

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

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

vs.

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.

**PLEASE READ THIS MOTION CAREFULLY AS IT MAY
AFFECT YOUR RIGHTS. PLEASE CONSULT YOUR
ATTORNEY IF YOU HAVE ANY QUESTIONS.**

**THIS COURT WILL HOLD A HEARING AT THE MIAMI-DADE
COURTHOUSE ON OCTOBER, 14 2008 AT 3:15 p.m. P.M. TO CONSIDER
THIS MOTION AND THE RELIEF REQUESTED HEREIN. IF YOU
HAVE ANY OBJECTION TO THE APPROVAL OF THE MOTION AND
RELIEF REQUESTED, YOU MUST ATTEND THE HEARING,
OTHERWISE YOU WILL BE BOUND BY THE TERMS OF THE BAR
ORDER.**

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**RECEIVER'S MOTION FOR ENTRY OF A BAR ORDER
ENJOINING ALL NOTICED PARTIES FROM PROSECUTING CLAIMS
AGAINST LANDMARK INSURANCE COMPANY AND TO ESTABLISH
A RESERVE OPERATING FUND FROM THE INSURANCE
RECOVERY AND CLAIM PROCEDURES TO THE INSURANCE FUNDS**

Michael I. Goldberg ("Receiver"), the court-appointed receiver for M.A.M.C. Incorporated ("MAMC") and D.B. Biloxi, II, LLC ("D.B. Biloxi II") (collectively, the "Receivership Entities"), files this Motion seeking the entry of a bar order enjoining the Lenders (as defined herein) and the Claimants (as defined herein) from prosecuting claims against Landmark American Insurance Company ("Landmark"), to authorize an operating reserve account be created from the insurance recovery (Reserve Account) and to establish claim procedures to the net funds. In support of this Motion, the Receiver states as follows:

M.A.M.C.'s Operations and the Appointment of the Receiver

1. Prior to receivership, MAMC was in the business of lending money to high credit risk borrowers including single purpose real estate LLCs owned by the principal of MAMC, Dana Berman ("Borrower(s)").
2. To fund its operations and the loans made to Borrowers, MAMC raised funds from approximately 640 individuals, some of whom directly invested in the loans to D.B. Biloxi, II (the "Lenders").
3. The Lenders' interest in the assets of Borrower are evidenced by a listing of all Lenders as owning an undivided interest in certain notes and mortgages.
4. On December 11, 2007, this Court appointed Michael Goldberg to be the Receiver for the Defendants and the Relief Defendants, including D.B. Biloxi II. *See* Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order"), previously filed with this Court.

5. Pursuant to the Receivership Order, the Receiver is authorized to take control of the Receivership Entities, manage their operations and assets, wind up their business affairs and exercise all rights afforded under Florida law and as set forth in the Receivership Order.

6. The Receiver contends that Dana Berman has no interest in the assets of Borrower by virtue of the Receivership Order and shall be forever barred from making a claim against the assets of Borrower.

7. All Claimants are known parties claiming an interest in the assets of Borrower, other than Lenders, and are noticed by this Motion to make a claim. All Claimants are listed on the service list attached hereto as Exhibit "1."

The Insurance Proceeds Should be Delivered Solely to Le Chateau Condominium's Unit Owners and a Fund for Clean-up Relating to Hurricane Katrina

8. D.B. Biloxi II holds title to a portion of what was formerly known as Le Chateau Condominiums ("Le Chateau"), located at 1994 Beach Boulevard, Biloxi, Mississippi. On or about August 29, 2005, as a result of Hurricane Katrina, Le Chateau suffered substantial property damage require the buildings to be deemed a total loss and leveled. D.B. Biloxi II submitted a claim for these losses pursuant to its insurance policy with Landmark, which led to a lawsuit by D.B. Biloxi II. Eventually, Landmark and D.B. Biloxi II entered into a settlement agreement ("Settlement Agreement") allowing for the distribution of certain insurance proceeds to DB Biloxi II ("Insurance Proceeds"). See Settlement Agreement previously filed with this court in connection with the motions filed over D.B. Biloxi, LLC and D.B. Biloxi III, LLC.

9. Pursuant to the Settlement Agreement, Landmark and DB Biloxi II want the Settlement Agreement serve to bar all claims against Landmark:

It is agreed that this AGREEMENT shall be effective as a bar to all matters and claims released herein, notwithstanding the discovery or existence of any additional or different fact or claims. ... D.B. BILOXI, II, LLC ... acknowledges

that this AGREEMENT covers not only facts and/or claims which arise out of or are related in anyway to the matters released herein which are presently known, but also to any further facts and/or claims which arise out of or in any way are related to the matters released herein that are not now known or anticipated but which may later develop or be discovered, including all unanticipated effects or consequences thereof.

Michael Goldberg shall petition the Receivership court for entry of a bar Order enjoining all claims against LANDMARK by secured mortgage holders, the unit owners of Le Chateau Homeowner's Association, Inc., Le Chateau Homeowner's Association, Inc., ... and any lien holders or loss payees under the policies. In the event the Receiver is unable to obtain a bar Order, this AGREEMENT shall be null and void and the Receiver shall return the SETTLEMENT AMOUNT to LANDMARK.

Settlement Agreement, p. 2, ¶¶2-3.

10. A portion of the settlement proceeds from the gross settlement of all insurance claims regarding the Biloxi properties is assigned to the Le Chateaux property - \$1,270,000. The Receiver seeks court authority to apportion some of the proceeds to operating expenses and to establish a claim procedure for the balance of the proceeds.

11. Further, the Receiver specifically seeks to NOT disburse any insurance proceeds to Dana Berman, an insider who purchased the units in the name of Waterside Acquisitions. Neither Dana Berman nor Waterside Acquisitions is entitled to the insurance proceeds and to contest the distribution of any proceeds to any claimant who did not pay full consideration for their interest

12. Prior to its destruction, D. B. Biloxi, II was a developer who had acquired and converted the property owned by the entity to a 58 unit condominium. Several of the units were sold, some to insiders and others to third parties. The files recovered by the Receiver at the corporate offices have insufficient information to determine the rights of ownership and lien claims against the properties.

**Entrance of the Bar Order will Prevent Duplicitous
Suits Against Landmark and Preserve the Settlement Agreement**

13. By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction. Art. V, § 5(b), Fla. Const.; § 26.012(2)(c), Fla. Stat.; *Terex Trailer Corp. v. McIlwain*, 579 So.2d 237, 241 (Fla. 1 Dist. 1991); *English v. McCray*, 348 So.2d 293, 298 (Fla. 1977), citing *State ex rel. B.F. Goodrich Co., et al. v. Trammell, et al.*, 140 Fla. 500, 192 So. 175 (1939). As a court of equity, this court is vested with jurisdiction to enter the Bar Order.

14. The avoidance of a multiplicity of lawsuits is a basis to invoke equitable jurisdiction. See *Realty Bond & Share Co. v. Englar*, 142 So. 152, 154, 104 Fla. 329 (Fla. 1932) (The prevention of a multiplicity of actions at law is one of the special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used). See also, *Dotolo v. Schouten*, 426 So.2d 1013, 1015 (Fla. 2d DCA 1983); *NEC Electronics, Inc. v. VG Sales Co.*, 655 So.2d 1146, 1147 (Fla. 4th DCA 1995).

15. Accordingly, the Receiver seeks the entry of a Bar Order which will prevent the multiplicity of suits against Landmark and keep the Settlement Agreement in tact.

16. A copy of this Motion is being sent to (i) all persons who have filed a Notice of Appearance in this case; (ii) Landmark; and (iii) all of the Lenders and Claimants (collectively the "Noticed Parties").

17. The Noticed Parties have been informed that they have an opportunity to attend the hearing on approval of this Motion and entry of the Bar Order and to object or otherwise comment prior to the entry of the Bar Order.

18. To the extent any of the Noticed Parties fails to respond and/or object to this Motion, such failure should be deemed a waiver of any right to contest the contents contained herein.

OPERATING EXPENSE FUND

19. The Receiver's plan is to market and sell the vacant land. However, the task is a daunting one in what some have labeled the worst real estate market of our lifetime and others have called "The Great Depression II." According the Receiver seeks to establish a reserve operating account from the insurance proceeds to allow the property to be held and marketed for as long as 2 years. The budget is as follows:

- (i) Insurance - \$3,000
- (ii) Clean up and maintenance past and future \$25,000
- (iii) Current payables \$47,727
- (iv) Expense reimbursement to Receivership estate \$36,000
- (v) Accounting - \$15,000
- (vi) Contingency \$20,000
- (vii) Legal \$50,000
- (viii) 2006 and 2007 property tax liability \$12,229.35
- (ix) 2 years property tax reserve - \$25,000

The Receiver therefore seeks to withhold \$233,956.35. Any funds not used will be distributed in accordance with the claim procedures established by the Court at the time the underlying real property is sold.

20. The balance of the funds will be made available to Claimants.

CLAIM PROCEDURES

21. The Receiver has been trying to determine through title searches and the corporate files the rights and priorities to the insurance proceeds. After a significant and diligent search the Receiver has not been able to find sufficient information to process the claims

22. The Receiver seeks the entry of a separate order authorizing each unit owner to make a claim to a pro-rata share of the net settlement proceeds after establishment of the reserve fund.

23. Claimants shall submit the following papers to the Receiver to claim their funds:

- (i) HUD-1 closing statement
- (ii) Deed of Trust
- (iii) Loan payoff information from any lender with payment directions
- (iv) An accounting of any advanced funds paid by D.B. Biloxi, II LLC, M.A.M.C., Dana Berman or any affiliated entity on behalf of the claimant.
- (v) Any attorney fee lien claimed against the insurance proceeds.

The Receiver shall thereafter be authorized, based on the percentage interest in the Deed of Trust to disperse claims or come before this court to contest the claim.

24. After the Claim fund has been distributed the balance of the proceeds shall be distributed to the MAMC lenders holding a 1st priority lien on the unsold units and pro-rata share of the land attributable to the unsold units.

25. The Receiver also plans to use the funds assignable to the units owned by Dana Berman to pay legal fees and Receiver fees.

WHEREFORE, the Receiver, Michael I. Goldberg, requests this Honorable Court to: (i) enter an Order granting the Motion; (ii) enjoin the Noticed Parties from prosecuting claims against Landmark; and (iii) Authorizing the Reserve Account; and (iv) approving the claim procedures.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail/Facsimile/Hand-Delivery and/or U.S. Mail on this day of 2008, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd 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 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 Amadi Companies and Amedia Family Investors**, DAVID AND JOSEPH, P.L., 1001 Brickell Bay Drive, 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. 191st Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire, Attorneys for Intervenor, Ira Sukoff**, KAHN, CHENKIN & RESNIK, P.L., 1815 Griffin Road, Suite 207, Dania, Florida 33304; to **Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire, Attorneys for Johns Manville**, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; to **Helen Schwartz Romañez, Esquire, Attorneys for Turnberry Bank & Bank of Coral Gables**, The Romañez Law Firm, 255 Alhambra Circle, Suite 850, Coral Gables, Florida 33134; to **Charles W. Throckmorton, Esquire, Attorneys for Dana Berman**, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9th Floor, Coral Gables, Florida 33134; to **James S. Telepman, Esquire, Attorneys for Jericho All-Weather Opportunity Fund, LP**, COHEN, NORRIS, SCHERER, WEINBERGER & WOLMER, 712 U.S. Highway One, Suite 400, North Palm Beach, Florida 33408-7146; to **Allen P. Pegg, Esquire, Counsel for IbeX Cheoah I, LLC**, at MURAI, WALD, BIONDO, MORENO & BROCHIN, P.A., Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134; to **J. Andrew Baldwin, Esquire, Attorneys for Regions Bank**, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606; to **Rey Hicks and Javier Castillo** of COMPLETE PROPERTY MANAGEMENT, at Post Office Box 402507, Miami Beach, Florida 33140; to **Daren Schwartz**, BERMAN MORTGAGE CORPORATION D/B/A M.A.M.C., INC., at 402 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida

33133; to **Norman S. Segall, Esquire**, *Attorneys for Skilled Services of Tampa Bay, LLC*, RUDEN MCCLOSKEY SMITH SCHUSTER & RUSSELL, P.A., 701 Brickell Avenue, Suite 1900, Miami, Florida 33131; to **Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191st Street, Suite 508, Aventura, Florida 33180; **Gabrielle D'Alemberte, Esquire**, LAW OFFICES OF ROBERT PARKS, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; to **Robert B. Miller, Esquire**, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2nd Avenue, Suite 919, Miami, Florida 33131-1538; to **Richard P. Cole, Esquire**, **Edward S. Polk, Esquire** and/or **Crystal Leah Arocha, Esquire**, *Attorneys for Meland Russin Hellinger & Budwick, P.A.* COLE SCOTT & KISSANE, P.A., Pacific National Bank Building, 1390 Brickell Avenue, Third Floor, Miami, Florida 33131; and The Receiver shall subsequently file a Notice of Service as to service upon the Noticed Parties.

Respectfully submitted,

BERGER SINGERMAN

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By: _____

JAMES D. GASSENHEIMER

Florida Bar No. 959987

cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*

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