

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY FLORIDA

GENERAL JURISDICTION DIVISION

STATE OF FLORIDA,

CASE NO. 07-43672 CA 09

Plaintiff,

v.

BERMAN MORTGAGE *et al.*

Defendants.

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**NOTICE OF HEARING**  
(Motion Calendar)

YOU ARE HEREBY notified that the undersigned will call up for hearing before the Honorable Thomas S. Wilson, Jr., one of the Judges of the above-styled Court, at The Dade County Courthouse, located at 73 West Flagler Street, Miami, Florida 33130, Room 626, on **Monday, September 8<sup>th</sup>, 2008 at 9:00 a.m.**, or as soon thereafter as can be heard:

*doc*

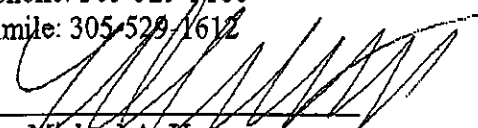
**MOTION FOR ORDER COMPELLING PRODUCTION OF DOCUMENTS  
FROM BARRY A. IMBER AND IMBER & COMPANY**

IN ACCORDANCE WITH THE AMERICAN DISABILITIES ACT PERSONS WITH DISABILITIES NEEDING A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE DEPUTY COURT ADMINISTRATOR OF THE ABOVE COUNTY AT AREA CODE (305) 375-2006 NOT LATER THAN SEVEN (7) DAYS PRIOR TO THE PROCEEDINGS. IF HEARING IMPAIRED, (TTD) 1-800-955-8771 OR VOICE (v) 1-800-955-8770 VIA FLORIDA RELAY SERVICE.

**HANZMAN GILBERT LLP**  
2525 PONCE DE LEON BOULEVARD • SUITE 700 • CORAL GABLES, FLORIDA 33134  
TELEPHONE (305) 529-9100 • FAX (305) 529-1612

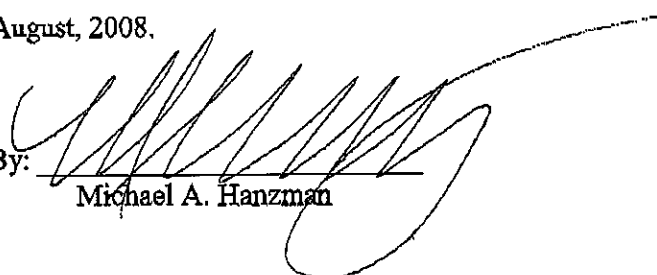
Respectfully submitted,

HANZMAN GILBERT, LLP  
Counsel for Michael I. Goldberg  
Court Appointed Receiver  
2525 Ponce de Leon Boulevard  
Suite 700  
Coral Gables, Florida 33134  
Telephone: 305-529-9100  
Facsimile: 305-529-1612

By:   
Michael A. Hanzman  
Florida Bar No. 510637

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the forgoing was furnished by facsimile and U.S. Mail to: James D. Gassenheimer, Esq., Berger Singerman, 200 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131, Michael I. Goldberg, Esq., Akerman Senterfitt, 350 East Las Olas Boulevard, Suite 1600, Ft. Lauderdale, Florida 33301-4217, Dean C. Colson, Esq., Colson Hicks Eidson, 255 Aragon Avenue, 2<sup>nd</sup> Floor, Coral Gables, Florida 33134, and Nanci Landy, Kaplan Zeena LLP, 2 South Biscayne Boulevard, One Biscayne Tower, Suite 3050, Miami, Florida 33131 this 28<sup>th</sup> day of August, 2008.

By:   
Michael A. Hanzman

IN THE CIRCUIT COURT OF THE 11TH  
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Plaintiff,

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BERMAN MORTGAGE *et al.*

Defendants.

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**MOTION FOR ORDER COMPELLING PRODUCTION OF  
DOCUMENTS FROM BARRY A. IMBER AND IMBER & COMPANY**

Michael I. Goldberg, in his capacity as the Court Appointed Receiver, by and through his undersigned counsel, hereby files this motion for an Order directing Barry A. Imber and Imber & Company to produce to the Receiver their entire file relating to Berman Mortgage Corporation and any related entities including, but not limited to, their work papers.

1. As part of discharging his duties in this matter the Receiver retained counsel to investigate, and if appropriate pursue, claims against accounting firms that had performed services for, or on behalf of, various receivership entities including Berman Mortgage Corporation. One of those accounting firms is Imber & Company, whose principal is Barry A. Imber.

2. On May 1<sup>st</sup>, 2008 the Receiver's counsel advised Mr. Imber that the Receiver was investigating potential claims against him and his firm and demanded insurance information required pursuant to Florida Statute § 627.4137. A copy of counsel's May 1<sup>st</sup>, 2008 correspondence is attached hereto as Exhibit "A."

3. On June 5<sup>th</sup>, 2008 Mr. Imber and Imber & Company, through their counsel, advised

HANZMAN GILBERT LLP

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TELEPHONE (305) 529-9100 • FAX (305) 529-1612

the Receiver's counsel that they would **"...preserve and make available to you all documents and/or other information Mr. Imber may possess pertaining to the receivership defendants identified in your correspondence of May 1<sup>st</sup>, 2008, or any entity related to or doing business with such entities. Additionally, this will confirm that these documents will be made available to you for your review at a mutually convenient time."** Put simply, Mr. Imber and Imber & Company, through their counsel, agreed to provide the Receiver with access to, and the right to inspect, any and all records pertaining to the receivership defendants. *See* Exhibit "B."

4. Apparently, at the insistence of his insurance carrier, Mr. Imber and his firm changed counsel, replacing Mr. Zack with the firm of Kaplan Zeena LLP. Despite repeated demand Mr. Imber and his company, through their new counsel, have now refused to provide the Receiver access to all his documents and, in particular, his accountant "work papers." According to Mr. Imber's new counsel, they have **"...no obligation to abide by an informal agreement reached with another attorney, particularly since the circumstances have changed."** *See* Exhibit "C." There has, of course, been no change in circumstances as Mr. Imber was well aware at the time his counsel initially agreed to produce the documents that potential claims against his firm were being investigated, and that this was the purpose for seeking the documents.<sup>1</sup>

5. On June 23<sup>rd</sup>, 2008 this Court entered its "Order on Motion for Appointment of Steering Committee" appointing Hanzman Gilbert LLP and the law firm of Colson Hicks Eidson to investigate claims against the accounting firms, including Imber & Company. *See* Exhibit "D." Mr. Imber and his firm's refusal to provide the Receiver with their files in this matter, including their

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<sup>1</sup>Persumably the change referred to is the fact that the Receiver's counsel, and Class Counsel, offered Mr. Imber the opportunity to enter into a tolling agreement and enter into pre-suit negotiations. That alleged "change in circumstances" is wholly irrelevant to the issue at hand, which is whether the Receiver is entitled to Mr. Imber's records, including his work papers.

"work papers," is impeding the directive of this Court and the investigation of the committee. The Receiver is entitled to access to these records. There is no legal justification to withhold the records particularly when Mr. Imber and his company, through counsel, previously agreed to produce them.

6. As a result of the foregoing, the Receiver requests that this Court enter an Order Compelling Barry A. Imber and Imber & Company to Produce all of their files regarding Berman Mortgage Corporation or any and all other affiliated entities, including but not limited to their work papers. The Receiver also requests that the Court Order Barry A. Imber and Imber & Company to reimburse the receivership reasonable attorneys' fees and costs incurred in connection with the filing and pursuit of this motion.

Respectfully submitted,

HANZMAN GILBERT, LLP  
Counsel for Michael I. Goldberg  
Court Appointed Receiver  
2525 Ponce de Leon Boulevard  
Suite 700  
Coral Gables, Florida 33134  
Telephone: 305-529-9100  
Facsimile: 305-529-1612

By: 

Michael A. Hanzman  
Florida Bar No. 510637

HANZMAN GILBERT LLP

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TELEPHONE (305) 529-9100 • FAX (305) 529-1612

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the forgoing was furnished by facsimile and U.S. Mail to: James D. Gassenheimer, Esq., Berger Singerman, 200 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131, Michael I. Goldberg, Esq., Akerman Senterfitt, 350 East Las Olas Boulevard, Suite 1600, Ft. Lauderdale, Florida 33301-4217, Dean C. Colson, Esq., Colson Hicks Eidson, 255 Aragon Avenue, 2<sup>nd</sup> Floor, Coral Gables, Florida 33134, and Nanci Landy, Kaplan Zeena LLP, 2 South Biscayne Boulevard, One Biscayne Tower, Suite 3050, Miami, Florida 33131 ... this 28<sup>th</sup> day of August, 2008.

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

  
Michael A. Hanzman

**HANZMAN GILBERT LLP**

2525 PONCE DE LEON BOULEVARD • SUITE 700 • CORAL GABLES, FLORIDA 33134  
TELEPHONE (305) 529-9100 • FAX (305) 529-1612

# **Exhibit “A”**

**HANZMAN**  
**GILBERT**<sup>LLP</sup>

MICHAEL A. HANZMAN, P.A.  
mhanzman@hanzmannilbert.com

May 1, 2008

**SENT VIA FACSIMILE (305) 956-5131**  
**AND U.S. MAIL CERTIFIED 70031010000339458923**

Barry A. Imber  
Imber & Company  
Certified Public Accountants  
1031 North Miami Beach Boulevard  
North Miami Beach, Florida 33162

**Re: *Receivership of Berman Mortgage Corporation and M.A.M.C. Incorporated***  
**Case No. 07-43672 CA 09**

Dear Mr. Imber:

We have been retained to represent Michael I. Goldberg, in his capacity as Receiver, for purposes of investigating - and if appropriate pursuing - claims against your firm arising from services performed for, or on behalf of, D. Jordan Berman Mortgage Corporation d/b/a Berman Mortgage Corporation, M.A.M.C. Incorporated and/or Mortgage Asset Management Corp., or any related entities.

Pursuant to Florida Statute § 627.4137, we request you to immediately disclose to us the name and coverage of each known insurer which does or may provide liability insurance coverage to pay all or any portion of any claim which might be made, and to forward this request for information to all affected insurers. In accordance with Florida Statute § 627.4137, the insurer(s) shall then supply, within 30 days of receipt of this request, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- (a) The name of the insurer.
- (b) The name of each insured.
- (c) The limits of liability coverage.



Letter to Mr. Imber  
May 1, 2008  
Page 2

(d) A statement of any policy coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.

(e) A copy of the policy.

The statement required above shall be amended immediately upon discovery of facts calling for an amendment to such statement.

In addition, please consider this a request to preserve and make available to us all documents and/or other information (in any form) you may possess pertaining to the receivership defendants identified above, or any entity related to or doing business with these entities. Please have your counsel contact us to make arrangements for our review of these files.

Very truly yours,



Michael A. Hanzman

MAH/lm

cc: Michael I. Goldberg, Esq.  
Dean Colson, Esq.

HANZMAN GILBERT LLP

2525 PONCE DE LEON BOULEVARD • SUITE 700 • CORAL GABLES, FLORIDA 33134  
TELEPHONE (305) 529-9100 • FAX (305) 529-1612

# **Exhibit "B"**

LAW OFFICES  
**PESETSKY & ZACK P.A.**

ELLIOTT NOEL ZACK

Of Counsel:  
WALTER S. PESETSKY

1031 NORTH MIAMI BEACH BOULEVARD  
NORTH MIAMI BEACH, FLORIDA 33162

TELEPHONE: (305) 940-0023  
FAX: (305) 787-8338

June 5, 2008

Hanzman Gilbert, LLP  
2525 Ponce De Leon Blvd.  
Suite 700  
Coral Gables, Florida 33134

Attn: Michael A. Hanzman

Re: Receivership of Berman Mortgage Corporation and M.A.M.C. Incorporated  
Case No. 07-43672 CA 09

Dear Michael:

This letter will confirm, on behalf of Barry A. Imber and Imber & Company, (collectively "Mr. Imber"), that Mr. Imber will, in accordance with your request, preserve and make available to you all documents and/or other information Mr. Imber may possess pertaining to the receivership defendants identified in your correspondence of May 1, 2008, or any entity related to or doing business with such entities. Additionally, this will confirm that these documents will be made available to you for your review at a mutually convenient time.

Please feel free to contact me at your convenience should you wish to discuss these matters further.

Very truly yours,

PESETSKY & ZACK, P.A.



Elliott Noel Zack

ENZ/glk

# **Exhibit “C”**

**Michael Hanzman**

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**From:** Nanci Landy [Nanci.Landy@kaplanzeena.com]  
**Sent:** Thursday, August 28, 2008 3:24 PM  
**To:** Michael Hanzman  
**Subject:** RE: Berman Mortgage

Yes. I have no obligation to abide by an informal agreement reached with another attorney, particularly since the circumstances have changed. I will be happy to provide you with all documents as required by Florida Statute.

Nanci



**Nanci Landy**  
MEMBER

Kaplan Zeena LLP  
2 South Biscayne Boulevard  
One Biscayne Tower, Suite 3050  
Miami, Florida 33133

Telephone: 305-520-0800 / Fax: 305-520-0801  
Website: Nanci.Landy@KaplanZeena.com / KaplanZeena.com

Past President  
Fort Lauderdale Broward County  
National Association of Women Business Owners  
2004-2005  
2005-2006

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**From:** Michael Hanzman [mailto:mhanzman@hanzmangilbert.com]  
**Sent:** Thursday, August 28, 2008 1:25 PM  
**To:** Nanci Landy  
**Cc:** paul@colson.com; Jeff Kravetz; Goldberg, Michael  
**Subject:** RE: Berman Mortgage

Nanci:

Are you telling me you do not intend to produce Mr. Imber's work papers?

8/28/2008

# **Exhibit “D”**

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY FLORIDA

GENERAL JURISDICTION DIVISION  
CASE NO. 07-43672 CA 09

State of Florida,

Plaintiff,

v.

Berman Mortgage *et al.*

Defendants.

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**ORDER ON MOTION FOR APPOINTMENT OF STEERING COMMITTEE**

**THIS CAUSE** having come on to be heard on June 23, 2008 on the Receiver's Motion for Appointment of Steering Committee, and the Court having reviewed the motion, heard argument of counsel, and being otherwise advised in the premises, it is hereupon

**ORDERED AND ADJUDGED** that said Motion is **GRANTED**. The Court appoints a Steering Committee, to be comprised of Special Litigation Counsel, Hanzman & Gilbert, LLP, and the law firm of Colson Hicks Eidson, attorneys for certain investors, to work together in investigating claims against the accounting firms, Mallah Furman & Company, P.A. and Imber & Company, and pursuing any such claims which may be discovered. The privileged and confidential activities of the Steering Committee shall be protected under the joint interest doctrine. *See Visual Scene, Inc. v. Pinkerton Bros., plc*, 508 So.2d 437 (Fla. 3rd DCA 1987).

**DONE AND ORDERED** in Chambers at Miami-Dade County, Florida this 23<sup>rd</sup> day of June,

2008.

Conformed Copy

JUN 23 2008

Thomas S. Wilson, Jr.  
THE HONORABLE THOMAS S. WILSON  
CIRCUIT COURT JUDGE