

**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,

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.

**RECEIVER'S MOTION FOR AUTHORIZATION TO EXECUTE
A CORRECTIVE DEED AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, and Relief Defendants, DB Atlanta, LLC, *et al.*, respectfully submits the *Receiver's Motion for Authorization to Execute a Corrective Deed and Supporting Memorandum of Law* ("Motion").

I. Preliminary Statement and Factual Background

A. Introduction

1. Relief Defendant, Normandy Holdings II, LLC, possessed an ownership interest in certain real property located at 187 North Shore Drive, Unit #187-1, Miami Beach, Florida

33141. In 2008, the Receiver sought and obtained Court authority to sell Normandy Holdings II, LLC's ownership interest in such real property to the Buyers (defined below). On August 28, 2008, the Receiver thus executed a special warranty deed conveying Normandy Holdings II, LLC's ownership interest in the real property to the Buyers.

2. The Buyers subsequently attempted to market and sell the real property. When doing so, the Buyers discovered that the special warranty deed—purportedly prepared and recorded by their transactional counsel at the time—contained an inaccurate legal description and an incorrect folio number. These mistakes were discovered by the title company in 2021 when the Buyers entered into a contract to sell the real property. The Receiver has been informed that, in order for the sale of the real property to proceed, a corrective warranty deed executed by the Receiver and in favor of the Buyers, is required.

B. Case Background

3. Berman Mortgage Corporation ("BMC") was a licensed mortgage lender whose primary role was to broker hard money, high interest, high risk loans to various real estate ventures. M.A.M.C. Incorporated ("MAMC") was also a licensed mortgage lender whose primary role was to act as loan servicing agent for the loans. MAMC would raise capital to make the loans brokered by BMC. BMC and MAMC obtained at least \$192 million from more than 700 individual investors (the "Lenders"). The Lenders' monies were used to fund the acquisition and construction of commercial real estate projects, many of which were incomplete or in default.

4. On December 11, 2007, the Florida Office of Financial Regulation filed a complaint (the "Complaint") in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 07-43672 CA 09, styled *State of Florida, Office of*

Financial Regulation v. Berman Mortgage Corporation, et al. seeking an injunction against BMC, MAMC, and other related entities including Normandy Holdings II, LLC (“Normandy Holdings” and together with other named defendants, the “Relief Defendants”) and requesting the appointment of a receiver.

5. The Complaint alleged that BMC and MAMC sold unregistered securities in the form of fractionalized interests in mortgages, operated as an unregistered securities dealer, made misrepresentations to investors, and misapplied investors’ monies in connection with the funding of approximately forty commercial mortgage loans.

C. Appointment of the Receiver

6. On December 11, 2007, the Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* (“Receivership Order”) appointing Michael Goldberg as the receiver for BMC and MAMC and the Relief Defendants (collectively, the “Receivership Defendants”) to prevent the waste and dissipation of the Receivership Defendants’ assets to the detriment of the Lenders.

7. Pursuant to the Receivership Order, the Court took exclusive jurisdiction and possession of the assets of the Receivership Defendants, including Normandy Holdings.

8. The Receivership Order directed and authorized the Receiver to, among other things, take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the receivership assets; conduct the business operations of the Receivership Defendants and any entity it controls; receive and collect all sums of money due and owing to the Receivership Defendants; to institute, defend, or compromise pending and hereafter instituted proceedings in state or federal courts and file actions against any persons or entities to recover property of the Receivership Defendants.

9. The Receivership Order further authorized the Receiver to apply to the Court for issuance of such other orders as may be necessary and appropriate to carry out the mandate of the Receivership Order.

D. The Normandy Holdings' Sale Motion

10. As provided for and contemplated by the Receivership Order, the Receiver administered the assets of the receivership estate, resolved all of the legal disputes, disposed of the real properties and made multiple distributions from the monies recovered from the proceeds of litigation and sale of properties.

11. Such actions included the filing of the *Receiver's Motion to Approve the Sale of Certain Receivership Assets Held by Relief Defendant Normandy Holdings II, LLC* on June 25, 2008 (the "Sale Motion").

12. Through the Sale Motion, the Receiver sought Court authority to sell Normandy Holdings' ownership interest in certain real property located at 187 North Shore Drive, Unit #187-1, Miami Beach, Florida 33141 (the "Unit") to Robert Pieczkowski and Maciej Jamiolkowski (the "Buyers") pursuant to the terms contained in a Residential Sale and Purchase Contract, attached to the Normandy Holdings' Sale Motion as Exhibit A.

13. On July 29, 2008, the Court entered an Order approving the Sale Motion and authorizing the sale of the Unit to the Buyers pursuant to the terms of the Contract (the "Sale Order").

14. On August 28, 2008, the Receiver thus executed a special warranty deed (the "Deed") conveying the Unit to the Buyers, a true and correct copy of which is attached hereto and incorporated herein as **Exhibit A**.

15. The Buyers subsequently attempted to market and sell the real property. When doing so, the Buyers discovered that the special warranty deed—purportedly prepared and recorded by their transactional counsel at the time—contained an inaccurate legal description and an incorrect folio number. These mistakes were discovered by the title company in 2021 when the Buyers entered into a contract to sell the real property.

16. The Receiver has been informed that, in order for the sale of the real property to proceed, a corrective warranty deed executed by the Receiver and in favor of the Buyers, is required.

17. All fees and costs incurred in connection with the preparation of this Motion are born by the Buyers.

II. Relief Requested

18. Through this Motion, the Receiver seeks Court authority to execute a corrective warranty deed, a true and correct copy of which is attached hereto and incorporated herein as **Exhibit B.**

19. A proposed order granting the relief is attached hereto and incorporated herein as **Exhibit C.**

III. Legal Standard

20. A receivership is equitable in nature, derived from the courts' inherent equity powers, and not dependent on statute. *Granada Lakes Villas Condominium Ass'n, Inc. v. Metro-Dade Investments Co.*, 125 So. 3d 756 (Fla. 2013). Under Florida law, a receiver is a custodian for the court through which the court controls the receivership estate. *In re Chira*, 343 B.R. 361 (Bankr. S.D. Fla. 2006), *aff'd*, 367 B.R. 888 (S.D. Fla. 2007). In executing the court's orders, a receiver acts as and for the court, which must supervise and independently approve the receiver's actions. *Lehman v. Trust Co. of America*, 57 Fla. 473, 49 So. 502 (1909).

21. A receiver's primary purpose is to preserve the value of the property of the receivership estate for those to whom it is ultimately determined that the property belongs so to accommodate all claims possible. 44 Fla. Jur 2d Receivers § 2. When property is placed under the court's control by the appointment of a receiver, the court ultimately controls transfer of the property. *In re Mariner Enterprises of Panama City, Inc.*, 131 B.R. 190 (Bankr. N.D. Fla. 1989).

22. The right and title of the receiver in property coming into the receiver's hands is by the same right and title of the person for whose title the receiver is appointed. *Behrens v. Blunk*, 822 N.W.2d 344 (Neb. 2012). In other words, the receiver's right and title is derivative of the entity placed in receivership and dependent on the rights of the entity in receivership. *GTR Source, LLC v. FutureNet Group, Inc.*, 89 N.Y.S.3d 528 (N.Y. Sup. Ct. 2018). The purchaser acquiring the property from the receiver acquires no better (or worse) title than receiver himself possessed. *Albertson Ranches, Inc. v. Cuddy*, 525 P.2d 1190 (Colo. App. 1974).

IV. Argument

23. The Receiver's rights in and title to the Unit were derivative of and dependent on the rights of Relief Defendant, Normandy Holdings.

24. The Court approved the Receiver's sale of Normandy Holdings' ownership interest in the Unit to the Buyers in July of 2008. Pursuant to the Sale Motion and the Sale Order, the Buyers **should** have received the same rights, title, and interest in the real property as the Receiver possessed, *i.e.* those derived from Relief Defendant, Normandy Holdings. On August 28, 2008, the Receiver thus executed a special warranty deed purporting to convey Normandy Holdings' ownership interest in the Unit to the Buyers.

25. The Buyers subsequently attempted to market and sell the real property. When doing so, however, the Buyers discovered that the special warranty deed contained an inaccurate legal description and an incorrect folio number. These mistakes were discovered by the title

company in 2021 when the Buyers entered into a contract to sell the Unit. The Receiver has been informed that, in order for the pending sale of the Unit to proceed, a corrective warranty deed executed by the Receiver, and in favor of the Buyers, is required. Court authority is required in order for the Receiver to enter into a corrective deed, as the Receiver has no authority to do so absent a Court order, and the Buyers are entitled to the same marketable title that the Receiver himself possessed.

26. All fees and costs incurred in connection with the preparation of this Motion are being born by the Buyers.

V. Notice

27. In order to provide sufficient notice to all of the Lenders, a copy of the Motion and supporting Memorandum of Law will be posted upon the receivership web-page.

VI. Conclusion

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of MAMC and related entities, respectfully requests this Court enter an Order (i) granting this Motion; (ii) authorizing the Receiver to execute the Corrective Deed attached hereto and incorporated herein as **Exhibit B**; and (iii) granting any such further relief as is just and proper.

Dated: January 10, 2022

Respectfully submitted,

AKERMAN LLP

201 East Las Olas Blvd., Suite 1800

Ft. Lauderdale, FL 33301

Phone: (954) 463-2700/Fax: (954) 463-2224

Email: catherine.kretzschmar@akerman.com

By: /s/ Catherine D. Kretzschmar

Catherine D. Kretzschmar, Esq.

Florida Bar No. 85843

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2022, a true and correct copy of this motion will be posted on the receivership web-page.

/s/ Catherine D. Kretschmar

EXHIBIT “A”



CFN 20080739740
 DR Bk 26561 Pgs 4304 - 4305; (2pgs)
 RECORDED 09/10/2008 13:40:17
 DEED DOC TAX 3,930.00
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

THIS INSTRUMENT PREPARED BY AND RETURN TO:
 GREG HERSKOWITZ, PA
 PINECREST PREMIER TITLE, L.L.C.
 9100 S. DADELAND BLVD, STE. 1000
 MIAMI, FL 33156
 PARCEL NO.: 02-32030071485

SPECIAL WARRANTY DEED

SPACE ABOVE THIS LINE FOR RECORDING DATA

THIS SPECIAL WARRANTY DEED, made the 28th day of August, 2008 by NORMANDY HOLDINGS II, LLC, A FLORIDA LIMITED LIABILITY COMPANY, having an address of 501 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133 herein called the Grantor, to ROBERT PIECHKOWSKI and MACIEJ JAMIOLKOWSKI whose address is 187-1 N SHORE DRIVE, MIAMI, FLORIDA 33141 hereinafter called the Grantee:
(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land situated in MIAMI-DADE County, State of Florida, viz.:

SEE EXHIBIT "A" ATTACHED HERETO

Subject to easements, restrictions and reservations of record and to taxes for the year 2008 and thereafter.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining. **TO HAVE AND TO HOLD**, the same in fee simple forever.

AND, the Grantor hereby covenants with said Grantee that at the time of delivery of this Deed, the Land and other rights, title and interests herein conveyed are free from all encumbrances made by Grantor and warrants and will defend the title to the Land, and all other rights, title and interests herein conveyed, against the lawful claims of Grantor and all persons claiming by, through or under Grantor, but against none other whatsoever.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Charlene Cida
 Witness #1 Signature
CHARLENE CERDA
 Witness #1 Printed Name
[Signature]
 Witness #2 Signature
Kimberly Shinder
 Witness #2 Printed Name

NORMANDY HOLDINGS II, a Florida limited liability company by and through its court appointed receiver, Michael I. Goldberg, appointed in that certain case styled State of Florida, Office of Financial Regulation v. Berman Mortgage Corporation, et. al., identified as Case No. 07-43672, in the Circuit Court in and for Miami-Dade County, Florida

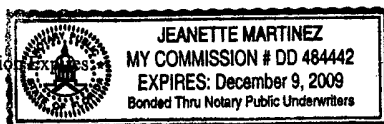
[Signature]
 Michael I. Goldberg, as court appointed receiver for Normandy Holdings, II, LLC, a Florida limited liability company, in Case No. 07-43672, in the Circuit Court in and for Miami-Dade County, Florida.

STATE OF FLORIDA
 COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 28th day of August, 2008 by Michael I. Goldberg, as court appointed receiver for Normandy Holdings, II, LLC, a Florida limited liability company, in Case No. 07-43672, in the Circuit Court in and for Miami-Dade County, Florida. He is personally known to me or has produced _____ as identification.

SEAL

My Commission



Notary Signature

Printed Notary Signature

LEGAL DESCRIPTION

EXHIBIT "A"

A PORTION OF LOT2, BLOCK 57, OF NORMANDY GOLF COURSE SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 44, AT PAGE 62 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6 IN BLOCK 57, NORMANDY GOLF COURSE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 44, AT PAGE 62, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, KNOWN AS THE POINT OF COMMENCEMENT; THENCE NORTH 51°11'54" EAST, A DISTANCE OF 94.72 FEET ALONG THE COMMON BOUNDARY LINE OF LOTS 6 AND 7 IN BLOCK 57, NORMANDY GOLF COURSE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 44, AT PAGE 62, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE TRAVEL PERPENDICULAR TO THE NORTHWEST (NORTH 38°48'06" WEST), A DISTANCE OF 88.66 FEET ALONG A LINE KNOWN AS "LINE A" TO THE POINT OF BEGINNING; THENCE TRAVEL NORTH 51°15'14" EAST ALONG A LINE TRAVELING THROUGH THE CENTERLINE OF THE COMMON WALL FOR PARCEL 155-4 AND PARCEL 155-5, A DISTANCE OF 69.30 FEET TO A POINT ALSO BEING THE BULKHEAD LINE OF INDIAN RIVER; THENCE TRAVEL SOUTH 38°43'49" EAST ALONG THE BULKHEAD LINE OF INDIAN RIVER, A DISTANCE OF 18.00 FEET TO A POINT; THENCE TRAVEL SOUTH 51°15'14" WEST, A DISTANCE OF 69.28 FEET TO A POINT ON THE LINE KNOWN AS "LINE A"; THENCE TRAVEL NORTH 38°48'06" WEST, ON A LINE PARALLEL WITH "LINE A", A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING; ALSO KNOWN AS: PARCEL 187-1.

EXHIBIT “B”

Prepared by and return to:
Donald J. Kahn, Esq.
Attorney at Law
Green and Kahn, P.L.
317 71st Street
Miami Beach, FL 33141
305-865-4311
File Number: GK-21-0469

Corrective Special Warranty Deed

This Quit Claim Deed executed this ___ day of _____, 2021, **NORMANDY HOLDINGS II, a Florida limited liability company**, whose post office address is 501 Continental Plaza, 3250 Mary Street, Coconut Grove Florida 33133, as first party, to **Robert Pieczkowski and Maciej Jamiolkowski**, whose post office address is 187-1 N. Shore Drive, Miami Florida 33141 Street, Miami FL 33127, second party; grantee.

WITNESSETH:

THAT the first party, does hereby remise, release, and quit claim unto the second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lots, pieces or parcels of land, situate, lying and being in County of Miami-Dade, State of Florida, to-wit:

A Portion of Lot 2, Block 57 of Normandy Golf Course Subdivision, according to the Plat thereof, as recorded in Plat Book 44, Page 62 of the Public Records of Miami-Dade County, Florida and more particularly described as follows:

Commencing at the Southwest corner of Lot 6 in Block 57, Normandy Golf Course Subdivision, according to the Plat thereof, as recorded in Plat 44, Page 62 of the Public Records of Miami-Dade County, Florida, known as the Point of Commencement; thence North 51°11'54" East, a distance of 94.72 feet along the common boundary line of Lots 6 and 7 in Block 57, Normandy Golf Course Subdivision, according to the Plat thereof, as recorded in Plat Book 44, Page 62, Public Records of Miami-Dade County, Florida; thence Travel perpendicular to the Northwest (North 38°48'06" West), a distance of 286.67 feet along a line known as line A to the Point of Beginning; thence Travel North 51°25'28" East along a line traveling through the centerline of the common wall for parcel 187-1 and parcel 187-2, a distance of 65.81 feet to a point also being the bulkhead line of Indian River; thence travel South 39°03'53" East along the Bulkhead line of Indian River, a distance of 21.87 feet to a point; thence travel South 51°11'54" West, a distance of 58.91 feet to a Point on the line known as line A; thence travel North 38°45'06" West, on a line parallel with line A, a distance of 21.67 feet to the Point of Beginning; also known as Parcel 187-1.

***** This Corrective Deed is being recorded in reference to that certain Special Warranty Deed dated 08/28/2008, recorded 09/10/2008 in OR Book 26561, Page 4304-4305, with Instrument CFN:2008R0739740, of the Public Records of Miami-Dade County in order to correct the "legal description" in the previously recorded Special Warranty Deed ******

TO HAVE AND TO HOLD the same together with all and singular and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien equity and claim whatsoever of the said first party, either in law or equity to the only proper use, benefit and behalf of the said second party forever.

IN WITNESS WHEREOF, the said first party has signed and sealed these presents the day and year first written above.

Signed, sealed and delivered in our presence:

NORMANDY HOLDINGS II, a Florida limited liability company by and through its court appointed receiver, Michael Goldberg, appointed in that certain case styled State of Florida, Office of Financial Regulations v. Berman Mortgage Corporation, et. Al, identified as Case No. 07-43672, in the Circuit Court in and for Miami-Dade County, Florida

Witness Name: _____

Witness Name: _____

State of _____

County of _____

_____(Seal)
Michael I. Goldberg, as court appointed receiver for Normandy Holdings, II, LLC, a Florida limited liability company, in Case No. 07-43672, in Circuit Court in and for Miami-Dade, Florida.

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021 Michael I. Goldberg, as court appointed receiver for Normandy Holdings, II, LLC, a Florida limited liability company, in Case No. 07-43672, in Circuit Court in and for Miami-Dade, Florida, who ☐ are personally known or ☐ have produced a driver's license as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

EXHIBIT “C”

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

CIRCUIT CIVIL DIVISION

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,

Defendants,

and

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

Relief Defendants.

ORDER AUTHORIZING RECEIVER TO EXECUTE A CORRECTIVE DEED

This matter came before the Court on ----- at hearing (the “Hearing”) on the *Receiver’s Motion for Authorization to Execute a Corrective Deed and Supporting Memorandum of Law* (D.E. ---) (the “Motion”) filed by Michael Goldberg, the court-appointed receiver (the “Receiver”) over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, and Relief Defendants DB Atlanta, LLC, *et al.* The Court, having reviewed the Motion and supporting Memorandum of Law, having considered the representations of the Receiver at the Hearing and noting no objections to the Motion were received, and finding that the notice and established

procedures of posting to the receivership website constitutes adequate notice of this Motion, the hearing thereon and this Order, and being otherwise fully advised in the premises, does:

ORDER AND ADJUDGE that:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to execute the Corrective Deed, attached as Exhibit B to the Motion, in his capacity as the Court-appointed receiver over Normandy Holdings II, LLC.
3. The Receiver is further authorized to execute any other documents and take any other actions reasonably necessary to consummate the transactions contemplated in the Contract.¹

DONE AND ORDERED in Chambers in Miami-Dade County, Florida on this ____ day of January, 2022.

THE HONORABLE PEDRO P. ECHARTE JR.
CIRCUIT COURT JUDGE

Conformed copies to:
All counsel of record
Posted to the Receiver's Web Site

¹ A true and correct copy of the Contract is attached as Exhibit A to the *Receiver's Motion to Approve the Sale of Certain Receivership Assets Held by Relief Defendant Normandy Holdings II, LLC* filed on June 25, 2008.