

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, et al.,

Relief Defendants.

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**RECEIVER'S MOTION TO EXPAND RECEIVERSHIP TO INCLUDE  
MAMC ISLAMORADA, LLC AND MAMC WRENN STREET, LLC  
AS ADDITIONAL RELIEF DEFENDANTS**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Dana J. Berman ("Berman"), Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., by and through undersigned counsel, hereby files this Motion to Expand Receivership to Include MAMC ISLAMORADA, LLC ("MAMC Islamorada") and MAMC Wrenn Street, LLC ("MAMC Wrenn Street") as Additional Relief Defendants, and states:

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

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Agreed Order Appointing Receiver ("Receivership Order"), previously filed with the Court. Among the Receivership Defendants is M.A.M.C. Incorporated, a loan service provider.

2. In the Receivership Order, Judge Wilson specifically states that all receivership assets, which includes the assets belonging to the Defendants and Relief Defendants, are subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and such assets shall be under the exclusive control of the Receiver:

The Court hereby takes exclusive jurisdiction and possession of the assets of the Defendants, Berman Mortgage, M.A.M.C., and Relief Defendants, the "Receivership Assets", which includes, but are not limited to: files, records, documents, leases, mortgages, investments, contracts, effects, lands, agreements, judgments, bank accounts, books of accounts, rents, goods, chattels, rights, credit claims, both asserted and unasserted, pending court actions and appeals, files and documents in the possession of attorneys and accountants of all of the Defendants and Relief Defendants, all other property, business offices, computers, servers, electronic data storage units, offsite storage locations, safety deposit boxes, monies, securities, choses in action, and properties, real and person, tangible and intangible, of whatever kind and description, wherever situation of the Defendants ... and Relief Defendants. The Receiver shall retain custody and control of all of the foregoing pursuant to the terms of this Agreed Order.

Receivership Order, ¶ 3 (emphasis added).

3. The Receiver was also authorized to investigate the manner in which the affairs of the Receivership Defendants were conducted and to institute actions on behalf of the Receivership Defendants as deemed necessary by the Receiver to collect funds or assets wrongfully misappropriated from the Receivership Defendants:

The Receiver is hereby authorized and specifically has standing to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion by advisable or proper for the protection of the Receivership Assets or proceeds thereof, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal courts as may in his judgment be necessary or proper for the collection, preservation and maintenance of the Receivership Assets and/or on behalf of the Receivership Defendants.

Receivership Order, ¶ 21 (emphasis added).

4. The Receivership Order identified 18 Relief Defendants. However, the list of Relief Defendants should be expanded to include MAMC Islamorada and MAMC Wrenn Street, as these entities hold title to receivership assets.<sup>1</sup>

5. M.A.M.C. Incorporated serviced a series of loans from investors assembled by Berman Mortgage Corporation totaling over \$25 Million loan to DB Islamorada, LLC, a Florida limited liability company created by Dana Berman and Keith Novak, for the purchase and development of 25-unit water-front condo-hotel development located at Mile Marker 81.5 Islamorada, Florida (the "Condo-Hotel Property") and for two contiguous parcels of vacant land located at 80 Wrenn Street, Plantation Key ("Wrenn Street Property") (collectively, the "Property")

6. DB Islamorada, LLC defaulted on the loan and was in Chapter 11 Bankruptcy proceedings at the time the Receivership was created.

7. In the bankruptcy, the MAMC lenders acquired the Condo-Hotel Property through a credit bid at a sale pursuant to 11 U.S.C. § 363.

8. Importantly, the lenders assigned their interests in the credit bid to MAMC Islamorada, LLC, a Florida limited liability company created by the Receiver on behalf of MAMC Incorporated to take title to the Condo-Hotel Property.

9. Also in the bankruptcy, the MAMC lenders acquired the Wrenn Street Property and assigned their interests in the credit bid to MAMC Wrenn Street, LLC, a Florida limited liability company created by the Receiver on behalf of MAMC Incorporated to take title to the Wrenn Street Property.

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<sup>1</sup> A relief defendant may either be a gratuitous beneficiary of the proceeds from the principal defendant's fraud or merely the custodian of the principal defendant's assets. *See, e.g., CFTC v. Hanover Trading Co.*, 34 F. Supp. 2d 203, 207 (S.D.N.Y. 1999).

10. MAMC Islamorada and MAMC Wrenn Street are clearly assets of the Receivership, and thus should be subject to the Receivership and the Receivership Order. MAMC Islamorada and MAMC Wrenn Street are managed by M.A.M.C. Incorporated, and were further created to take title to assets that were collateral for a loan serviced by M.A.M.C. Incorporated and funded by investors for whose benefit the Receivership is primarily established.

11. At the moment, there are tens of thousands of dollars of outstanding tax obligations on the Property and there is a dispute among the investors as to priority of payment. Bringing MAMC Islamorada and MAMC Wrenn Street into the Receivership would provide these entities the benefit of the stay created by the Receivership Order and allow the parties to resolve issues of priority and monetize the Property for the benefit of the investors. The Receiver does not seek a determination at this time as to each lenders' ownership interest and priority but will file a motion on these issues at a later time.

12. Consequently, and in line with the Receivership Order, inclusion of MAMC Islamorada, LLC and MAMC Wrenn Street, LLC into the Receivership proceedings as Relief Defendants "is both necessary and appropriate in this matter in order to prevent further waste and dissipation of the assets of the Defendants and Relief Defendants to the detriment of its investors." Receivership Order, ¶ 3.

**WHEREFORE**, the Receiver moves this Court for entry of an Order Expanding the Receivership to Include Additional Relief Defendants MAMC Islamorada, LLC and MAMC Wrenn Street, LLC, and any other and further relief deemed necessary by this Court.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and/or U.S. Mail on this **16<sup>th</sup> day of April 2009**, to: **Cristina Saenz, Assistant General Counsel, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401**

N.W. 2<sup>nd</sup> 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. 191<sup>st</sup> Street, Aventura, Florida 33180; 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, 9<sup>th</sup> Floor, 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 **Jared Gelles, Esquire**, *Counsel for Daren Schwartz*, RAFFERTY, STOLZENBERG, GELLES, ET AL., 1401 Brickell Avenue, Suite 825, Miami, Florida 33131-3502; to **Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191<sup>st</sup> 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 **David A. Wheeler, Esquire**, *Counsel for Various Unit Owners at Le Chateau Condominiums at DB Biloxi II, LLC* WHEELER & WHEELER, PLLC, 185 Main Street, Biloxi, Mississippi 39530; to **Michael A. Hanzman, Esquire**, HANZMAN GILBERT, LLP, 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; to **Paul Huck, Esquire and Dean C. Colson, Esquire**, COLSON HICKS EIDSON, 255 Aragon Avenue, Second Floor, Coral Gables, Florida 33134; to **Jason S. Miller, Esquire**, *Counsel for Flagstar Bank*, ADORNO & YOSS, LLP, 2525 Ponce de Leon Boulevard, Suite 400, Coral Gables, Florida 33134; to **Mark A. Basurto, Esquire and**

**Charles Evans Glausier, Esquire**, *Attorneys for Gulf Island Beach and Tennis Club Condominium Association, Inc.*, BUSH ROSS, P.A., Post Office Box 3913, Tampa, Florida 33601-3913; and to **Valerie Tompkins, Esquire**, *Counsel for Doris Tompkins, Investor/Lender in DB Biloxi II, LLC; for Paula Tompkins, as Investor/Lender in DB Biloxi I, LLC; and for Valerie Tompkins, as Investor/Lender in DB Biloxi, LLC, DB Biloxi II, LLC and DB Biloxi III, LLC, Redlands Ranch, LLC and DB Simpsonville, LLC*, LAW OFFICES OF VALERIE TOMPKINS, 12865 West Dixie Highway, Second Floor, North Miami, Florida 33161.

Respectfully submitted,

**BERGER SINGERMAN**

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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)*  
Posted to the Berman Mortgage Website

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