

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

GENERAL JURISDICTION DIVISION

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, et al.

Relief Defendants.

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**RECEIVER'S MOTION FOR AN ORDER APPROVING FINAL DISTRIBUTION OF  
PROCEEDS FROM SETTLEMENT BETWEEN MAMC INCORPORATED AND  
EMERALD CAY INVESTMENTS, LLC**

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 Motion for an Order Approving Final Distribution of Proceeds from Settlement between M.A.M.C. Incorporated and Emerald Cay Investments, LLC ("Motion") and states:

1. M.A.M.C. lenders (the "Lenders") hold a first mortgage in the principal amount of \$2,500,000.00 ("Mortgage") on various parcels of real property located in Osceola County, Florida (the "Property") owned by Emerald Cay Investments, LLC ("Emerald Cay"). Defendant, M.A.M.C. Incorporated, as attorney-in-fact for the Lenders, instituted foreclosure proceedings on the Property.

2. On October 15, 2008, M.A.M.C. Incorporated (on behalf of the Lenders) obtained a Final Judgment of Foreclosure against Emerald Cay and the guarantors of Emerald Cay's obligations pursuant to subject loan and Mortgage.<sup>1</sup>

3. The amount of the Lenders' Final Judgment of Foreclosure is \$3,097,171.44 plus interest at the rate of 11 percent per annum.

4. The Receiver entered into a settlement to compromise the foreclosure action ("Settlement") between M.A.M.C. Incorporated, Emerald Cay, as well as the issues between M.A.M.C. Incorporated and Carlos J. Bonilla, Daniel E. Harper, and Ray Smith, who are the personal guarantors of Emerald Cay's obligations pursuant to the subject loan and Mortgage ("Personal Guarantors").

5. On September 23, 2009, this Court approved of the proposed settlement between M.A.M.C. Incorporated, Emerald Cay and the Personal Guarantors and authorized the Receiver to effectuate the proposed settlement.

6. The Settlement will yield proceeds of \$2,360,000.00 to M.A.M.C. Incorporated. In addition, M.A.M.C. Incorporated holds \$48,919.75 in relation to the M.A.M.C. Lenders' loan to Emerald Cay (collectively, the "Funds").

7. By this Motion, the Receiver requests a Court Order approving the proposed final distribution of all Funds held by M.A.M.C. in relation the Lenders' Loan to Emerald Cay including the proceeds of the Settlement.

8. The Receiver seeks the Court's authorization to make the following final distributions of the Funds:

- a. \$55,180.01 to Akerman Senterfitt for representation of the Receiver in relation to the instant project including its efforts related to Settlement; \$2,500 holdback as a reserve for attorneys' fees and costs payable to Akerman Senterfitt for representation of the Receiver in relation to the instant transaction; The Receiver

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<sup>1</sup> The guarantors of Emerald Cay's obligations pursuant to the subject loan and Mortgage are Zuma Developments, LLC, Millennium Investment, LLC, Ray Smith, Carlos J. Bonilla, and Daniel E. Harper.

requests authorization to pay up to the \$2,500.00 amount without further order of this Court and to distribute any remaining balance of the reserve to the Lenders pursuant to paragraph 8(d) hereof;

- b. \$5,500.00 holdback as a reserve for attorneys' fees and costs incurred by Berger Singerman, P.A. for representation of the Receiver in relation to the instant project including its efforts related to this Motion and hearing thereon and for additional attorneys fees incurred in resolving any post-settlement issues. The Receiver requests authorization to pay up to the \$5,500.00 amount without further order of this Court and to distribute any remaining balance of the reserve to the Lenders pursuant to paragraph 8(d) hereof;
- c. \$47,200.00 to the Receivership estate representing a 2% holdback of the gross settlement proceeds in accordance with prior Orders of the Court to cover administrative expenses;
- d. The Receiver further seeks authority to distribute the remaining Funds to the Lenders as a partial return of principal on a pro-rata basis in accordance with each Lenders' interests in the loan to Emerald Cay.

9. The Receiver has utilized the notice procedures which were established by the Court by posting copies of the Motion and Notice of Hearing hereon to the Receivership website and sending same via the e-mail distribution procedures established for the purposes of the Receivership.

**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 constitute adequate notice of the instant motion and hearing thereon;
- b. authorizing the Receiver to make the final distributions of the Funds outlined in paragraph 8; and
- d. awarding such other and further relief this Court deems just and proper.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail on this **30th day of September 2009**, to the attached service list.

Respectfully submitted,

**BERGER SINGERMAN**

*Attorneys for Receiver, Michael Goldberg*

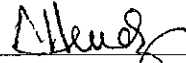
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**SERVICE LIST**

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<p><b>Allan A. Joseph, Esquire</b>  <i>Special Counsel for The Receiver</i>                  DAVID AND JOSEPH, P.L.                  1001 Brickell Bay Drive, Suite 2002                  Miami, Florida 33131</p>	<p><b>Jason S. Miller, Esquire</b>  <i>Counsel for Flagstar Bank</i>                  ADORNO &amp; YOSS, LLP                  2525 Ponce de Leon Boulevard, Suite 400                  Coral Gables, Florida 33134</p>
<p><b>Charles W. Throckmorton, Esquire</b>  <i>Attorneys for Dana Berman</i>                  KOZYAK TROPIN THROCKMORTON, P.A.                  2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor                  Coral Gables, FL 33134</p>	<p><b>Paul Huck, Esquire</b>  <b>Dean C. Colson, Esquire</b>                  COLSON HICKS EIDSON                  255 Aragon Avenue, Second Floor                  Coral Gables, FL 33134</p>
<p><b>Ms. Tamara G. Chaskes, Esquite</b>                  COCONUT GROVE BANK                  2701 South Bayshore Drive                  Miami, FL 33133</p>	

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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