

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
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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**BARRY A. IMBER AND IMBER & COMPANY'S MOTION TO STAY PENDING APPEAL**

Non-parties, Barry A. Imber and Imber & Company (hereinafter collectively "Imber"), hereby move for a stay of proceedings pursuant to Rule 9.310 of the Florida Rules of Appellate Procedure. In support of the motion, Imber states:

1. On September 29, 2008, this Court ordered Imber to produce protected work papers over Imber's objections. Then on October 20, 2008 this Court denied Imber's Motion for Reconsideration and/or Clarification regarding the production of its work papers and the Court's September 29<sup>th</sup> Order.

2. Imber has filed a Petition for Writ of *Certiorari* with the District Court of Appeal for the Third District.

3. Rule 9.310(a) authorizes this court to stay a non-final order pending appeal. *See Platt v. Russek*, 921 So. 2d 5 (Fla. 2d DCA 2004).

4. A stay is necessary in this case to preserve the status quo during the pendency of the appeal. As was further outlined in Imber's Motion for Reconsideration and/or Clarification, if Imber

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were to produce the requested documents, it would cause irreparable damage to Imber.

5. The requested discovery is "cat out of the bag" type of discovery, the production of which will cause irreparable injury. See *Allstate Ins. Co. v. Langston*, 655 So.2d 91 (Fla.1995) (discovery of protected material could result in letting the "cat out of the bag," and injury could result if such information was disclosed); *Allstate Ins. Co. v. Boecher*, 733 So.2d 993, 999 (Fla.1999); *Martin-Johnson, Inc. v. Savage*, 509 So.2d 1097 (Fla.1987).

6. Without a stay pending appellate review, Imber will be forced to spend potentially unnecessary time, resources and money in responding to the Receiver's discovery while the appellate court considers Imber's appeal and, in fact, the production of the documents would moot the appeal, causing Imber irreparable harm..

7. Under the circumstances of this case, Imber's rights could not be adequately protected without the entry of a stay of proceedings during the pendency of the appeal.

WHEREFORE, Imber, by undersigned counsel, requests that this Honorable Court enter an order staying the proceedings in this matter during the pendency of the appeal.

Respectfully Submitted,

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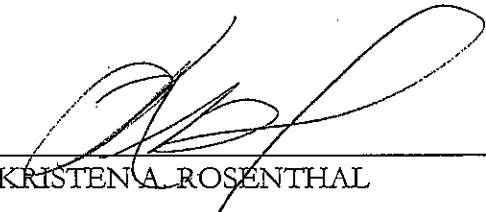
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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail to: **Michael A. Hanzman, Esq.**, Hanzman Gilbert, LLP, 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; **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, Fort Lauderdale, Florida 33301-4217; **Dean C. Colson, Esq.**, Colson Hicks Eidson, 255 Aragon Avenue, 2<sup>nd</sup> Floor, Coral Gables, Florida, 33134, this 27<sup>th</sup> day of October, 2008.

  
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KRISTINA ROSENTHAL