

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE  
COUNTY, FLORIDA

CASE NO: 08-79169 CA (09)

ALEX BISTRICER, as limited partner of GULF  
ISLAND RESORT, L.P., and GULF  
ISLAND RESORT, L.P.,

Plaintiffs,

vs.

COASTAL REAL ESTATE ASSOCIATES, INC.,  
a Florida corporation; BERMAN MORTGAGE  
CORPORATION; DANA BERMAN; OCEANSIDE  
ACQUISITIONS; LLC, a Florida limited liability  
company; DBKN GULF INCORPORATED, a  
Florida corporation; and STEVEN CARLYLE  
CRONIG,

Defendants.

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**NOTICE OF HEARING**  
**(Motion Calendar)**

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing the  
following:

**PLAINTIFFS' MOTION TO STAY ORDER DATED  
SEPTEMBER 1, 2009 PENDING APPEAL**

The hearing shall be:

BEFORE THE HONORABLE:  
AT THE:

Thomas S. Wilson, Jr.  
Miami Dade County Courthouse  
73 W. Flagler Street  
Miami, Florida 33130  
Monday, October 5, 2009  
9:00 a.m.

ON:  
AT:

or as soon thereafter as the same may be heard.

ANANIA, BANDKLAYDER, BAUMGARTEN & TORRICELLA

PLEASE BE GOVERNED ACCORDINGLY.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was sent via email and regular mail on September 17<sup>th</sup>, 2009 to: Ariadna Hernandez, Esq., Berger Singerman, Counsel for Receiver Michael I. Goldberg; 200 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131; William Dufoe, Holland & Knight, LLP, 100 North Tampa Street, Suite 4100, Tampa, Florida 33602; and Deborah Poore Fitzgerald, Esq., Walton, Lantaff, Schroeder & Carson, LLP, Corporate Center, Suite 2000, 100 East Broward Boulevard, Fort Lauderdale, Florida 33301.

**ANANIA, BANDKLAYDER, BAUMGARTEN,  
& TORRICELLA**

Attorneys for Plaintiffs

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By:

  
Maurice J. Baumgarten  
Florida Bar No. 525324

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a Florida corporation; BERMAN MORTGAGE  
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company; DBKN GULF INCORPORATED, a  
Florida corporation; and STEVEN CARLYLE  
CRONIG,

Defendants.

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**PLAINTIFFS' MOTION TO**  
**STAY ORDER DATED**  
**SEPTEMBER 1, 2009 PENDING**  
**APPEAL**

ALEX BISTRICER ("Mr. Bistricer"), as limited partner of GULF ISLAND RESORT, L.P., and GULF ISLAND RESORT, L.P. ("GIR LP")(collectively, "Plaintiffs"), by and through undersigned counsel, hereby move for the entry of an Order staying this Court's September 1, 2009 Order Granting Receiver Michael Goldberg's Motion to Sell the Property of Oceanside Acquisitions, LLC Free and Clear of Liens, Claims, and Encumbrances ("Sept. 1, 2009 Order")(attached hereto as Exhibit A), pending a decision by the Third District Court of Appeal on Plaintiffs' appeal from the final judgment that the Court indicated on September 15, 2009 it would enter quieting title in favor of Oceanside Acquisitions, LLC ("Oceanside") with respect to the condominium units that are currently titled in the name of Oceanside (but which Plaintiffs contend should be titled in the name of GIR LP). As grounds therefor, Plaintiffs state as follows:

1. This action was originally filed in March, 2003 in Pasco County Circuit Court, in a case styled as *Alex Bistricher, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Sixth Judicial Circuit Case No. 51-2003- CA- 942 ES (the "Quiet Title Action"). In the Quiet Title Action, Plaintiffs seek to quiet title in favor of GIR LP with respect to certain condominium units located at the Gulf Island Resort in Hudson, Florida which currently are titled in the name of Oceanside or Keith Novak ("Subject Units").

2. The Units were owned by Gulf Island Resort, L.P. ("GIR LP). Oceanside contends that GIR LP transferred the Units to Gulf of Mexico Enterprises, Inc. ("GME") and that Oceanside later purchased the Units from GME, the record title owner. Oceanside claims that to complete its purchase of the Units, it borrowed \$1,700,000 from approximately 42 individuals (the "Lenders").

3. In the Quiet Title Action, GIR LP contends that the purported sales of the Subject Units from GIR LP to GME were unauthorized and invalid, Oceanside's purported purchase of the Subject Units from GME was therefore also unauthorized and invalid and accordingly title to the Subject Units should be quieted in favor of GIR LP.

4. On May 9, 2007, based on an alleged discovery violation by GIR LP, which GIR LP intends to appeal to the Third District Court of Appeal, the trial court in the Quiet Title Action entered a so-called "Partial Final Judgment" quieting title to the Units in favor of Oceanside ("Partial Judgment"). At the time the trial court entered its "Partial Final Judgment", claims by GIR LP of civil theft and conspiracy against Oceanside relating to its purported purchase of the Units remained pending in the Quiet Title Action.

5. On June 13, 2008, this Court entered its *Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*. The Pasco County

Court also entered its order granting the Receiver's motion to transfer the cases to this Court. Accordingly, the Quiet Title Action is before this Court as Eleventh Judicial Circuit Case No. 08-79169 CA (09).

6. On July 15, 2009, this Court conducted a hearing on the Motion of Michael J. Goldberg, as State Court Appointed Receiver over Relief Defendant, Oceanside Acquisitions, LLC ("Oceanside") to Sell the Property of Oceanside Free and Clear of Liens, Claims and Encumbrances ("Motion to Sell").

7. At the hearing on the Receiver's Motion to Sell, GIR LP argued that because the time for it to appeal the Partial Final Judgment in the Quiet Title Action had not run, there was no final judgment determining that Oceanside in fact owns the Units and in the absence of such a final determination, this Court lacked the authority to allow the sale of the Units free and clear of GIR LP's ownership claim and to transfer that claim to the sale proceeds.

8. The Court however ruled that, notwithstanding the fact that the time for appeal of the Partial Final Judgment in the Quiet Title Action may not have run, as far as the trial court in the Quiet Title Action was concerned, it did make a "final" determination that Oceanside currently holds legal title to the Subject Units, and therefore the Court, upon the Receiver's showing that the sale of the Units was authorized under applicable law, was authorized to permit the sale of the Units.

9. Thereafter, on September 1, 2009, the Court entered its Order granting the Receiver's Motion to Sell which authorized the Receiver to market and sell the Subject Units and enter into purchase and sale contracts with prospective purchasers of the units which contracts would be subject to the Court's approval by motion and notice to the interested parties.

10. The September 1, 2009 Order further provided that all liens and claims with respect to the Subject Units would be transferred to the proceeds from the sale of those Units and the Units would be sold free and clear of all liens, including the claims of the Plaintiffs that they are the rightful owners of the Subject Units.

11. Thereafter, at a hearing held by the Court on September 15, 2009 on Oceanside's motion for summary judgment with respect to the remaining claims against it for civil theft and conspiracy, the Court indicated that it would grant Oceanside's summary judgment motion and enter a final judgment quieting title in the Subject Units in favor of Oceanside that would be appealable.

12. Plaintiffs intend to appeal to the Third District Court of Appeal the final judgment to be entered by the Court in favor of Oceanside with respect to the quiet title claims. As part of their appeal from the final judgment, Plaintiffs also intend to appeal the Court's September 1, 2009 Order granting the Receiver's Motion to Sell, together with various other interlocutory orders that were previously entered in the Quiet Title Action.

13. With respect to the September 1, 2009 Order, Plaintiffs' position, among other things, is that the Court has no authority to allow purchasers to purchase the Subject Units without regard to GIR LP's ownership claim, because a prerequisite to such a sale is a final and no longer appealable determination that the Subject Units are owned by Oceanside and not GIR LP.

14. In the absence of a stay of the Court's September 1, 2009 Order granting the Receiver's Motion to Sell, Plaintiffs may effectively be denied a meaningful appeal from the final judgment granting quiet title in favor of Oceanside with respect to any of the Subject Units that may be sold prior to any decision on appeal by the Third District Court of Appeal. That is because a purchaser of any of the Subject Units pursuant to the Court's September 1, 2009, will claim that it

purchased the Subject Unit free and clear of any claims by the Plaintiffs in the Quiet Title Action and that Plaintiffs' relief is limited to the proceeds of the sale pursuant to the Court's September 1, 2009 Order.

15. In order to preserve GIR LP's ownership rights in the Subject Unit in the event the Third District Court of Appeal reverses the final judgment and either determines that GIR LP is the owner of the Subject Units or remands this matter for a trial on this issue, the Court should stay its September 1, 2009 Order and preclude the sale of any of the Subject Units pending the outcome of the appeal of this matter.

WHEREFORE, Plaintiffs ALEX BISTRICER, as limited partner of GULF ISLAND RESORT, L.P., and GULF ISLAND RESORT, L.P., respectfully request that this Court enter an Order: (a) staying the Court's September 1, 2009 Order pending a final decision by the Third District Court of Appeal on Plaintiffs' appeal from the final judgment to be entered by the Court; (b) prohibiting the Receiver from selling, transferring or encumbering any of the Subject Units pending a final decision by the Third District Court of Appeal on Plaintiffs' appeal from the final judgment to be entered by the Court in favor of Oceanside; (c) prohibiting the Receiver from disbursing any of the funds that may be remaining from any prior sale of any of the condominium units that were titled in the name of Oceanside; and/or (c) making such stay subject to the Court's continuing jurisdiction to determine whether any reasonable conditions should be imposed upon the stay or to otherwise modify the stay.

Respectfully submitted,

**ANANIA BANDKLAYDER BAUMGARTEN &  
TORRICELLA**

*Attorneys for Plaintiffs*

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By:   
Maurice J. Baumgarten  
Florida Bar No. 525324

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was sent via email and regular mail on September 17, 2009 to: Ariadna Hernandez, Berger Singerman, Counsel for Receiver Michael I. Goldberg; William Dufoe, Holland & Knight, LLP, 100 North Tampa Street, Suite 4100, Tampa, Florida 33602; and Deborah Poore Fitzgerald, Esq., Walton, Lantaff, Schroeder & Carson, LLP, Corporate Center, Suite 2000, 100 East Broward Boulevard, Fort Lauderdale, Florida 33301.

  
Maurice J. Baumgarten



IN THE CIRCUIT COURT OF THE  
ELEVENTH 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,

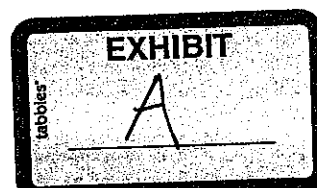
DB ATLANTA, LLC, a Florida limited liability  
company, et al.,

Relief Defendants.

**ORDER GRANTING RECEIVER, MICHAEL I. GOLDBERG'S MOTION TO SELL  
THE PROPERTY OF OCEANSIDE ACQUISITIONS, LLC FREE AND CLEAR OF  
LIENS, CLAIMS, AND ENCUMBRANCES**

THIS CAUSE came before the Court on Wednesday, July 15, 2009 at 1:30 p.m. for an evidentiary hearing upon the Motion of Michael I. Goldberg, as State Court Appointed Receiver over Relief Defendant, Oceanside Acquisitions, LLC ("Oceanside") to sell the Property of Oceanside Free and Clear of Liens, Claims, and Encumbrances, and the Court, having heard and considered the evidence presented by the parties through witness testimony and hearing exhibits,

FINDS as follows:



1. On December 11, 2007, this Court appointed Michael Goldberg as the Receiver (the "Receiver") over the Defendants and Relief Defendants in these Receivership proceedings.

2. One of the Relief Defendants, Oceanside, is an entity formed by Dana Berman and Keith Novak, which entity purchased condominium units at Gulf Island Resort in Pasco County, Florida (the "Units"). Two of the Units were sold prior to the establishment of the Receivership; a total of 17 units<sup>1</sup> remain unsold.

3. The Units were once owned by Gulf Island Resort, L.P. Gulf Island Resort, L.P. transferred the Units to Gulf of Mexico Enterprises, Inc. ("GME"). Later, Oceanside purchased the Units from GME, the record title owner. To complete its purchase of the Units, Oceanside borrowed \$1,700,000 from approximately 42 individuals (the "Lenders") through loans serviced by Defendant, M.A.M.C. Incorporated and secured as first and second position mortgages by the Units.

4. In 2003, Gulf Island Resort, L.P. and Alex Bistricher ("collectively, Bistricher") commenced a quiet title action in Pasco County Circuit Court styled *Alex Bistricher, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Sixth Judicial Circuit Case No. 51-2003- CA- 942 ES (the "Quiet Title Action"). On May 9, 2007, the trial Court in the Quiet Title Action quieted title to the Units in Oceanside. The May 9, 2007 Partial Final Judgment was presented to this Court and the Court has taken judicial notice of same.

5. On June 13, 2008, this Court entered its *Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*. The Pasco

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<sup>1</sup> Four of the seventeen units were transferred to Keith Novak by Chief Restructuring Officer, Alan Goldberg. The Receiver contests the validity of the transfers and contends that he still holds equitable title to these units.

County Court also entered its order granting the Receiver's motion to transfer the cases to this Court. Accordingly, the Quiet Title Action is before this Court as Eleventh Judicial Circuit Case No. 08-79169 CA (09).

6. At the hearing on the Receiver's instant motion, Bistricec, through counsel, argued that the time to appeal the Partial Final Judgment in the Quiet Title Action had not run and thus, that this Court did not have the authority to order the sale of the Units free and clear of liens. The Court finds, based on the Partial Final Judgment Quieting Title and applicable case law, that Oceanside holds legal title to the Units at issue in the Quiet Title Action and which are the subject of the Receiver's instant motion to sell the property free and clear of liens. The Court has also considered the case law presented by the parties regarding the circumstances in which a court may properly order the sale of property free and clear of liens and finds that the Court is authorized to order the sale of the Units based on the evidence presented and factual findings contained herein for the reasons stated on the record.

7. Based on the testimony of the representative of the Executive Committee of Lenders in relation to the Oceanside project, Gail Corenblum, who has observed the condition of the Units and has personal knowledge of same, the Court finds that the Units are in a state of disrepair requiring a substantial investment to repair, improve or otherwise rehabilitate the Units. Approximately a year ago, Ms. Corenblum observed that some of the Units had mold infiltration, substantial ceiling damage, and pigeon droppings had accumulated on the balconies. Ms. Corenblum testified that most of the Units have been stripped of cabinetry, wiring, plumbing fixtures, and other fixtures and that all Units were without electric power. Ms. Corenblum also testified that several of the Units had been cited for fire code violations in relation to the windows and that some Units are missing locks on the sliding glass doors.

8. Based on the testimony of Ms. Corenblum regarding Oceanside's attempts to raise money from the Lender group, the Court finds that the individual Lenders are unwilling or unable to contribute monies to repair, improve, or otherwise rehabilitate the Units.

9. Based on testimony of E. Harold Gassenheimer, who is employed by the Receiver as Chief Operating Officer of M.A.M.C. Incorporated, regarding the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does have the funds to repair, improve, or otherwise rehabilitate the Units.

10. Based on Ms. Corenblum and Mr. Gassenheimer's testimony relating to the Receiver's past efforts to market the Units for sale, the Court finds that pending litigation, including the Quiet Title Action, renders the Units unmarketable due to an inability of a prospective purchaser to obtain title insurance.

11. Intervenor, Gulf Island Beach and Tennis Club Condominium Association (the "Association") has moved to intervene in this Receivership case to seek payment of past due condominium assessments on the Units from the Receivership, which assessments are estimated by the Association at over \$150,000.00 and confirmed by the testimony of Ms. Corenblum.

12. Based on Ms. Corenblum and Mr. Gassenheimer's testimony, the Court finds that ad valorem property taxes on the Units also remain unpaid for the years 2006, 2007, and 2008, which taxes total approximately \$200,000.00.

13. Based on the testimony of Mr. Gassenheimer relating to the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does not have the ability to pay to condominium fees and taxes for the Units, which condition places the Units in peril of loss to all interested parties by reason of foreclosure.

14. The Court finds that the circumstances render a sale of the Units necessary for the adequate protection of the rights of the parties. Under these circumstances, a sale of the units would preserve the real interests of the parties by transferring any claims and liens to the proceeds of sale.

15. The ultimate purpose of the Receivership is to provide a vehicle to marshal and preserve assets and maximize return to the lienholders. Allowing the Units to be sold would further the goals of the Receivership and all interested parties because monetizing the Units would prevent waste of the property while the Court adjudicates the different parties' right, title, and interest to the proceeds. It will also allow the Receivership to avoid liability for expenses associated with the Units such as the unpaid taxes and condominium association fees which continue to accrue and necessarily diminish the return for the Receivership, the Lenders and other interested parties. In this instance, the sale of the Units by the Receiver is expedient and proper.

16. This Court has the authority to order that title conveyed to any prospective purchasers be free and clear of any liens, claims, and encumbrances and that said claims, liens, and encumbrances be transferred to the proceeds of the sale of the Units.

17. Florida law requires the Court to monitor the sales of the Units by the Receiver carefully and to disapprove of any proposed sale for less than the property should reasonably be expected to sell.

Accordingly, it is ORDERED AND ADJUDGED that:

18. The Receiver is hereby authorized to market and sell the Units, including those units currently titled in the name of Oceanside and the four units transferred by Oceanside to

Keith Novak (which transfers the Receiver contests) should the latter become re-titled in the name of Oceanside.

19. The Receiver shall undertake an evaluation of the units, consult with and obtain pricing recommendations from no less than three licensed real estate brokers, and price the units in accordance with the average of the three estimates.

20. The Receiver is hereby authorized to contract with a real estate broker for the marketing and sale of the Units, subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court.

21. The Receiver shall have exclusive authority to negotiate the sale of Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contracts by motion and notice to all interested parties in the manner previously approved by the Court.

22. Upon approval by the Court of the proposed sale of any unit(s), the prospective purchaser(s) shall receive title to the subject unit(s) free and clear of any and all liens, claims, and encumbrances including, but not limited to, those liens, claims, and encumbrances, if any, held by the parties in the Quiet Title Action, any actions to foreclose liens for condominium assessments including those of Intervenor, Gulf Island Beach and Tennis Club Condominium Association, the mortgages held by M.A.M.C. Lenders, and any actions by contract purchasers of the Units, which actions were transferred to the Receivership Court from Pasco County Circuit Court.<sup>2</sup> The prospective purchaser(s) of the unit(s) shall receive clear title irrespective of

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<sup>2</sup> The Pasco County cases ordered transferred to the Receivership Court are: a. *Deborah R. Abajian v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-07-CA-2370-WS; b. *Cyril Latona v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA3925-WS; c. *James R. Patterson and Eileen M. Patterson v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-3925-WS; d. *Cunningham*

any filings in the public records, including but not limited to, the filings of Gulf Island Resort, L.P. or Bistricher.

23. The Receiver shall deposit the net proceeds from the sale of the Units, after payment of outstanding condominium fees and taxes, into the Court's Registry until further motion and order of this Court, which proceeds shall be subject to all liens, claims, and encumbrances, if any, claimed by any and all interested parties in the Units for future adjudication by the Court.

DONE AND ORDERED in Chambers this \_\_\_\_ day of August, 2009.

**Conformed Copy**

**SEP 01 2009**

THOMAS S. WILSON, JR.  
Thomas S. Wilson, Jr.  
CIRCUIT COURT JUDGE  
Circuit Court Judge

Copies furnished to:

Counsel of Record  
Receivership Website

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*and Elias v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4792-WS; and *Tina Hinton v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4238-WS.