

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR 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.

THE ORIGINAL
FILED ON:

AUG 11 2009

IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL.

MOTION TO ABANDON RELIEF DEFENDANT DB TAMPA, LLC

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Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., (the "Receiver") by and through undersigned counsel, hereby files this Motion to Abandon Relief Defendant DB TAMPA, LLC, and states:

The Receiver is Appointed Over Relief Defendant DB TAMPA, LLC

1. On December 11, 2007, this Court appointed Michael Goldberg to be the Receiver for the Defendants and the Relief Defendants.
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. Pursuant to the Receivership Order, Relief Defendant DB Tampa, LLC, is subject to the receivership. In fact, in the Receivership Order, Judge Wilson specifically states that all receivership assets, which include Relief Defendant DB Tampa, LLC, is 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 [including DBDS Vero Beach, LLC], 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 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.

4. Receivership Order, ¶ 3 (emphasis added). See also, Receivership Order, ¶ 13 (“Michael I. Goldberg ... is appointed receiver for ... DB Tampa, LLC ...”). DB Tampa, LLC, is a Relief Defendant in this action because the Court found its inclusion necessary to “prevent further waste and dissipation of the assets of the Defendants and Relief Defendants, to the detriment of its investors.” See Temporary Injunction and Agreed Order Appointing Receiver (“Receivership Order”), previously filed with the Court, ¶7.

Relevant Facts

5. 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.

6. 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. Alan Goldberg 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.

7. The Receiver believes that he has used his best efforts to raise funds from the lender pool to salvage the DB Tampa project. Pursuant to these efforts, after the institution of the Receivership, certain Lenders agreed to finance the additional needs of the First Mortgage Loan. A total of approximately \$493,000.00 was raised post-receivership. Approximately \$418,000.00 was spent and the balance remained on account. Unfortunately, these efforts fell well short of the funding requirements to salvage the project.

8. But for Magicorp's investment and the subsequent investment of the Lenders who provided additional funding, the second mortgage holders' interests would most probably have been extinguished by the first mortgagee, Great Florida Bank.

9. The Lenders holding the second mortgage defaulted under the terms of the Collateral Assignment entered into between Alan Goldberg as CRO of MAMC and George Macropulos' entity, Magicorp Ltd:

10. George Macropulos issued a Notice of Non-Judicial Sale of the second mortgage holders' assigned notes and mortgages under UCC Article 9, pursuant to Chapter 679 of the Florida Statutes.

11. Macropulos agreed to protect the interests of the Lenders who provided additional financing and agreed to condition the UCC sale on providing a signed document by Magicorp protecting the said interests ("New Money Protection Agreement"). Pursuant to the 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.

12. On May 6, 2009, this Court approved the New Money Protection Agreement. The Court's Order on Receiver's Emergency Motion Regarding UCC Sale is attached hereto as Exhibit A.

13. The non-judicial sale of the assigned notes and mortgage through which Magicorp acquired the second mortgage holders' interests held by the MAMC Lenders occurred on May 11, 2009. The money on account from the new money lenders was transferred by MAMC to Magicorp.

14. Another entity formed by Macropulos, Bayshore Oaks Holdings, LLC, as the successor-in-interest to MAMC, obtained title to the DB Tampa Property at the foreclosure sale held on July 22, 2009.

15. As such, because the MAMC Lenders no longer hold the second mortgage on the DB Tampa Property, DB Tampa, LLC and DB Tampa no longer owns the Property, DB Tampa, LLC no longer has any equity to protect and thus its continued inclusion in the Receivership estate is no longer consistent with the purposes of the case and there is no further potential for waste of DB TAMPA, LLC's assets. Consequently, it should be abandoned from these Receivership proceedings.

**Defendant DB Tampa, LLC Should be Abandoned as a Relief Defendant
Because it is of No Value to the Receivership Estate**

16. The entire purpose for the inclusion of DB Tampa, LLC, as a Relief Defendant was so that the Receiver could properly protect its assets because the evidence tended to show that there was an "imminent danger that the property of the Defendants and Relief Defendants

may be further dissipated and/or commingled if a Temporary Injunction and the appointment of a receiver" was not issued. Receivership Order, ¶2. Its inclusion served to "prevent immediate and irreparable injury to the investors who have entrusted over \$192,000,000 to the ... Relief Defendants," Receivership Order, ¶4, and otherwise "prevent further waste and dissipation of the assets of the ... Relief Defendants, to the detriment of its investors." Receivership Order, ¶7. Essentially, the Receivership Order served to protect Relief Defendant DB Tampa, LLC, and its assets, and thereby protect the investors.

17. The Receiver has recovered all that it can recover from Relief Defendant Tampa, LLC. Thus, protection is no longer necessary. Consequently, Relief Defendant DB Tampa, LLC, no longer has any purpose in this Receivership action and should be removed.

WHEREFORE, the Receiver, on behalf of Relief Defendant DB Tampa, LLC, respectfully requests that this Court grant this Motion to Abandon Relief Defendant DB Tampa, LLC, and for such other and additional relief as the Court deems just and proper.

Respectfully submitted,

BERGER SINGERMAN

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 11th day of August, 2009, to:

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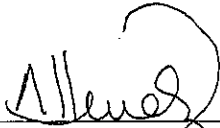
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cc: The Honorable Thomas Wilson, Jr. *(via U.S. Mail)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*
Posted to the Berman Mortgage Website

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

Plaintiff(s),

vs.

BERMAN MORTGAGE
CORPORATION ET AL.

Defendant(s).

ORDER

GRANTING/DENYING
PLAINTIFF'S/DEFENDANT'S
RECEIVERS

07-43672 CA 09

Receivers THIS CAUSE having come on to be heard on May 16, 2009 at 10:30 AM
on Plaintiff's/Defendant's Motion EMERGENCY MOTION

REGARDING UCC SALE OF THE SECOND MORTGAGE AND

ACCOMPANYING NOTES REGARDING DB TAMPA, LLC

and the Court having heard argument of counsel, and being otherwise advised in the premises, it is
hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby GRANTED.

1. THE COURT FINDS THAT THE RECEIVER'S OBLIGATIONS WITH RESPECT TO THE NOTICE OF SALE
IS LIMITED TO PROVIDING NOTICE OF THE SALE TO THE LENDERS THROUGH ESTABLISHED POSTING
AND DISTRIBUTION PROCEDURES. 2. THE COURT FINDS THAT STANDING TO OBJECT TO THE UCC SALE OF
THE SECOND MORTGAGE VESTS SOLELY WITH THE LENDERS (SECOND MORTGAGE HOLDERS) AND NOT WITH
THE RECEIVER. 3. THE NOTICE PROCEDURES USED BY THE RECEIVER CONSTITUTE ADEQUATE NOTICE
BY THE RECEIVER TO THE LENDERS. 4. THE COURT HEREBY APPROVES THE NEW MONEY
PROTECTION AGREEMENT (EX B TO THE MOTION) BY MAGICORP PROTECTING THE LENDERS' ADDITIONAL*
DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 6th day of

May, 2009

Thomas S. Wilson, Jr.
CIRCUIT COURT JUDGE

Thomas S. Wilson, Jr.
Circuit Court Judge

Copies furnished to: Counsel of Record

117.01-554 1/03

* INVESTMENTS IN THE DB TAMPA PROJECT.

