

IN THE CIRCUIT COURT OF THE 11TH
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, **DB DURHAM, LLC**, a Florida
Limited Liability Company, **MAMC FLORIDA
SPORTSDANCE, LLC**, a Florida Limited
Liability Company, et al.,

Relief Defendants.

**RECEIVER'S EMERGENCY MOTION TO AUTHORIZE
THE RECEIVER TO EXECUTE DOCUMENTS REQUIRED
FOR THE SALE OF THE ASSETS OF DBDS MELBOURNE**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Dana J. Berman ("Berman"), by and through undersigned counsel, hereby files this *Receiver's Motion to Authorize the Receiver to Execute Documents Required for the Sale of the Assets of DBDS Melbourne*, to Act as Manager of the Entity as the Receiver over Berman and to vote Berman's Membership Interests and in support thereof state as follows:

1. On December 11, 2007, this Court appointed Michael Goldberg (the "Receiver") to be the Receiver for the Defendants and the Relief Defendants. *See* Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order") previously filed with this Court.

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

2. The assets of Berman became receivership asset subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and subject to the exclusive control of the Receiver. This motion seeks to ratify the appointment with respect to Berman's 49.5% membership interest in DBDS Melbourne, LLC.

3. DBDS Melbourne holds the ownership rights to property located in Melbourne Florida. The assets are subject to a First Mortgage in favor of Mercantile Bank.

4. The Receiver now seeks to sell the assets of DBDS Melbourne to the Bank as part of the settlement of a foreclosure lawsuit

5. In April 2008 Michael Goldberg became the non-member manager of DBDS Melbourne. The operating agreement provides that an 85% vote of the membership interests can change the manger. This motion seeks confirmation that Michael Goldberg had the authority to vote the membership interests of Berman and together with the interests of Schwartz who owns 49.5% of the membership interests are sufficient to effectuate this change in the manger. Schwartz, through his counsel is asked to confirm his ratification of this vote.

6. Importantly, this Court has already authorized the Receiver to execute contracts, instruments, and other agreements on behalf the Receivership Defendants and the entities controlled by the Receivership Defendants:

The Receiver is further authorized to ... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls [.]

Receivership Order, ¶17 (emphasis added).

7. Undoubtedly, the Receiver deems the sale of the Assets advisable for the marshalling, maintenance and preservation of the Receivership Assets.

8. Therefore, via the instant Motion, the Receiver seeks to exercise its control over DBDS Melbourne, and his authority to execute the Documents on behalf of DBDS Melbourne, to ratify the vote of Michael Goldberg as manger and to authorize him as manger of DBDS Melbourne to execute all documents necessary for the closing.

WHEREFORE, the Receiver moves this Court for entry of an Order consistent with the relief requested in the motion.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

1000 Wachovia Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

Telephone: (305) 755-9500

Facsimile: (305) 714-4340

E-Mail: jgassenheimer@bergersingerman.com

By: _____


JAMES D. GASSENHEIMER

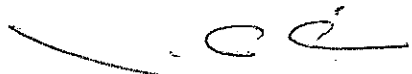
Florida Bar No. 959987

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail, Facsimile and U.S. Mail on this **16th day of December 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd Avenue, Suite N-708, Miami, Florida 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; and to Jared Gelles, Esquire, Counsel for Daren Schwartz, Rafferty, Stolzenberg, Gelles, et al., 1401 Brickell Avenue, Suite 825, Miami, Florida 33131-3502.

Respectfully submitted,

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)*

1857897-1