

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-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, et al.,

Relief Defendants.

**MOTION TO EXPAND RECEIVERSHIP TO INCLUDE
ADDITIONAL RELIEF DEFENDANT M.A.M.C. EMERALD CAY, LLC**

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 Expand Receivership to Include Additional Relief Defendant M.A.M.C. Emerald Cay, LLC, and states:

1. On December 11, 2007, this Court appointed Michael Goldberg (the "Receiver") to be the Receiver for the Defendants and the Relief Defendants. See Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order").

2. In the Receivership Order, Judge Wilson specifically states that all receivership assets, which includes the assets belonging to the relief defendants, 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, 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 situation 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).

3. The Receiver was also authorized to investigate the manner in which the affairs of the Receivership Defendants were conducted and to institute actions on behalf of the Receivership Defendants as deemed necessary by the Receiver to collect funds or assets wrongfully misappropriated from the Receivership Defendants:

The Receiver is hereby authorized and specifically has standing to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion by advisable or proper for the protection of the Receivership Assets or proceeds thereof, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal courts as may in his judgment be necessary or proper for the collection, preservation and maintenance of the Receivership Assets and/or on behalf of the Receivership Defendants.

Receivership Order, ¶ 21 (emphasis added).

4. The Defendant, MAMC, Incorporated (“MAMC”) was a loan servicer, acting on behalf of approximately 640 separate investors (“The Investors”). MAMC serviced over 70 loans invested in 37 separate projects at the time the Receivership was instituted. One of the loans was made to a third party borrower, Emerald Cay, LLC. This borrower defaulted and MAMC on behalf of the Investors has foreclosed the loan and needs to hold title to the former collateral for the loan for the benefit of the investors. MAMC formed MAMC Emerald Cay, LLC (the “New Company”) for this purpose. The members of the New Company are made up of the Investors in proportion to their ownership of the former loan made to Emerald Cay, LLC. The loan was part of the Receivership and enjoyed the protections thereof. The New Company should also be part of the receivership for the same reasons. Entities owned for the benefit of the Investors have historically been referred to as Relief Defendants. The Receivership Order identified 18 Relief Defendants.¹

5. The New Company owns four parcels of vacant land in Orange County, Florida.

6. Importantly, the New Company is an asset of the Receivership, is Managed by M.A.M.C., and thus clearly should be subject to the Receivership and the Receivership Order.

7. Consequently, and in line with the Receivership Order, inclusion of MAMC Emerald Cay, LLC into the Receivership “is both necessary and appropriate in this matter in

¹ A relief defendant may either be a gratuitous beneficiary of the proceeds from the principal defendants' fraud or merely the custodian of the principal defendants' assets. *See, e.g., CFTC v. Hanover Trading Co.*, 34 F. Supp. 2d 203, 207 (S.D.N.Y. 1999).

order to prevent further waste and dissipation of the assets of the Defendants and Relief Defendants, to the detriment of its investors.” Receivership Order, ¶ 3.


WHEREFORE, the Receiver moves this Court for entry of an Order Expanding the Receivership to Include Additional Relief Defendant M.A.M.C. Emerald Cay LLC, and any other relief deemed necessary by this Court.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340


By: _____


JAMES D. GASSENHEIMER
Florida Bar No. 959987
jgassenheimer@bergersingerman.com
MONICA F. ROSSBACH
Florida Bar No. 13641
mrossbach@bergersingerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail and/or electronic mail to all parties on the attached Service List on this **21st** day of **June, 2010**.

By: _____


JAMES D. GASSENHEIMER
Florida Bar No. 959987

SERVICE LIST

<p>Cristina Saenz Assistant General Counsel STATE OF FLORIDA OFFICE OF FINANCIAL REGULATION 401 N.W. 2nd Avenue, Suite N-708 Miami, FL 33128</p>	<p>Alan M. Sandler, Esquire <i>Counsel for Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IR Mary Joe Meyer SD IRA; Mary Joe Meyer Roth IRA</i> SANDLER & SANDLER 117 Aragon Avenue Coral Gables, FL 33134</p>
<p>Charles W. Throckmorton, Esquire <i>Attorneys for Dana Berman</i> KOZYAK TROPIN THROCKMORTON, P.A. 2525 Ponce de Leon Boulevard, 9th Floor Coral Gables, FL 33134</p>	<p>Paul Huck, Esquire Dean C. Colson, Esquire COLSON HICKS EIDSON 255 Aragon Avenue, Second Floor Coral Gables, FL 33134</p>
<p>Jason S. Miller, Esquire <i>Counsel for Flagstar Bank</i> ADORNO & YOSS, LLP 2525 Ponce de Leon Boulevard, Suite 400 Coral Gables, FL 33134</p>	<p>Maurice Baumgarten, Esquire ANANIA, BANDKLAYDER, BLACKWELL, BAUMGARTEN, TORRICELLA & STEIN Bank of America Tower -- Suite 4300 100 SE 2nd Street Miami, FL 33131</p>
<p>Mark A. Basurto, Esquire and Charles Evans Glausier, Esquire, Attorneys for Gulf Island Beach and Tennis Club Condominium Association, Inc. BUSH ROSS, P.A. Post Office Box 3913 Tampa, Florida 33601-3913</p>	<p>Charles L. Neustein, Esquire CHARLES L. NEUSTEIN, P.A. 777 Arthur Godfrey Road, Second Floor Miami Beach, FL 33140</p>
<p>William Dufoe, Esquire Robert W. Lang, Esquire HOLLAND & KNIGHT, LLP 100 North Tampa Street, Suite 4100 Tampa, FL 33602</p>	<p>Deborah Poore Fitzgerald, Esquire WALTON LANTAFF SCHROEDER & CARSON, LLP Corporate Center, Suite 2000 100 East Broward Boulevard Fort Lauderdale, FL 33301</p>
<p>Peter Valori, Esquire DAMIAN & VALORI, LLP 1000 Brickell Avenue, Suite 1020 Miami, FL 33131</p>	<p>Christopher S. Linde, Esquire Burr Forman 450 S. Orange Avenue Suite 200 Orlando, Florida 32801</p>

cc: The Honorable Jerald Bagley (*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

2876435-1