

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR DADE
COUNTY, FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

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.

**RECEIVER'S MOTION TO ABANDON RELIEF DEFENDANT DB BILOXI III, LLC AND
FOR AN ORDER APPROVING THE DISBURSEMENT OF FUNDS**

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Michael I. Goldberg, as 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 Biloxi III, LLC and for an Order Approving the Disbursement of Funds, and states:

Overview

The Receiver seeks to abandon DB Biloxi III, LLC as it is no longer the owner of any the real property upon which the MAMC Lenders held a second mortgage. The first mortgagee has foreclosed out the interests of this relief defendant. The Receiver entered into a settlement with the first mortgagee on the subject property, which settlement was approved by the Court. Although the first mortgagee becomes the owner of the subject property pursuant to the settlement, it provides a residual benefit to the MAMC Lenders who held a second position lien on the property. The Receiver has created a new entity, M.A.M.C. Biloxi III, LLC in which the MAMC Lenders would hold their residual interests in proportion to the their respective investments in the second mortgage. DB Biloxi III does hold certain cash on which the Receiver and Second Lien holders have an equitable claim. The Receiver seeks court approval to abandon DB Biloxi III, LLC and to transfer the cash held by DB Biloxi III, LLC to the new entity, M.A.M.C. Biloxi III, LLC.

DB Biloxi III, LLC owes \$165,000, which amount represents the primed contributions of certain lenders to fund the DB Biloxi III project ("Primed Lender Contributions"). Approximately \$ 75,000 of this amount was held by DB Biloxi III, LLC and was returned to the Lenders. The receiver seeks to return the remaining amount contributed by the Lenders (\$90,000), to the respective Lenders plus the contractual interest rate of 8% per annum on the full \$165,000. DB Biloxi III, LLC also holds approximately \$227,000.00 of escrow deposits from prospective

purchasers of units in the DB Biloxi III project. The majority of the prospective purchasers of the units have cancelled their respective purchase and sale agreements and settled their claims with the Receiver. Other deposit holders have not responded to letters from the Receiver regarding the remaining deposits ("Deposits"). By this Motion, served on the prospective purchasers as stakeholders in the Deposits, the Receiver seeks a ruling from the Court determining that DB Biloxi III, LLC is entitled to retain the Deposits. After paying the Primed Lender Contributions, DB Biloxi III, LLC would transfer all remaining Deposits to the new entity, M.A.M.C. Biloxi III, LLC for distribution pursuant to further order of this Court. The Receiver will also serve a copy of this Motion by regular U.S. Mail on GCID Realty, Inc. as GCID Realty, Inc. may claim an interest in the Deposits.

The Receiver is Appointed Over Relief Defendant DB BILOXI III, LLC

1. On December 11, 2007, this Court appointed Michael Goldberg to be the Receiver for the Defendants and the Relief Defendants.

2. DB Biloxi III, LLC ("DB Biloxi III") is a Relief Defendant that, at the time of the Receivership was instituted, was a single purpose real estate entity and the owner of an apartment property, known as Oak Shores, located on 12 acres of land in Biloxi Mississippi, which property was converted to condominium units ("DB Biloxi III project"). Although the development originally consisted of a 264-unit apartment property, the units suffered substantial property damage from Hurricane Katrina and only 176 units on the north five acres of the property were salvageable (Oak Shores Phase I). The remaining 88 units on the south Gulf-front 7-acre parcel (Phase II) were demolished. The developer planned construction of a mid-rise condominium complex on the Phase II parcel. However, the Phase II parcel is currently vacant land. Phase I and Phase II are collectively referred to herein as the "Property."

3. Pursuant to the Receivership Order, Relief Defendant DB Biloxi III is subject to the receivership. In fact, in the Receivership Order, Judge Wilson specifically states that all receivership assets, which include Relief Defendant DB Biloxi III, 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 [including DB Biloxi III, 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 Biloxi III, LLC ..."). DB Biloxi III 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. The Property of DB Biloxi III is subject to a first mortgage in favor of Alterna Mortgage Income Fund, LLC ("Alterna").

6. The MAMC Lenders hold a second mortgage on the property in the amount of \$23,350,000.00.

7. Alterna instituted foreclosure proceedings on the Oakshores property against DB Biloxi III and the MAMC Lenders as second mortgage holders.

8. The Receiver, after hiring a real estate consultant to evaluate the property was advised that it is unlikely that DB Biloxi III has equity in the Oakshores property beyond what is owed to Alterna, as the first mortgage holder. Accordingly, in the foreclosure proceedings, subject to any defenses by DB Biloxi III and/or the MAMC Lenders to the foreclosure, the interests of DB Biloxi III and the MAMC Lenders would have been foreclosed completely by Alterna.

9. Therefore, the Receiver entered into a proposed settlement with Alterna ("Alterna Settlement") subject to this Court approval which settlement the Receiver believes to be in the best interest of the Receivership estate and the MAMC Lenders. The Court entered its Order approving the Alterna Settlement on July 17, 2009.

10. Pursuant to the Alterna Settlement compromising the disputes between the DB Biloxi III and Alterna, Alterna was allowed to foreclose the interests of the Receivership estate including those of DB Biloxi III and the MAMC Lenders as second mortgage-holders and allow a foreclosure sale of the Property.

11. Pursuant to the Alterna Settlement, if Alterna is the successful bidder at the foreclosure sale of the Phase II property and becomes the owner of the Phase II property, Alterna will pay the Receivership 20% of the net sales proceeds from any subsequent sale of the Phase II property for the benefit of the MAMC Lenders holding the second mortgage on the Property.

12. With regard to the Phase I property, the Alterna Settlement authorizes Alterna to enter the Property, make improvements to the Property, and market the Phase I units for sale. Alterna will retain all the proceeds of the sale of the Phase I condominium units; In the event

Alterna recovers its full principal under the mortgage, including contract rate of interest and all fees and costs outlined in the settlement, Alterna agrees to pay 80% of the net proceeds of unit sales to the Receivership Estate for the benefit of the MAMC Lenders as second mortgage holders.

13. As such, because the MAMC Lenders second mortgage on the DB Biloxi III Property will be foreclosed and DB Biloxi III will no longer own the Property, DB Biloxi III 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 Biloxi III's assets. Consequently, DB Biloxi III should be abandoned from these Receivership proceedings.

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

14. The entire purpose for the inclusion of DB Biloxi III 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 Biloxi III and its assets, and thereby protect the investors.

15. Pursuant to the Receivership Order, the Receiver may abandon Receivership assets to duly perfected secured or lien creditors, if after due investigation and notice to the parties in

interest, here determines that either the Receivership Defendants have no equity in such asset(s) or such asset(s) are burdensome to the estate or are of inconsequential value and harmful to the Receivership estate. Receivership Order, ¶ 20.

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

Wind Up of DB Biloxi III, LLC, Creation of MAMC Biloxi III, LLS and Proposed Disbursement of Funds

17. As part of the wind up of DB Biloxi III, the Receiver proposes to assign the interest of the MAMC lenders in the Alterna Settlement, which provides the Lenders a residual interest, to a new entity created by the Receiver named M.A.M.C. Biloxi III, LLC. The MAMC Lenders would hold interests in the new entity in proportion to their respective investments in the second mortgage

18. The Receiver seeks court approval to abandon DB Biloxi III and to assign the rights and interests in the Alterna settlement to the new entity, M.A.M.C. Biloxi III, LLC.

19. The Receiver also seeks the Court's approval of the proposed disbursement of all funds currently held by DB Biloxi III to the new entity.

20. DB Biloxi III, LLC owed \$165,000 to certain lenders as primed contributions to fund the DB Biloxi III project ("Primed Lender Contributions"). Approximately \$ 75,000 of this amount was held by DB Biloxi III, LLC and was returned to the Lenders. The receiver seeks to return the remaining amount \$90,000.00 of Primed Lender Contributions to the respective Lenders plus the contractual interest rate of 8% per annum on the full \$165,000 of Primed Lender Contributions.

21. DB Biloxi III also holds approximately \$227,000.00 of escrow deposits from prospective purchasers of units in the DB Biloxi III project. The majority of the prospective purchasers of the units have cancelled their respective purchase and sale agreements and settled with the Receiver. Others have not responded to notices from the Receiver.

22. The escrow deposits remain unclaimed ("Deposits"). The Receiver disputes that the prospective purchasers are entitled to return of the Deposits because of a failure to close on their respective contracts for the purchase and sale of units.

23. By this Motion, which is being served by regular mail on the prospective purchasers as stakeholders in the Deposits, the Receiver seeks a ruling from the Court determining that DB Biloxi III, LLC is entitled to retain the Deposits unless a claim is made against the Receivership estate on or before October 15, 2009 ("The Claims Bar Deadline").

24. After paying the remaining Primed Lender Contributions plus accrued interest, DB Biloxi III, LLC would transfer all Deposits to the new entity, M.A.M.C. Biloxi III, LLC for distribution pursuant to further motion and order of this Court.

25. GCID Realty, Inc. ("GCID Realty") may claim an interest in the Deposits by virtue of a Developer Consulting Brokerage and Marketing Agreement, which the Receiver rejected pursuant to this Court's "Order Granting the Receiver's Motion to Authorize Receiver to Terminate DB Biloxi III's Consulting Brokerage and Marketing Agreement with GCID Realty and to Direct Turnover of Escrow Funds and for an Accounting." A copy of the Court's Order is attached hereto as **Exhibit A**. The Receiver seeks a ruling from this court that if GCID Realty fails to make a claim against the Deposits on or before the Claims Bar Deadline that its claim shall be forever barred.

WHEREFORE, the Receiver respectfully requests that this Court enter an Order:

- a) granting the Receiver's instant Motion;

- b) authorizing the Receiver to abandon DB Biloxi III, LLC;
- c) authorizing the Receiver to assign the interests of the MAMC Lenders to M.A.M.C. Biloxi III, LLC, including the interest in the Alterna Settlement;
- d) finding that the form of notice and time period for making claims against the Deposits is reasonable and approving the Claims Bar Deadline;
- e) finding that DB Biloxi III is entitled to retain the Deposits and transfer same to the new MAMC entity free and clear of liens and claims ;
- f) authorizing the Receiver to distribute from Deposit funds retained, the remaining \$90,000 of Primed Lender Contributions plus accrued interest at 8% per annum on the full \$165,000 of Primed Lender Contributions;
- g) authorizing the Receiver to transfer all remaining funds of DB Biloxi III, LLC to M.A.M.C. Biloxi III, LLC subject to distribution upon further motion and order of this Court; and
- h) awarding such other and further relief as this Court deems just and proper.

Respectfully submitted,

BERGER SINGERMAN

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JAMES D. GASSENHEIMER

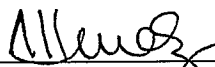
Florida Bar No. 959987

ARIADNA HERNANDEZ

Florida Bar No. 020953

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this **10th day of September, 2009**, to the attached Service List.

By: 
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**Mike Boudreaux, Registered Agent for
GCID Realty, Inc.**
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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

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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, MAMC FLORIDA
SPORTSDANCE, LLC, a Florida Limited
Liability Company, et al.,

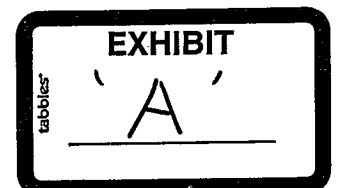
Relief Defendants.

**ORDER GRANTING RECEIVER'S MOTION TO AUTHORIZE RECEIVER TO
TERMINATE DB BILOXI, III'S CONSULTING BROKERAGE AND
MARKETING AGREEMENT WITH GCID AND TO DIRECT
TURNOVER OF ESCROW FUNDS AND FOR AN ACCOUNTING**

This matter having come before the Court on January 7, 2008 on *Receiver's Emergency Motion to Authorize Receiver to Terminate DB Biloxi, III's Consulting Brokerage and Marketing Agreement with GCID and to Direct Turnover of Escrow Funds and for an Accounting*, and the Court having heard argument of counsel, and otherwise being duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED as follows:

1. The motion is Granted.

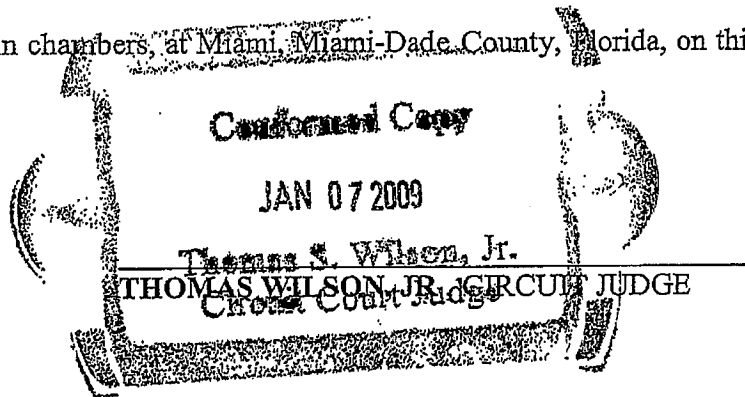


2. The DB Biloxi, III Consulting Brokerage and Marketing Agreement with GCID is terminated as of the date of this Order.

3. GCID is directed to turnover all Escrow Funds held for the benefit of DB Biloxi, III, LLC, and is ordered to provide an accounting of the same within fifteen (15) days from the date of this Order.

4. The Receiver is authorized to hire an alternative broker.

DONE AND ORDERED in chambers, at Miami, Miami-Dade County, Florida, on this 7th day of January 2009.



Copies furnished to:

James D. Gassenheimer, Esq.
Michael I. Goldberg, Esq.
Cristina Saenz, AGC
Alan M. Sandler, Esq.
Allan Joseph, Esq.
Charles Pickett, Esq.
Charles Throckmorton, Esq.
GCID Realty, Inc.
Lenders - Posted on the Website

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