

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.

BERGER SINGERMAN  
attorneys at law

RECEIVER'S MOTION TO APPROVE THE SETTLEMENT AGREEMENT  
BETWEEN ATLANTIC LENDING, LLC, AND BERMAN MORTGAGE  
CORPORATION, M.A.M.C. INCORPORATED,  
THE MAMC LENDERS AND THE RECEIVERSHIP ASSETS

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., by and through undersigned counsel, hereby files this Motion to Approve the Settlement Between Atlantic Lending, LLC ("Atlantic") and Receivership Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, M.A.M.C. Lenders and the Receivership Assets, and states:

The Receiver is Appointed Over Berman Mortgage Corporation, M.A.M.C. Incorporated, and Their Respective Assets

1. On December 11, 2007, this Court appointed Michael Goldberg (the "Receiver") to be the Receiver for the Defendants, the Relief Defendants, and all of their respective assets. See Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order"), previously filed with this Court.

2. Among the Defendants are Berman Mortgage Corporation, and M.A.M.C. Incorporated. As Receivership Defendants, Berman Mortgage Corporation and M.A.M.C. Incorporated are receivership assets subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and subject to 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, 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 personal, 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.

Receivership Order, ¶ 3 (emphasis added).

**Atlantic and Its Lawsuits Involving Berman Mortgage Corporation, M.A.M.C. Incorporated and Their Respective Assets**

3. Atlantic is a plaintiff in an action pending in Miami-Dade County Circuit Court captioned *Atlantic Lending, LLC and Stephen Zaron, M.D., et al. v. Fantasy of the Ocean, LLC*, Case No. 04-7035 (the "FOTO Case").

4. In addition to Atlantic, the other Plaintiffs in the FOTO Case consist of a large group of individuals (identified in the pleadings in the FOTO Case), who agreed to allow Berman Mortgage Corporation and/or M.A.M.C. Incorporated to service their loan and litigate the FOTO case on their behalf ("MAMC Lenders").

5. Atlantic also has an action pending in Miami-Dade County Circuit Court, Case No. 05-14867 (the "Fraud Case") against Mansiana Ocean Residences, LLC, Berman Mortgage Corporation, and Meland, Russin, Hellinger & Budwick, P.A., Andrew Hellinger, Esquire and Peter Russin, Esquire, and has sought to consolidate the Fraud Case with the FOTO Case.

6. Among the Receivership Assets are the attorney-client-work-product, and mediation privileges in connection with all matters in which Berman Mortgage Corporation and/or the MAMC Lenders were represented by Meland, Russin, Hellinger & Budwick, P.A. (or the employees and principals of said law firm), which privileges, prior to the transfer of same to the Receiver, belonged to Berman Mortgage Corporation or the MAMC Lenders (other than to the extent they may have previously been waived).

7. On September 17, 2008, this Court entered an Order relieving Atlantic from the stay obligations of the Receivership Order. On that same day, the Receiver filed a Motion for Rehearing on the Court's September 17, 2008 Order Granting Relief from Stay or in the Alternative to Correct its September 17, 2008 Order ("Rehearing Motion").

**The Parties Agree to Settle, and Thereby Preserve Receivership Assets**

8. Although the Rehearing Motion is still pending, the Parties have agreed to settle all disputes between them regarding the Receivership proceedings, so as to avoid the expense and delay associated with litigating these disputes.

9. The Waiver of Assignment of Privileges and Settlement Agreement are attached hereto as Exhibit "A" (the "Settlement Agreement") and contains the following key provisions:

1. **WITHDRAWAL OF REHEARING MOTION:** Contemporaneously with the execution of this Agreement, the Receiver shall serve a notice of withdrawal, with prejudice of his Rehearing Motion.

2. **WAIVER OF PRIVILEGE:** Contemporaneously with the execution of this Agreement, the Receiver shall irrevocably waive all of Berman Mortgage Corporation's ("BMC") and the MAMC Lenders' attorney-client, work-product, and mediation privileges in connection with all matters in which Berman Mortgage Corporation and/or the MAMC Lenders were represented by Meland, Russin, Hellinger and Budwick, P.A. (or the employees and principals of said law firm), which privileges shall be irrevocably assigned and transferred to Atlantic.

3. **LIMITATIONS ON EXECUTION AGAINST BERMAN MORTGAGE CORPORATION, THE MAMC LENDERS AND RECEIVERSHIP ASSETS:** In the event a final judgment is entered in the Fraud Case in favor of Atlantic and against Berman Mortgage Corporation (the "Fraud Judgment"), Atlantic agrees that it shall not execute on the Fraud Judgment, seek to collect, or otherwise seek to satisfy the Fraud Judgment against GMC, MAMC Incorporated, the Receiver, the Receivership Assets and the MAMC Lenders. This provision shall not in any way restrict Atlantic's ability to foreclose on the real property which is the subject of the FOTO Case.

**4. LIMITATIONS ON LITIGATION AS TO INDIVIDUAL**

**LENDERS:** Atlantic shall not file an action to recover damages from any MAMC Lenders, except in the event that any individual Lender makes a claim against Atlantic in connection with the FOTO Case. Atlantic shall not take more than three MAMC Lenders' depositions in either the FOTO Case or the Fraud Case, except in the event that any Individual Lender (other than the three whom Atlantic deposes) makes any claim in either the FOTO Case or the Fraud Case asserting any right regarding such litigation. MAMC Lenders' depositions shall be coordinated with the Receiver's counsel.

\*\*\*

**13. REPRESENTATION AND WARRANTIES:**

The signatories to this Agreement mutually represent and warrant that they have full power and authority to execute this Agreement, unless such authority is not provided by the Court in the Receivership Case, in which case the Agreement shall be void. Provided this agreement is approved by the Court in the Receivership Case, it shall bind the Settlement Parties to the terms and provisions hereof. The Receiver's counsel shall, immediately following execution of this Agreement, file and set for hearing a motion seeking approval and ratification of this Agreement.

10. The Receiver now seeks to finalize this Settlement Agreement.

11. The Receiver believes that this settlement conforms with the Receiver's Court ordered obligation to ensure the preservation and/or recovery of receivership assets, and thereby prevent any further waste or dissipation, and most of all, protect the Investor Group.

12. Importantly, this Court has previously authorized the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants:

The Receiver is further authorized to ... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, ¶17. (emphasis added)


13. In line with the aforementioned authority granted by this Court, the Receiver now seeks this Court's approval of the Settlement Agreement.

WHEREFORE, the Receiver moves this Court for entry of an Order Approving the Settlement Between Atlantic Lending, LLC, and Receivership Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, M.A.M.C. Lenders, and the Receivership Assets, and any other relief deemed necessary by this Court.

Respectfully submitted,

BERGER SINGERMAN  
*Attorneys for Receiver, Michael Goldberg*  
1000 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Direct Line: (305) 714-4383  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340  
E-Mail: [jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)

By: \_\_\_\_\_

  
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 Electronic Mail and U.S. Mail on this 6<sup>th</sup> day of November 2008, to: Cristina Saenz, Assistant General Counsel, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> Avenue, Suite N-708, Miami, Florida 33128; to Alan M. Sandler, Esquire, *Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA*, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to Allan A. Joseph, Esquire, *Counsel for The Amadi Companies and Amedia Family Investors*, DAVID AND JOSEPH,

P.L., 1001 Brickell Bay Drive, Suite 2002, Miami, Florida 33131; to Richard R. Robles, Esquire, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to Daniel Kaplan, Esquire, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191<sup>st</sup> Street, Aventura, Florida 33180; to Howard N. Kahn, Esquire, *Attorneys for Intervenor, Ira Sukoff*, KAHN, CHENKIN & RESNIK, P.L., 1815 Griffin Road, Suite 207, Dania, Florida 33304; to Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire, *Attorneys for Johns Manville*, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; to Allen P. Pegg, Esquire, *Counsel for IBEX Cheoah I, LLC*, MURAL, WALD, BIONDO, MORENO & BROCHIN, P.A., Two Alhambra Plaza, PH-1B, Coral Gables, Florida 33134; to Helen Schwartz Romañez, Esquire, *Attorneys for Turnberry Bank & Bank of Coral Gables*, The Romañez Law Firm, 255 Alhambra Circle, Suite 850, Coral Gables, Florida 33134; to Charles W. Throckmorton, Esquire, *Attorneys for Dana Berman*, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor, Coral Gables, Florida 33134; to J. Andrew Baldwin, Esquire, *Attorneys for Regions Bank*, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606; to Rey Hicks and Javier Castillo of COMPLETE PROPERTY MANAGEMENT, at Post Office Box 402507, Miami Beach, Florida 33140; to Daren Schwartz, BERMAN MORTGAGE CORPORATION D/B/A M.A.M.C., INC., at 402 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133; to Norman S. Segall, Esquire, *Attorneys for Skilled Services of Tampa Bay, LLC*, RUDEN MCCLOSKEY SMITH SCHUSTER & RUSSELL, P.A., 701 Brickell Avenue, Suite 1900, Miami, Florida 33131; to Norman Malinski, Esquire, *Counsel for Giles Construction*, 2875 NE 191<sup>st</sup> Street, Suite 508, Aventura, Florida 33180; Gabrielle D'Alemberte, Esquire, LAW OFFICES OF ROBERT PARKS, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; to Robert B. Miller, Esquire, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2<sup>nd</sup> Avenue, Suite 919, Miami, Florida 33131-1538; to Richard P. Cole, Esquire, Edward S. Polk, Esquire and/or Crystal Leah Arocha, Esquire, *Attorneys for Meland Russin Hellinger & Budwick, P.A.* COLE SCOTT & KISSANE, P.A., Pacific National Bank Building, 1390 Brickell Avenue, Third Floor, Miami, Florida 33131; to David A. Wheeler, Esquire, *Counsel for Various Unit Owners at Le Chateau Condominiums at DB Biloxi II, LLC*