

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 OFFICE
OF FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE GROUP
and DB BILOXI at al.,

Defendants.

**JOHNS MANVILLE'S RENEWED MOTION TO BE
EXCUSED FROM STAY ORDER FOR LIMITED PURPOSE**

Limited Intervener, JOHNS MANVILLE ("JOHNS MANVILLE"), by and through its undersigned counsel, respectfully submits its Renewed Motion to Be Excused From Stay Order for Limited Purpose, and states:

1. On June 22, 2005, JOHNS MANVILLE and D.B. BILOXI, LLC ("DB BILOXI") entered into a contract and promissory note whereby JOHNS MANVILLE agreed to install a new roof system on the Edgewater Garden Condominiums and to provide financing for the new roof system and whereby D.B. BILOXI agreed to make payments to JOHNS MANVILLE on a monthly basis immediately following the completion of the roof.
2. During the course of the installation of the new roof, on August 29, 2005, Hurricane Katrina struck. At the time of the hurricane, JOHNS MANVILLE had furnished labor, services and materials improving the property in the amount of \$821,146.89 (Eight Hundred Twenty-one Thousand, One Hundred Forty-six Dollars and Eighty-nine Cents).

3. On or about May 11, 2006, JOHNS MANVILLE and D.B. BILOXI executed that certain *Amendment to Promissory Note Dated June 22, 2005*, which reduced the principal amount of the note from \$1,400,000.00 to \$821,146.89.

4. D.B. BILOXI commenced making payments in accordance with the Agreement in June of 2006, and made nine (9) payments the last being for the installment due February 15, 2007. The principal amount remaining due and owing is \$609,613.75 (Six Hundred Nine Thousand, Six Hundred Thirteen Dollars and Seventy-five Cents) which has been in arrears since March, 2007.

5. On December 11, 2007, this Court entered its Temporary Injunction and Agreed Order Appointing Receiver. That Order provides, in relevant part:

¶ 3 [t]he Court hereby takes exclusive jurisdiction and possession of the assets of ... the Relief Defendants [by definition, including DB Biloxi] ... which includes ... contracts, ... lands, agreements, ... and chooses in action;

¶¶ 4 & 13 [the Court appoints Michael Goldberg as receiver of DB Biloxi's assets]; and

¶ 15a [the Court stays all persons from commencing any suit or proceeding against the Receiver or the Receivership Assets].

6. In order to protect its interest, Johns Manville should be permitted to pursue its contract/note claim to a judgment against the Receiver in his capacity as Receiver of the assets of D.B. Biloxi LLC and the Edgewater Garden Apartments real estate.

WHEREFORE, Johns Manville respectfully requests an Order excusing Johns Manville from the provision of paragraph 15a of this Court's Temporary Injunction and Agreed Order Appointing Receiver issued December 11, 2007 for the limited purpose of pursuing its contract/note claim to a judgment against the Receiver in his capacity as Receiver of the assets of D.B. Biloxi LLC and the Edgewater Garden Apartments real estate, and granting such additional and further relief as is just and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was transmitted via U.S. Mail on this 17th day of December, 2008 to all persons on the attached Service List.

CASEY CIKLIN LUBITZ MARTENS & O'CONNELL
(Counsel for Johns Manville)
515 North Flagler Drive, Suite 1900
West Palm Beach, Florida 33401
Telephone: 561-832-5900
Facsimile: 561-833-4209

By: _____



LINDA DICKHAUS AGNANT
Florida Bar No.: 708623
CHARLES L. PICKETT
Florida Bar No.: 0051217

SERVICE LIST

CHRISTINA SAENZ
ASSISTANT GENERAL COUNSEL
OFFICE OF FINANCIAL REGULATION
401 NW 2ND AVENUE
SUITE N-706
MIAMI, FL 33128

ALAN M. SANDLER, ESQ.
ANDLER & SANDLER
117 ARAGON AVE.
CORAL GABLES, FL 33134

MICHAEL I. GOLDBERG, ESQ.
ACKERMAN SENTERFITT
350 E. LAS OLAS BLVD., SUITE 1600
FT. LAUDERDALE, FL 33301-4127

DANIEL KAPLAN, ESQ.
DANIEL KAPLAN, PA
2875 NE 191 ST., SUITE 600
AVENTURA, FL 33180

CHARLES W. THROCKMORTON, ESQ.
KOZYAK TROPIN THROCKMORTON, PA
2525 PONCE DE LEON BLVD. 9TH FL
CORAL GABLES, FL 33134

REY HICKS & JAVIER CASTILLO
COMPLETE PROPERTY MANAGEMENT
PO BOX 402507
MIAMI BEACH, FL 33140

JAMES D. GASSENHEIMER, ESQ.
BERGER SINGERMAN
200 S. BISCAYNE BLVD., SUITE 100
MIAMI, FL 33131

ALLAN A. JOSEPH, ESQ.
DAVID AND JOSEPH, PL
1001 BRICKELL BAY DR., SUITE 2002
MIAMI, FL 33131

RICHARD R. ROBLES, ESQ.
LAW OFFICES OF RICHARD R. ROBLES, PA
905 BRICKELL BAY DRIVE
TOWER II, MEZZANINE, SUITE 228
MIAMI, FL 33131

HOWARD N. KAHN, ESQ.
KAHN CHENKIN & RESNIK, PL
1815 GRIFFIN RD., SUITE 207
DANIA, FL 33304

J. ANDREW BALDWIN, ESQ.
THE SOLOMON LAW GROUP, PA
1881 W. KENNEDY BLVD.
TAMPA, FL 33606-1606

MR. DAREN SCHWARTZ
12555 BISCAYNE BLVD., UNIT 930
NORTH MIAMI, FL 33181

SERVICE LIST

JARED GELLES, ESQ.
RAFFERTY, STOLZENBERG GELLES ET AL.
1401 BRICKELL AVENUE, SUITE 825
MIAMI, FL 33131-3502

NORMAN MALINSKI, ESQ.
2875 NE 191ST STREET, SUITE 508
AVENTURA, FL 33180

GABRIELLE D'ALEMBERTE, ESQ.
LAW OFFICES OF ROBERT PAQRKS
2121 PONCE DE LEON BLVD, SUITE 505
CORAL GABLES, FL 33134

ROBERT B. MILLER, ESQ.
TABAS, FREEDMAN, SOLOFF & MILLER, PA
THE INGRAHAM BUILDING
25 SE 2ND AVENUE, SUITE 919
MIAMI, FL 33131-1538

RICHARD P. COLE, ESQ.
COLE SCOTT & KISSANE, PA
PACIFIC NATIONAL BANK BUILDING
1390 BRICKELL AVENUE, 3RD FL
MIAMI, FL 33131

DAVID A. WHEELER, ESQ.
WHEELER & WHEELER, PLLC
185 MAIN STREET
BILOXI, MS 39530

MICHAEL A. HANZMAN, ESQ.
HANZMAN GILBERT LLP
2525 PONCE DE LEON BLVD, SUITE 700
CORAL GABLES, FL 33134

DEAN C. COLSON, ESQ.
COLSON HICKS EIDSON
255 ARAGON AVENUE, 1ND FL
CORAL GABLES, FL 33134

JASON S. MILLER
ADORNO & YOSS, LLP
2525 PONCE DE LEON BLVD., SUITE 400
CORAL GABLES, FL 33134