

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.

**RECEIVER'S EMERGENCY MOTION REGARDING A UCC SALE OF THE SECOND
MORTGAGE AND ACCOMPANYING NOTES REGARDING DB TAMPA, LLC**

Michael Goldberg, as Court Appointed Receiver, by and through undersigned counsel, files this *Emergency Motion for a Court Order Regarding the Noticed Non-Judicial UCC Sale of the Second Mortgage and Accompanying Notes to DB Tampa, LLC*, and states:

1. This case involves the State of Florida's claims against Dana Berman and several of his entities. Michael Goldberg has been appointed by the State to act as Receiver over Dana Berman and his business entities. This Motion specifically addresses business entities, DB Tampa, LLC and MAMC Incorporated.

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. DB Tampa, LLC is a single purpose entity formed by Dana Berman to acquire certain real property in the Tampa area of Florida on which was situated a rental community ("Property"). The intent was to convert the rental community on the Property to condominiums. To finance the acquisition and conversion process, Dana Berman borrowed money from Great Florida Bank secured by a first mortgage on the Property ("First Mortgage Loan") and subsequently borrowed money from a group of lenders he had assembled in the form of a second mortgage ("Lenders") which was subsequently funded through five future advances.

3. MAMC Incorporated, is a loan servicer that on behalf of a group of lenders assembled loans and mortgages. As this Court is aware when Dana Berman and his various entities started to experience certain financial difficulties in or about March of 2007, the lenders and Mr. Berman agreed to the appointment of a Chief Restructuring Officer ("CRO") to operate the business. Alan Goldberg was hired as CRO and operated the companies from March of 2007 to the inception of this Receivership case in December of 2007. During the CRO period, Alan Goldberg was required to handle the inability of DB Tampa to continue to service the First Mortgage Loan made by Great Florida Bank of DB Tampa. He therefore negotiated a deal with one of the lenders, George Macropulos to borrow money to continue to fund the project and to service the first mortgage. Mr. Macropulos received in exchange for making the loan, a collateral assignment of the second mortgage and notes ("Collateral Assignment") held by the MAMC Lenders. Notice was provided to the lenders by Alan Goldberg of the intent to enter into this transaction through a Decision Notice Process provided for in the loan servicing agreement and entered into between MAMC and the lender participants. The Decision Notice was approved by lenders and later ratified by this Court. The Lenders holding the second mortgage are now in

default under the terms of the Collateral Assignment entered into between Alan Goldberg as CRO of MAMC and George Macropulos' entity, Magicorp Ltd.

4. George Macropulos has issued a Notice of Non-Judicial Sale under UCC Article 9, pursuant to Chapter 679 of the Florida Statutes. The non-judicial sale of the assigned notes and mortgage shall occur on May 11, 2009, pursuant to the attached Re-Notification of Disposition of collateral attached hereto as **Exhibit "A"** ("Notice of Sale").

5. The Receiver seeks a court order determining the obligations of the Receiver with respect to his Notice of Non-Judicial Sale and to determine appropriate procedures for Notice of the Sale.

6. Magicorp, through its counsel, has raised the question whether the Receiver has standing to address these issues with the Court. Florida cases regarding the standing of a Receiver are based upon the axiomatic principle that a Receiver only obtains the rights of actions that were possessed by the person or corporation in Receivership. *Hamilton v. Flowers*, 183 So.2d 811 (Fla. 1938); *Freeman v. Dean Witter Reynolds, Inc.*, 865 So.2d 54 (2nd DCA 2003). Here, the Receiver stands in the shoes of the loan servicer and not in the shoes of holders of the notes.

7. The Receiver is subject to the supervision and control of the Court that appoints it. *O'Neil v. General Motors Corp.*, 841 App.Sup. 391 (M.D. Fla. 1993).

8. In this circumstance, the Receiver acts on behalf of the loan servicer, however, the second mortgage and notes are owned by the Lenders. Therefore, the Receiver believes and seeks a Court finding that the claims, rights, and obligations with respect to the second mortgage belong to the Lenders.

9. This Court has previously authorized and approved as a method of providing notice to the Lenders the posting of any notice on the Receiver's web page and an email distribution to all Lenders. The Receiver seeks approval that the email and web-posting is sufficient notice with respect to the Notice of Sale. This method of communication was the method previously used by the company and is subsumed in the loan servicing agreements entered into between the Lenders and the company.

10. The Receiver brings to the attention of the Court that after the institution of the Receivership certain Lenders agreed to finance the additional needs of the First Mortgage Loan and Macropulos has agreed to protect the interests of the Lenders who provided additional financing and has agreed to condition the UCC sale on providing a signed document by Magicorp protecting the said interests ("New Money Protection Agreement"). See New Money Protecting Agreement attached hereto as **Exhibit "B."**

11. A total of approximately \$493,000.00 has been raised post-receivership. Approximately, \$418,000.00 has been spent and the balance remains on account. Under the terms of the New Money Protection Agreement, each Lender shall have the right to seek a refund of the unspent money or commit the money to the project in exchange for the same benefits received by all similarly situated Lenders. See Exhibit B.

12. The Receiver brings to the attention of the Court that but for Magicorp's investment and the subsequent investment of the Lenders protected under the New Money Protection Agreement, the of the second mortgage holders interests would most probably have been extinguished by Great Florida Bank.

13. The Receiver believes that he has used his best efforts to raise funds from the lender pool to salvage the DB Tampa project. Unfortunately these efforts have fallen well short of the funding requirements to salvage the project.

14. The Receiver has issued a Decision Notice in accordance with the provisions of this Court's Order Granting the Receiver's Amended Motion to Determine Procedures by which Receiver can make decisions on specific loans and projects. The Decision Notice advised the Lenders of their rights to protect their investment in the Second Mortgage by agreeing to participate in the additional funding requirements. Only a limited number of lenders have come forward to protect their respective investments. See this Court's Order dated February 8, 2008, marked as **Exhibit "C."**

WHEREFORE, the Receiver seeks an Order from this Court:

- a. Determining that the Receiver's obligations with respect to the Notice of Sale is limited to providing notice of the sale to the Lenders and that standing to object to the sale vests solely with the Lenders, and not the Receiver;
- b. Determining that the posting of the Notice of Sale on the Receivership website and the email distribution of the Notice of Sale to the Lenders constitutes adequate notice to the second mortgage holders of the sale;
- c. Approving the negotiated agreement protecting those second mortgage holders who have funded the DB Tampa project post-receivership; and
- d. Awarding such other and further relief as this Court deems just and proper under the circumstances.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this **29th day of April 2009**, 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 **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 **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 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 **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

Attorneys for Receiver, Michael Goldberg
1000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Direct Line: (305) 714-4383
Telephone: (305) 755-9500
Facsimile: (305) 714-4340
E-Mail: jgassenheimer@bergersingerman.com

By: _____

JAMES D. GASSENHEIMER
Florida Bar No. 959987
ARIADNA HERNANDEZ
Florida Bar No. 020953

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
William C. Phillippi, Esq. (via e-mail)

2092812-1

RE-NOTIFICATION OF DISPOSITION OF COLLATERAL

To: Coconut Grove Bank as the Custodian
of the Charles R. Gremler IRA, et al., Debtor
c/o M.A.M.C. Incorporated
Suite 402, 3250 Mary Street
Coconut Grove, Florida 33133

From: Magicorp Ltd., Secured Party
6525 Collins Avenue
Miami Beach, Florida 33141

We will sell the following-described collateral to the highest qualified bidder in public as follows:

Description of Collateral:

Two promissory notes (the "Notes") executed and delivered by DB Tampa, LLC, a Florida limited liability company, one dated December 20, 2006, in the original principal amount of \$3,985,000 and one dated February 9, 2007, in the original principal amount of \$605,000, and a second priority Mortgage and Security Agreement dated October 13, 2004, and recorded at Official Records Book 14329, Page 1971, of the Public Records of Hillsborough County, Florida, and as hereinbefore amended (the "Second Mortgage"), which secures the Notes and encumbers certain real property located in Hillsborough County, Florida, more particularly described as follows (the "Encumbered Real Property"):

Lots 3 and 4, in Block 1, P.H. COLLIN'S SUBDIVISION, less the East 15 feet of Lot 4 and less the West 15 feet of Lot 3, deeded to the City of Tampa, according to the Plat thereof, as recorded in Plat Book 2, at Page 50 the Public Records of Hillsborough County, Florida.

Day and Date: Monday, May 11, 2009
Time: 11:00 A.M.
Place: Law Offices of Adams, Cassidy & Phillippi
One E. Broward Boulevard, Suite 1410
Fort Lauderdale, Florida 33301

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell. You may request an accounting by calling (954) 764-6450.

cc: Michael I. Goldberg, Receiver
M.A.M.C. Incorporated
c/o Akerman Senterfitt



NEW MONEY PROTECTION AGREEMENT

THIS NEW MONEY PROTECTION AGREEMENT (the "Agreement") is made as of the _____ day of April, 2009, by **MAGICORP LTD**, a Cyprus corporation ("Magicorp"), in favor of certain members (the "Other New Money Providers") of **COCONUT GROVE BANK AS THE CUSTODIAN OF THE CHARLES R. GREMLER IRA, et al.**, (collectively, the "Borrower").

WHEREAS, the members of the Borrower are the owners and holders of interests in either of two promissory notes executed and delivered by DB Tampa, LLC, a Florida limited liability company ("DB Tampa"), one dated December 20, 2006, in the original principal amount of \$3,985,000 ("Future Advance Promissory Note #4") and one dated February 9, 2007, in the original principal amount of \$605,000 ("Series #2 Promissory Note" and, together with Future Advance Promissory Note #4, the "Second Mortgage Loan"); and

WHEREAS, the Second Mortgage Loan is secured by a second priority Mortgage and Security Agreement dated October 13, 2004, and as hereinbefore amended (the "Second Mortgage"), encumbering certain real property owned by DB Tampa and located in Hillsborough County, Florida (the "Real Property"); and

WHEREAS, Magicorp made a loan of additional funds to the Borrower (the "Magicorp Loan") for the purposes of (1) bringing current the first mortgage loan (the "First Mortgage Loan") encumbering the Real Property and (2) funding the cost of foreclosure of the Second Mortgage Loan; took as collateral a security interest in the Second Mortgage Loan; and has advanced additional amounts with respect to the Magicorp Loan; and

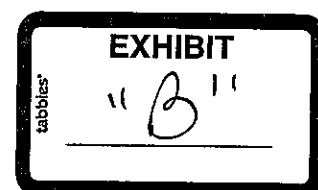
WHEREAS, the Other New Money Providers have also advanced additional amounts with respect to the Second Mortgage Loan (the "Other New Money"); and

WHEREAS, the Borrower has brought an action to foreclose the Second Mortgage; and

WHEREAS, the Magicorp Loan matured on October 30, 2008; it is currently in default and Magicorp has noticed a UCC sale for the Second Mortgage Loan for May 11, 2009 (the "UCC Sale"); and

WHEREAS, the receiver for M.A.M.C. Incorporated, the loan servicer for the Borrower has requested that Magicorp execute and deliver this Agreement for the benefit of the Other New Money Providers, which Magicorp is willing to do on the terms and conditions of this Agreement;

NOW, THEREFORE, Magicorp hereby agrees as follows:



If Magicorp is the successful bidder for the Second Mortgage Loan at the UCC Sale and Magicorp or an affiliate also becomes the owner of the Real Property at foreclosure sale, Magicorp or the affiliated new owner shall grant a new second mortgage encumbering the Real Property securing an amount equal to the sum of (a) the amount of the Other New Money provided by the Other New Money Providers through May 11, 2009' and (b) all amounts provided by Magicorp in connection with the Second Mortgage Loan, plus accrued but unpaid interest to the date of grant of the second mortgage (collectively, the "Secured Amount").

If Magicorp is the successful bidder for the Second Mortgage Loan at the UCC Sale and Magicorp or an affiliate is outbid at the foreclosure sale for the Real Property, up to 80% of the net foreclosure proceeds shall be distributed to the Other New Money Providers and Magicorp on a pro rata basis based on their respective portions of what would have been the Secured Amount. The maximum amount of such distribution shall be the sum that what would have been the Secured Amount.

IN WITNESS WHEREOF, Magicorp has caused this Agreement to be duly executed as of the date first above written.

MAGICORP, LTD, a Cyprus corporation

By: _____
George Macropulos, its Attorney-in-Fact

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, **NORMANDY
HOLDINGS II, LLC**, a Florida Limited Liability
Company, **NORMANDY HOLDINGS III, LLC**,
a Florida Limited Liability Company,
ACQUISITIONS, LLC, a Florida Limited
Liability Company, **DBKN GULF
INCORPORATED**, a Florida Limited Liability
Company, **OCEANSIDE ACQUISITIONS,
LLC**, a Florida Limited Liability Company, **DB
BILOXI, LLC**, a Florida Limited Liability
Company, **DB BILOXI II, LLC**, a Florida
Limited Liability Company, , **DB BILOXI III,
LLC**, a Florida Limited Liability Company, **DBDS
VERO BEACH, LLC**, a Florida Limited Liability
Company, **DB TAMPA, LLC**, a Florida Limited
Liability Company, **DB SIMPSONVILLE, LLC**,
a Florida Limited Liability Company, **DBDS
NORTH MIAMI, LLC**, a Florida Limited
Liability Company, **REDLANDS RANCH
HOLDINGS, LLC**, a Florida Limited Liability
Company, **DBDS BISCAYNE PARK, LLC**, a
Florida Limited Liability Company, **DB
CARROLL STREET, LLC**, a Florida Limited
Liability Company.

Relief Defendants

FILED
FEB - 8 PM 12:17
11TH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLA.
CASE NO. 07-43672 CA 09

EXHIBIT
"C"
tabbles

**ORDER GRANTING RECEIVER'S AMENDED MOTION TO DETERMINE
PROCEDURES BY WHICH RECEIVER CAN MAKE DECISIONS
ON SPECIFIC LOANS AND PROJECTS**

THIS CAUSE HAVING come on before the Court on January 28, 2008 upon the *Receiver's Amended Motion to Determine Procedures by which Receiver Can Make Decisions on Specific Loans*

~~and Projects~~ and the Court having heard argument of counsel for the Receiver having noted no

objection from any other interested party, and being otherwise duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED that:

1. The Receiver's Motion is GRANTED.
2. The Receiver is authorized to act with respect to the projects and loans by a majority vote of all participants in each loan voting in proportion to their percentage interest in the loan or project.

The following procedures are established for voting:

a. If the decision for which approval is sought is not one that requires emergency action, a description of the issue to be voted upon together with a ballot (Decision Notice) shall be provided by U.S. Mail and e-mail to each participant ten days before the final date set for return of the ballots and shall be posted on the same day on the web site maintained by the Receiver. Each investor shall be instructed to return the ballot either approving or disapproving the measure.

b. Any participant in the loan who does not return a ballot shall be deemed to have voted to approve the position recommended by the Receiver.

d. The Receiver is authorized to take the action proposed upon receipt of a majority of the ballots returned in favor of the position proposed by the Receiver.

e. Each participant's vote shall be pro-rata with their percentage interest in the loan.

f. In the event that the decision requiring action by the Receiver is one deemed to be an emergency the Decision Notice shall be sent by electronic mail and posted on the web site maintained by the Receiver five days before the date set for return of the ballot. If the an investor does not have an email on file with the company, the notice shall be sent to that investor by Federal Express.

3. The Court finds that the Receiver is authorized in his sole discretion to make all decisions previously reserved to management under the company's loan servicing agreement and specifically, the following decisions:

- a. To declare a loan in default;
- b. To initiate foreclosure proceedings with respect to a loan.
- c. To retain appropriate professionals on behalf of the Investors to prosecute foreclosure actions and/or take appropriate action with respect to property securing each loan that is in default through litigation or otherwise to protect the interests of the Investors.
- d. To bid at any sale on a property and to form a special purpose entity to take title to the property which shall be managed by the Receiver.

4. The Court has further been advised that Alan Goldberg managed the defendant M.A.M.C. Incorporated and the Relief Defendants as a Chief Restructuring Officer (CRO) between March 12, 2007 and December 11, 2007. (The CRO Period). During the CRO Period certain decisions were made with respect to loans through a similar decision notice process to that established by the Court in this Order. The Court has been advised that the Receiver has and continues to review these decisions as made by decision notice. The Court authorizes the Receiver to, in his discretion, accept or reject decisions made by the CRO during the CRO Period without further order of the court. The Receiver is authorized to execute all documents necessary to complete

or consummate sales and/or enter into contracts authorized by a decision notice during the CRO Period and accepted by the Receiver. Any decision notice from the CRO Period which the Receiver determines should be rejected, shall be rejected by motion filed with the Court and noticed to all involved parties.

~~DONE AND ORDERED in Chambers at Miami, Miami Dade County, Florida, on this~~

9 day of February 2007.



THOMAS WILSON, JR., CIRCUIT JUDGE

cc: All Counsel of Record

949357-1