

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 TO ALLOW WITNESS FISHER
TO APPEAR BY PHONE AT THE JUNE 18, 2009 HEARING TO
APPROVE THE RECEIVER'S EXECUTION OF A LETTER OF INTENT
FOR THE PURCHASE AND SALE OF THE ASSETS OF MAMC
ISLAMORADA, LLC PROPERTY NUNC PRO TUNC TO JUNE 12, 2009**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Dana J. 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 *Receiver's Motion to Allow Witness Fisher to Appear By Phone and Testify at the June 18, 2009 Hearing on the*

BERGER SINGERMAN
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Motion to Approve the Receiver's Execution of Letter of Intent for the Purchase and Sale of M.A.M.C. Islamorada, LLC Nunc Pro Tunc to June 12, 2009, and states as follows:

1. M.A.M.C. Incorporated serviced a series of loans from Lenders assembled by Berman Mortgage Corporation to DB Islamorada, LLC, ("DB Islamorada") a Florida limited liability company created by Dana Berman and Shelie Sims Perdigon, for the purchase and development of a 25-unit water-front condo-hotel development located at Mile Marker 81.5 Islamorada, Florida (the "Condo-Hotel Property").

2. DB Islamorada, LLC defaulted on the loans and filed for Chapter 11 Bankruptcy protection prior to this Receivership proceeding. 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.

3. 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. On May 27, 2009, the Court ordered that MAMC Islamorada, LLC be brought into this Receivership as a Relief Defendant and, as such, its assets are part of the Receivership.

4. MAMC Islamorada, LLC is managed by M.A.M.C. Incorporated on behalf of its members, the former MAMC lenders. As such, M.A.M.C. Islamorada, LLC is an asset of the Receivership and is subject to the exclusive jurisdiction of this Court, and subject to 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 personal, tangible and intangible, of whatever kind and description, wherever situated 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); *see also*, Receivership Order, ¶ 13.

5. The Receiver now seeks to sell the assets of MAMC Islamorada, LLC. to Landology, LLC, while retaining certain loan and equity participation rights on the part of the Members of MAMC Islamorada, LLC.

6. The Receiver executed the LOI pursuant to the Court's Receivership Order authorizing the Receiver to execute contracts, instruments, and other agreements on behalf of 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. The Receiver deems the sale of MAMC Islamorada Property advisable for the marshalling, maintenance, and preservation of the Receivership assets. Specifically, the transaction presents the members with a partner with the funds necessary to preserve and further monetize the asset.

8. There are approximately 340 members of MAMC Islamorada, LLC. There is not a consensus as to the disposition of the property and the acceptance of the terms contained in the LOI for the purchase and sale transaction now contemplated. The Receiver is aware that some investors object to the terms of the proposed transaction.

9. The Receiver has served a copy of the attached LOI on the investors by posting the LOI to the Receivership website and by email distribution, which procedures were established by the Court. The Receiver will post this Motion and Notice of Hearing thereon to the Receivership website and distribute a copy of the Notice of Hearing and Motion to the Lenders/Members via the posting and e-mail distribution procedures previously established by this Court for the purposes of the Receivership.

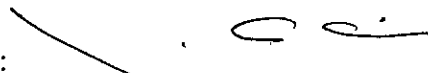
10. The Court has set this matter for a special set evidentiary hearing at 10:45 am on June 18, 2009. Undersigned Counsel seeks to present the testimony of the Receiver in person and the witness hired to market and sell the property, Louis Fisher, by phone. Mr. Fisher is not present in Miami and the Receiver believes the expense of presenting this witnesses' testimony live is an unnecessary and unwarranted expense.

WHEREFORE, the Receiver moves this Court for entry of an Order:

- a. finding that the notice and established procedures by posting to the Receivership website and e-mail distribution to the Lenders/Members constitute adequate notice of the instant motion and hearing thereon;
- b. Approving the presentation of Witness Fisher by telephone;
- c. awarding such other and further relief this Court deems just and proper.

Respectfully submitted,

BERGER SINGERMAN
Attorneys for Receiver, Michael Goldberg
1000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
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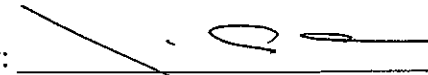
By: 

JAMES D. GASSENHEIMER
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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 **16th day of June, 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

By: 

JAMES D. GASSENHEIMER
Florida Bar No. 959987
E-Mail: jgassenheimer@bergersingerman.com

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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