BMC and MAMC, and are barred from commencing, prosecuting, continuing or otherwise asserting any such claims against Berman, Morgan and the Insurance Company.

4. In the event of any discrepancies or inconsistencies between the terms of the Settlement Agreement and the terms of this Order, the terms of the Settlement Agreement shall govern unless such term(s) was specifically amended herein.

5. The Court reserves jurisdiction to enforce and interpret the Settlement Agreement and enter any other related Orders.

DONE AND ORDERED in Chambers on this ____ day of _____, 201__.

Conforme à Copy

Circuit Court Judge

JAN 26 2015

Jerald Barry
Circuit Court Judge

Copies to all parties on attached list