

**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,

Defendant.

and

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

**RECEIVER'S MOTION FOR AN ORDER APPROVING THE RECEIVER'S
RETENTION OF TEW CARDENAS LLP ON A CONTINGENT FEE BASIS AS
SPECIAL COUNSEL FOR MAMC FOUR AMBASSADORS, 5-100, LLC**

Michael I. Goldberg, the receiver of Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), *et al.*, and Relief Defendants DB Atlanta, LLC, *et al.* (the "Receiver"), hereby files this Motion for An Order Approving the Receiver's Retention of Tew Cardenas LLP on a Contingent Fee Basis as Special Counsel for MAMC Four Ambassadors, 5-100, LLC. In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, this Court appointed Michael Goldberg as the receiver for BMC and MAMC (jointly, the "Defendants") and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants'

assets to the detriment of investors who entrusted over \$192 million to the Receivership Defendants.

2. MAMC originated a loan of \$6,515,000 from certain investors ("Investors") to Brickell Bay Yacht Club at the Four Ambassadors LLC to purchase a commercial condominium unit, located at 801 Brickell Bay Drive, Unit 5-100, Miami, Florida ("Unit 5-100"), and comprises two ballrooms totaling 20,000 square feet with the intention of building a fifth tower. The loan became non-performing. A long and arduous foreclosure, bankruptcy, and personal bankruptcy sequence ensued and, eventually, the original lenders prevailed and took title to the Property in the name of MAMC Four Ambassadors, 5-100 LLC, a Florida limited liability company ("Four Ambassadors"). MAMC is the general partner of Four Ambassadors.

3. After Four Ambassadors fell behind on payment of its maintenance fees to Four Ambassador Association, Inc. ("Association"), the building's condominium association, Four Ambassadors sought and received permission from this Court to file a bankruptcy case. Soon thereafter, on October 15, 2008, Four Ambassadors filed a Chapter 11 petition, assigned Case No. 08-25254-LMI ("Bankruptcy Case").

4. The Association filed a motion to dismiss or convert the Bankruptcy Case or for relief from the automatic stay to foreclose on Unit 5-100 ("Motion to Dismiss"). The Association and Four Ambassadors subsequently entered into a Stipulation of Settlement ("Stipulation") of the Motion to Dismiss, whereby Four Ambassadors was given until February 17, 2009 to sell Unit 5-100 by auction. The Stipulation also provided that in the event the auction did not result in sufficient funds to pay the Association or the auction did not take place by February 17, 2009, title to Unit 5-100 was to be transferred to the Association. The Stipulation was approved by the Bankruptcy Court on November 8, 2009.

{FT732847;1}

5. Four Ambassadors, in consultation with the auctioneer, determined that under the current economic climate, an auction might not result in the highest and best price for Unit 5-100. Four Ambassadors then negotiated and entered into a Commercial Condominium Lease Agreement ("Lease Agreement") with La Escala De Miami Corp. ("Tenant"), which included an option for the Tenant to purchase Unit 5-100.

6. On February 17, 2009, Four Ambassadors presented the Bankruptcy Court with an Emergency Motion to Enter into a Commercial Condominium Lease Agreement and Option Agreement for Sale of the Property to the Tenant ("Emergency Motion").

7. The Association objected to the Emergency Motion, asserting that it violated the terms of the Stipulation. The Bankruptcy Court agreed with the Association and on February 25, 2009, entered an Order transferring Unit 5-100 to the Association. The Bankruptcy Case was subsequently dismissed.

8. Four Ambassadors recently discovered that the Tenant entered into a lease agreement with the Association for Unit 5-100 and may be in discussion with the Association to purchase Unit 5-100. The Tenant lists Unit 5-100 as its principal address and mailing address with the Florida Department of State, Division of Corporations.

9. Four Ambassadors has been advised that when the Association learned that Four Ambassadors was in negotiations with the Tenant, the Association contacted the Tenant and offered the Tenant a better lease agreement. Moreover, Four Ambassadors believes that the Association and the Tenant purposefully delayed the execution of the Lease Agreement and the Bankruptcy Court's approval of the Lease Agreement in order to extinguish Four Ambassadors' ownership interest in Unit 5-100.

{FT732847;1}

10. The Receiver seeks authority to retain Tew Cardenas LLP ("Tew") as special counsel to represent Four Ambassadors in a potential lawsuit against the Tenant and the Association. Matias Dorta, Esq., a partner with Tew will serve as lead counsel. Mr. Dorta practices commercial litigation in state and federal courts and has experience litigating similar matters.

11. Tew will be retained on a contingent fee basis and shall not be entitled to fees unless a recovery is obtained. The Receiver shall pay all of the costs and litigation expenses in connection with this matter. The sum of \$25,000 is being raised from the Investors to apply to the expenses incurred by Tew. Tew shall provide the Receiver with prior notice and right of approval of all expenses which exceed \$500. Otherwise, the costs shall be billed monthly and paid from the \$25,000 reserved for expenses. Any costs incurred beyond \$25,000 shall be paid upon settlement or recovery. A true and correct copy of the Contingency Fee Agreement is attached hereto as Exhibit 1.


12. The Receiver believes it is in the best interest of Four Ambassadors and the receivership estate to employ Tew to fully examine the merits of filing the lawsuit. Moreover, as a result of the Contingency Fee Agreement, the costs to the Investors will be contained. The Receiver is charged with the responsibility of preventing waste and dissipation of the Defendants' assets. *See* Receivership Order at ¶ 7. Moreover, the Receiver is authorized to enter into agreements and take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. *Id.* The Receivership Order also grants the Receiver the authority to employ "Outside Professionals" including attorneys, as necessary to accomplish Receivership purposes.

13. The Receiver has consulted with the Executive Committee¹ who has advised the Receiver that they approve his entering into the Contingency Fee Agreement with Tew Cardenas.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of BMC, MAMC and related entities, respectfully request this Court to enter an Order authorizing the Receiver to enter into the agreement described herein and to grant such further relief as is just and proper.

Respectfully submitted,

AKERMAN SENTERFITT
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By: 

Joan M. Levit, Esquire
Florida Bar No. 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of December, 2010, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List.

By: 

¹ At the outset of the receivership, the Receiver set up committees comprised of lenders for each loan and one overall committee made up of at least one lender from each loan ("Executive Committee") to advise the Receiver.

SERVICE LIST

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Counsel for Receiver

EXHIBIT 1

CONTINGENCY FEE AGREEMENT AND AUTHORITY TO REPRESENT

The undersigned, Michael Goldberg as Receiver for MAMC Inc., hereafter referred to as Client, does hereby retain and employ the law firm of Tew Cardenas LLP ("Tew Cardenas") to represent Client against Four Ambassadors Association, Inc. and related persons and entities ("the Case").

Contingency Fee. As compensation for the services rendered by Tew Cardenas the Client agrees to pay a fee from the gross proceeds of any recovery, by settlement, judgment or otherwise, as follows:

- 1) Before the filing of an answer or the demand for appointment of arbitrator or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:
 - A. 33 ⅓% of any recovery up to \$1 million; plus
 - B. 30% of any portion of the recovery between \$1 million and \$2 million; plus
 - C. 20% of any portion of the recovery exceeding \$2 million.

- 2) After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitration is made, the expiration of the time period provided for such action, through the entry of judgment:
 - A. 40% of any recovery up to \$1 million; plus
 - B. 30% of any portion of the recovery between \$ 1million and \$2 million; plus
 - C. 20% of any portion of the recovery exceeding \$2 million.

- 3) If any defendant admits liability at the time of filing their answers and requests a trial only on damages as to that Defendant:
 - A. 33 ⅓% of any recovery up to \$1 million; plus
 - B. 20% of any portion of the recovery between \$1 million; plus
 - C. 15% of any portion of the recovery exceeding \$2 million.

- 4) An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

If no recovery is obtained for the Client, Tew Cardenas shall not be entitled to any attorneys' fee.

Court Awarded Attorney's Fees. Any attorney's fee paid by or on behalf of any defendant in connection with a settlement of any court awarded attorney's fee shall become a part of the total amount of recovery for purposes of calculating the attorney's fee under this contract, Provided, however, that should the attorney's fee paid by or on behalf of any defendant as a result of settlement or the court awarded attorney's fee exceed the percentage fee set forth above, such settlement fee or court awarded fee shall be the attorney's fee under this contract. In other words, the attorney's fee shall be the greater of the percentage fee or the fee paid by or on behalf

of the defendant. Nothing in this contract shall limit the fee paid by or on behalf of the defendant to the above percentages. The fee to be paid by or on behalf of the defendant shall be determined by utilizing the criteria set forth in the prevailing case law or statutory law of the State of Florida.

Expenses of Litigation. The Client agrees to pay all of the costs and litigation expenses in connection with prosecution of the Claims, including, without limitation, filing fees, service of process expenses, long distance telephone calls, courier service, travel expenses, outside photocopying at the Firm's actual cost, computerized legal research, expert witness fees, other expert witness expenses, court reporter and deposition transcript fees. Client shall be given prior notice and right of approval of any expense incurred which exceeds \$500. It is hereby agreed that costs and litigation expenses shall be billed monthly against and paid from the \$25,000.00 the Client shall pay Tew Cardenas upon the execution of this Agreement. Any costs incurred beyond \$25,000.00 shall be paid upon settlement or recovery from the Defendant.

Settlement Authority. No settlement, negotiation or compromise shall be made by Client without the consent of Tew Cardenas and no settlement, negotiation or compromise shall be made by Tew Cardenas without Client's consent.

Right to Withdraw. It is specifically agreed that Tew Cardenas reserve the right to withdraw from representation at any time where, in its judgment, the facts of the case are discovered to show a legally insufficient cause or basis for recovery, or upon development or discovery of a conflict prohibited by the Florida Bar's Rules of Professional Responsibility.

Dated this _____ day of November, 2010

Michael Goldberg as Receiver for MAMC, Inc.

BY: _____

The representation is accepted by the foregoing terms.

TEW CARDENAS LLP

BY: _____
Matias R. Dorta