

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

CASE NO.: 07-43672 CA 09

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 MOTION FOR AN ORDER APPROVING THE DISTRIBUTION OF FUNDS IN
RELATION TO THE LE CHATEAU PROJECT OWNED BY
RELIEF DEFENDANT, DB BILOXI II, LLC**

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, files this Motion for an Order Approving the Distributions of Funds in Relation to the Le Chateau Project owned by Relief Defendant, DB Biloxi II, LLC, and states:

Background

1. On December 11, 2007, this Court appointed Michael Goldberg to be the Receiver for the Defendants and the Relief Defendants.
2. DB Biloxi II, LLC ("DB Biloxi II") is a Relief Defendant that, at the time of the Receivership was instituted, was a single purpose real estate entity and the owner of a condominium

property, known as Le Chateau located at 1194 Beach Boulevard in Biloxi Mississippi, (“Le Chateau Project”).

3. The Le Chateau Project suffered substantial property damage as a result of Hurricane Katrina and was deemed a total loss and leveled.

4. DB Biloxi II and the property insurer for the Le Chateau Project entered into a settlement agreement, which settlement was approved by Order of this Court on October 14, 2008. As part of the settlement which involved three separate DB entities and their respective properties and projects, the Le Chateau Project was assigned \$1,270,000.00 of from the settlement proceeds.

5. The Court’s October 14, 2008 Order authorized the Receiver to establish a reserve operating account from the insurance proceeds to allow the Receiver to hold the property for up to two years and market the property in more favorable market conditions.

6. The Court’s Order also approved a claims procedure for the unit owners to make claims to their pro-rata share of the net settlement proceeds after establishment of the reserve.

7. The Court’s Order directed that the balance of the insurance proceeds be distributed to the MAMC Lenders who hold a first lien on 61.44 percent of the real property owned by DB Biloxi II, LLC.

8. Pursuant to the Court’s Order, the Receiver has implemented the claims procedure, which included notice to all unit owners. The majority of the unit owners have claimed and received their respective distributions.

9. However, a number of the unit owners have failed to make a claim to their respective portions of the insurance proceeds.

10. The Receiver seeks to establish a bar date by which the remaining unit owners must make their claims, if any, to the unclaimed insurance proceeds.

11. The Receiver also seeks a determination by this Court that the insurance proceeds totaling \$59,654.27 apportioned to units owned by Yellow Tail, LLC (Units 102 and 410) and Sterling Resorts, LLC (Unit 101) and financed by loans from Relief Defendant DB Biloxi II (the “Seller-Financed Units”), which loans are now in default, are properly retained by DB Biloxi II for distribution to the M.A.M.C. Lenders in proportion to their respective investments in the subject loans.

Proposed Claims Bar and Distribution of Funds

12. By this Motion, which is being served by regular mail on the unit owners as stakeholders in the insurance proceeds, the Receiver seeks a ruling from the Court:

a) determining that DB Biloxi II, LLC is entitled to retain the insurance proceeds totaling \$59,654.27 apportioned to the Seller-Financed Units;

b) determining that DB Biloxi II, LLC is entitled to retain the remaining unclaimed insurance proceeds totaling \$94,694.74 unless a claim is made against the Receivership estate on or before October 30, 2009 (“The Claims Bar Deadline”).

13. The Receiver also seeks the Court’s approval of the proposed disbursement of all the remaining insurance proceeds as follows:

a) Distribution of the insurance proceeds apportioned to the Seller-Financed Units to DB Biloxi II for the benefit of the MAMC Lenders in proportion to each lenders respective investment in the subject loan(s);

b) Distribution of the remaining insurance proceeds unclaimed as of October 30, 2009 to the unit-owners who have made claims and the developer owned units, in the proportions established and followed in the apportionment of the insurance proceeds, as adjusted for the nonclaiming unit-owners.

14. The Receiver seeks an order from this Court barring any claims against the insurance proceeds made after Claims Bar Deadline.

15. Pursuant to the notice procedure established by this Court, a copy of this Motion is being posted on the Receivership website, with a notice of the posting simultaneous sent to the M.A.M.C. Lenders by email.

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

- a) granting the Receiver's instant Motion;
- b) approving of the posting and notice procedures followed by the Receiver;
- c) finding that the form of notice and time period for making claims against the insurance proceeds is reasonable and approving the Claims Bar Deadline;
- d) finding that DB Biloxi II is entitled to retain the insurance proceeds apportioned to the Seller-Financed Units;
- e) ordering that any claims to the remaining insurance proceeds be made by filing a claim in this Court with service on the Receiver on or before October 30, 2009 and barring any claims to the insurance proceeds made after the Claims Bar Deadline;
- f) authorizing the Receiver to distribute the insurance proceeds apportioned to the Seller-Financed Units to the M.A.M.C. Lenders in proportion to their respective investments in the subject loan(s);
- g) authorizing the Receiver to distribute all remaining insurance proceeds unclaimed as of October 30, 2009 to the unit-owners who have made claims and DB Biloxi II (as apportioned to the Seller-Financed Units) in the proportions established and followed in the apportionment of the insurance proceeds, as adjusted for the non-claiming unit owners; and

h) awarding such other and further relief as this Court deems just and proper.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

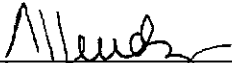
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By: 

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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 **23rd day of September, 2009**, to the attached Service List.

By: 

ARIADNA HERNANDEZ

Florida Bar No. 020953

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SERVICE LIST

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