

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

STATE OF FLORIDA, OFFICE OF FINANCIAL  
REGULATION,

CASE NO.: 07-43672 CA 09

Plaintiff,

vs.

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

Defendant.

and,

**DB ATLANTA, LLC**, a Florida Limited Liability  
Company, **DB DURHAM, LLC**, a Florida  
Limited Liability Company, **NORMANDY  
HOLDINGS II, LLC**, a Florida Limited Liability  
Company, **NORMANDY HOLDINGS III, LLC**,  
a Florida Limited Liability Company,  
**ACQUISITIONS, LLC**, a Florida Limited  
Liability Company, **DBKN GULF  
INCORPORATED**, a Florida Limited Liability  
Company, **OCEANSIDE ACQUISITIONS,  
LLC**, a Florida Limited Liability Company, **DB  
BILOXI, LLC**, a Florida Limited Liability  
Company, **DB BILOXI II, LLC**, a Florida  
Limited Liability Company, , **DB BILOXI III,  
LLC**, a Florida Limited Liability Company, **DBDS  
VERO BEACH, LLC**, a Florida Limited Liability  
Company, **DB TAMPA, LLC**, a Florida Limited  
Liability Company, **DB SIMPSONVILLE, LLC**,  
a Florida Limited Liability Company, **DBDS  
NORTH MIAMI, LLC**, a Florida Limited  
Liability Company, **REDLANDS RANCH  
HOLDINGS, LLC**, a Florida Limited Liability  
Company, **DBDS BISCAYNE PARK, LLC**, a  
Florida Limited Liability Company, **DB  
CARROLL STREET, LLC**, a Florida Limited  
Liability Company,

Relief Defendants.

**THE ORIGINAL  
FILED ON:**

**APR 07 2008**

**IN THE OFFICE OF  
CIRCUIT COURT DADE CO. FL.**

**MOTION TO APPROVE THE ASSIGNMENT OF THE PASCO  
COUNTY MATTERS FROM PASCO COUNTY TO THIS COURT**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., (the "Receiver") by and through undersigned counsel, hereby files this Motion to Approve the Assignment of the Pasco County Matters to this Court in the Circuit Court of the Eleventh Judicial Circuit, and states:

**This Court Appoints a Receiver for the Relief Defendants**

1. On December 11, 2007, this Court issued an order appointing Michael I. Goldberg to be the Receiver of relief defendants (the "Order"), including but not limited to, Oceanside Acquisitions, LLC, and DBKN Gulf Incorporated, (collectively, the "Relief Defendants"). See the Order attached hereto as Exhibit "A."

2. At the time this Court issued the Order, the Relief Defendants were (and still are) defendants in various law suits taking place in Pasco County. The lawsuits are styled as follows: *Abajian et al., v Oceanside Acquisitions, LLC*, Case No. 51-07-CA2370-SW; *Latona v. Oceanside Acquisitions, LLC*, Case No. 51-07-CA-3925-WS; *Cunningham and Elias v. Oceanside Acquisitions, LLC*, Case No. 51-07-CA-4792-WS; *Bistricer et al., v. Coastal Real Estate Associates, Inc., Berman Mortgage Corp., Dana Berman, Oceanside Acquisitions, LLC, DBKN Gulf Incorporated, et al.*, Case No. 51-2003-CA-942-ES; *Patterson et al v. Oceanside Acquisitions, LLC*, Case No. 51-2007-CA-2371-WS; *Hinton v. Oceanside Acquisitions, LLC*, Case No., 51-2007-CA-4238-WS (collectively, the "Pasco County Matters").

3. Notwithstanding the existence of the Pasco County Matters, once this Court issued the Order appointing the Receiver over the Relief Defendants, the Relief Defendants lost any power they had to transfer property or otherwise act. See, e.g., *O'Neal et al., v. General*

*Motors Corp.*, 841 F. Supp. 391, 398 (M.D. Fla. 1993) (“Under Florida law, once a receiver is appointed for a business, the business loses power to transfer or otherwise act with regard to the property subject to the receivership.”), citing *Sunland Mortgage Corp. v. Lewis*, 515 So.2d 1337, 1339 (Fla. 5<sup>th</sup> DCA 1987). See also, *Wilson et al., v. Hartman et al.*, 95 B.R. 841, 843, n. 4 (S.D. Fla. 1989) (same).

4. Moreover, as the Court presiding over the Receivership Proceedings, this Court obtained the power to determine all questions concerning the disposition of the Receivership property (i.e., the Relief Defendants), and such power cannot be interfered with by other courts:

The custody of property by the court through its receiver is the custody of the sovereign power or government acting through the courts, possession by the court of the res gives jurisdiction over the res to the court appointing the receiver and gives such court power to determine all questions concerning the ownership and disposition of the property. *White v. Ewing*, 1894, 159 U.S. 36, 15 S. Ct. 1018, 40 L.Ed. 67. No other court can interfere with the possession of the res.

*Murtha v. Steijskal*, 232 So.2d 53, 55 (Fla. 4<sup>th</sup> DCA 1970) (emphasis added).

5. Similarly, Section 517.191(2), Florida Statutes, states that the receivership court, “in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.” (emphasis added).

**This Court Claims Exclusive Jurisdiction over the Relief Defendants**

6. In line with that power, in the Order, this Court specifically states that all receivership assets, which includes the assets belonging to the Relief Defendants, are subject to the exclusive jurisdiction of this Court in the Circuit Court of the Eleventh Judicial Circuit, and such assets shall be under the exclusive control of the Receiver:

The Court hereby takes exclusive jurisdiction and possession of the assets of the ... Relief Defendants, the “Receivership Assets”, which includes, but are not limited to: files, records, documents, leases, mortgages, investments, contracts,

effects, lands, agreements, judgments, bank accounts, books of accounts, rents, goods, chattels, rights, credit claims, both asserted and unasserted, pending court actions and appeals, files and documents in the possession of attorneys and accountants of all of the Defendants and Relief Defendants, all other property, business offices, computers, servers, electronic data storage units, offsite storage locations, safety deposit boxes, monies, securities, chooses in action, and properties, real and person, tangible and intangible, of whatever kind and description, wherever situation of the Defendants ... and Relief Defendants. The Receiver shall retain custody and control of all of the foregoing pursuant to the terms of this Agreed Order.

Order, ¶ 3. *See also*, Order, ¶ 13 (specifically appointing the Receiver to take exclusive control over all of the Relief Defendants)).

**The Order Specifically Authorizes the Receiver to  
Adjust the Pasco County Matters to Preserve the Relief Defendants' Assets**

7. To effect exclusive Jurisdiction, the Order gives specific authority to the Receiver to adjust legal actions or proceedings pending against the Receivership assets (including the Relief Defendants):

The Receiver is hereby authorized and specifically has standing to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion by advisable or proper for the protection of the Receivership Assets or proceeds thereof, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal courts as may in his judgment be necessary or proper for the collection, preservation and maintenance of the Receivership Assets and/or on behalf of the Receivership Defendants.

Order, ¶ 21 (emphasis added).

8. Thus, in each of the Pasco County Matters (and in an attempt to preserve the Receivership Assets), the Receiver has filed a "Notice of Receivership, Motion to Assign Case to Judge Wilson, or in the Alternative, Stay the Case until Further Order of Judge Wilson." (emphasis added).

9. Assignment to this Court is appropriate as this Court presides over the Receivership Proceedings, and thus can prevent duplicative discovery, prevent inconsistent

pretrial rulings concerning common questions of fact related to the Relief Defendants' activities, and thereby conserve judicial resources and the Receivership Assets.<sup>1</sup>

10. Undoubtedly, assignment of the Pasco County Matters is necessary and proper for the collection, preservation and maintenance of the Receivership Assets and/or on behalf of the Receivership Defendants (including the Relief Defendants), and thereby prevent any further waste or dissipation.

11. By way of the instant Motion, the Receiver, on behalf of the Relief Defendants, seeks this Court's Approval of the assignment of the Pasco County Matters to this Court in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

**WHEREFORE**, the Receiver, on behalf of the Relief Defendants, respectfully requests that this Court accept the assignment of the Pasco County Matters, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, and for such other and additional relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail on this **4<sup>th</sup> day of April 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer**

---

<sup>1</sup> Notably, to the extent divergent interests arise between the parties in the different matters following a transfer to this Court, Your Honor has the broad flexibility to tailor a pretrial schedule to accommodate any divergent interests among the parties in the various actions. *See, e.g., In re Franklin National Bank Securities Litigation*, 393 F. Supp. 1093, 1095, (Jud. Pan. Mult. Lit. 1975). (“[W]e point out that the transferee judge has the broad flexibility to tailor a pretrial schedule to accommodate any divergent interests among the parties in the various actions. More precisely, he is free to gauge the extent of coordination appropriate between the SEC and private actions, without inhibiting the SEC's efforts for prompt injunctive relief and without sacrificing the advantages of centralized pretrial proceedings.”).

*Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA*, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Allan A. Joseph, Esquire**, *Counsel for The Amid Companies and Amedia Family Investors*, DAVID AND JOSEPH, P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida 33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to **Daniel Kaplan, Esquire**, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191<sup>st</sup> Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire**, *Attorneys for Intervenor, Ira Sukoff*, KAHN & CHENKIN, 2924 Davie Road, Suite 200, Davie, Florida 33314; as well as serving copies upon counsel in Pasco County cases as follows: to **Jaime Austrich, Esquire**, *Attorneys for Plaintiffs, Cyril Latona, James R. Patterson, Eileen M. Patterson, Robert H. Abajian and Deborah R. Abajian*, SHUMACKER, LOOP & KENDRICK, LLP, 101 East Kennedy Boulevard, Suite 2800, Tampa, Florida 33602; to **Andrew M. Lyons, Esquire**, *Counsel for Plaintiff, Tina Hinton*, CARTER & LYONS, P.A., 5308 Spring Hill Drive, Spring Hill, Florida 34606; to **David J. Sockol, Esquire and R. Mark Bortner, Esquire**, *Attorneys for Plaintiffs, Jennifer & Robert Cunningham and Victor Elias*, SOCKOL & ASSOCIATES, P.A., 111 Second Avenue Northeast, Suite 1401, St. Petersburg, Florida 33701; to **Maurice Baumgarten, Esquire**, ANANIA, BANDKLAYDER, BLACKWELL, BAUMGARTEN, TORRICELLA & STEIN, Bank of America Tower – Suite 4300, 100 SE 2<sup>nd</sup> Street, Miami, Florida 33131; to **Charles L. Neustein, Esquire**, CHARLES L. NEUSTEIN, P.A., 777 Arthur Godfrey Road, Second Floor, Miami Beach, Florida 33140; to **Scott A. McLaren, Esquire**, HILL, WARD AND HENDERSON, P.A., 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602; to **Pete Hutchison Brock, II, Esquire**, JOHNSON, AUVIL, BROCK & WILSON, P.A., P.O. Box 2337, Dade City, Florida 33526; to **William**

**Dufoe, Esquire, Robert W. Lang, Esquire and/or William H. Bartlett, Esquire**, HOLLAND & KNIGHT, LLP, 100 North Tampa Street, Suite 4100, Tampa, Florida 33602; to **Deborah Poore Fitzgerald, Esquire**, WALTON LANTAFF SCHROEDER & CARSON, LLP, Corporate Center, Suite 2000, 100 East Broward Boulevard, Fort Lauderdale, Florida 33301; and to **Peter Valori, Esquire**, DAMIAN & VALORI, LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131.

Respectfully Submitted,

BERGER SINGERMAN

*Attorneys for Defendant*

200 South Biscayne Boulevard, Suite 1000

Miami, FL 33131

Telephone: (305) 755-9500

Facsimile: (305) 714-4340

By: \_\_\_\_\_

  
JAMES D. GASSENHEIMER

Florida Bar No. 959987

E-Mail: [jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)

GREGORY A. HAILE

Florida Bar No. 606421

E-Mail: [ghaile@bergersingerman.com](mailto:ghaile@bergersingerman.com)

1021233-1