

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

STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION,

CASE NO. 07-43672 CA 09

Plaintiff,

v.

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

Defendants,

and

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

Relief Defendants.

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**VERIFIED EMERGENCY MOTION TO RELEASE NON-RECEIVERSHIP FUNDS**

Defendant, Dana Berman (“Dana”), joined by his father, Steve Berman (“Steve”), move this Court to release certain non-receivership funds that are currently being held in trust by undersigned counsel for movants, and state:

**The Motorbike Collection**

1. In October 2007, Dana agreed to entry of a Partial Final Judgment in his divorce case (Case No. 06-21446 FC 16), disposing and dividing assets with his ex-wife, Deborah Freyer Berman

(hereinafter "Freyer"), the mother of the parties' three minor children. <sup>1</sup>

2. Among Dana's personal assets acquired both before and during the marriage, and long before the instant receivership, was a collection of antique motorbikes. Pursuant to the Financial Settlement and Partial Final Judgment in the divorce case, the collection of motorbikes was quit-claimed to Dana.

3. In need of immediate funds for living expenses, Dana transferred the motorbike collection to his father, Steve, in consideration of (i) monies Steve had already advanced to Dana from February 2007 through September 2007, and (ii) an additional \$40,000 that Steve advanced to Dana for living expenses during the months of October 2007 through January 2008.

4. Steve sold the motorbike collection in January for \$101,000. Steve desires to lend these proceeds to Dana, in order to fund expenses, detailed below, that Dana desperately needs in connection with pending child custody disputes with Freyer.

**Receiver's Claim to Funds; Agreed Deposit of Proceeds Into Trust**

5. This Court's December 11, 2007 Temporary Injunction and Agreed Order Appointing Receiver provides, in relevant part:

The named Defendants ... are hereby restrained and enjoined from ... [d]issipating, selling, conveying, alienating, divesting themselves of, withdrawing, pledging as security, transferring, assigning, giving away, or in any manner whatsoever disposing of any of the monies or assets... obtained with or derived directly or indirectly from any investor monies obtained by the Defendants from the placing and servicing of loans, mortgages, and investments, no matter how ownership or title is held ...

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<sup>1</sup> At the time of the Partial Final Judgment, it was believed that the parties had been legally married. Since that time, there is an issue that questions whether the parties had a valid legal marriage, but for the purpose of this Motion, the word "marriage" shall be used to describe the partnership between Dana J. Berman and Deborah Freyer between the years 1995-February 2006 (when the parties separated).

(Emphasis added).

6. As soon as the Receiver was appointed, Dana advised him of his transfer of the motorbike collection to Steve, and agreed as a courtesy to deposit the monies in an attorneys' trust account in order to give the Receiver a reasonable time to determine whether the funds were Receivership property. The funds are currently held in trust by undersigned counsel pending agreement with the Receiver or an order of this Court.

**The Funds Belong To Steve, Who Wishes To Advance Them to Dana**

7. The funds are not receivership property. They were not "obtained with, or derived directly or indirectly from any investor monies obtained by the Defendants from the placing and servicing of loans, mortgages, and investments." They are traceable to the antique motorbike collection, which was acquired over a period of years (1992 through 2005) exclusively with Dana's personal monies (*i.e.*, salary). The last of the motorbikes was acquired approximately two years before the receivership.

8. The Receiver has had ample time to investigate these matters over the last seven months. He has adduced no evidence that the funds are within the scope of the receivership order and, in fact, they are not.

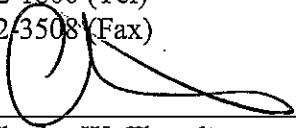
9. Steve and Dana request that this motion be heard on an emergency basis. Dana is currently without counsel in his ongoing, hotly contested litigation with Freyer, and Freyer is using Dana's financial disadvantage as an opportunity to petition the Court to restrict him from access to his children.<sup>2</sup> An emergency hearing on the custody issue is set for May 15, 2008 and Dana needs the funds before then to ensure that he is represented.

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<sup>2</sup> Dana was awarded joint custody of his three minor children, and he currently has a 50% time-sharing arrangement.

WHEREFORE, movants respectfully request that this Court enter an order authorizing Kozyak Tropin & Throckmorton, P.A. to release the subject funds to, or at the direction of, Steve Berman.

Respectfully submitted,  
KOZYAK TROPIN & THROCKMORTON, P.A.  
2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, FL 33134  
(305) 372-1800 (Tel)  
(305) 372-3508 (Fax)

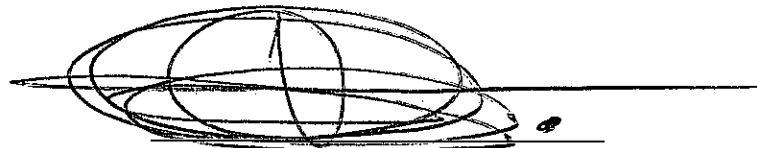
By:   
Charles W. Throckmorton  
Fla. Bar No. 286192

**VERIFICATION**

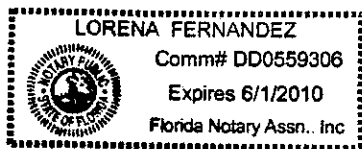
STATE OF FLORIDA            )  
COUNTY OF MIAMI-DADE    )

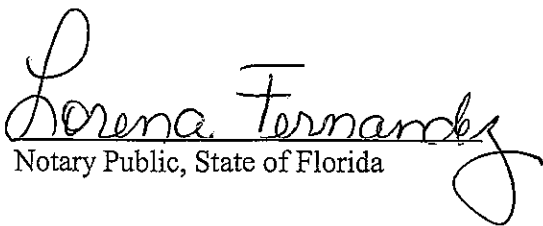
Dana Berman, being duly sworn, hereby states:

My name is Dana Berman. I have read the foregoing motion, and all facts stated therein are true and correct.

  
Dana Berman

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of May, 2008 by Dana Berman is personally known to me/who has produced Driver's License as identification and who did /did not take an oath.  
# B655-170-63-446-0



  
Notary Public, State of Florida

Print Name: Lorena Fernandez

Commission No. DD0559306

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. Mail this 7 day of May, 2008 to:

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