

**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 ENTRY OF AN ORDER AUTHORIZING
THE RECEIVER TO ENTER INTO A SETTLEMENT AGREEMENT
WITH FIDELITY NATIONAL TITLE COMPANY
REGARDING GULF ISLAND RESORT, L.P., LTD.**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this Motion for Entry of an Order Authorizing the Receiver to Enter into a Settlement Agreement with Fidelity National Title Company Regarding Gulf Island Resort, L.P., Ltd. (the "Motion"). In support of the Motion, the Receiver states as follows:

1. On December 11, 2007, the Florida Office of Financial Regulation ("OFR") filed a Complaint for Temporary and Permanent Injunction and Appointment of Receiver.

2. The OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors (the "Lenders") by offering fractional interests in short-term acquisition and/or construction mortgage loans. MAMC serviced the loans pursuant to servicing agreements entered into between the individual Lenders and MAMC.

3. On December 11, 2007, this Court (the "Receivership Court") appointed Michael Goldberg as the receiver for BMC, MAMC and the Relief Defendants (collectively, the "Receivership Defendants").

4. The Gulf Island Beach and Tennis Club ("Gulf Island") is a residential condominium community located at the water's edge in Hudson, Florida and consists of two mid-rise buildings constructed in 1985 and vacant land.

5. In February of 1993, after the Federal Deposit Insurance Corporation ("FDIC") took title to the unsold condominium units from the developer, the FDIC sold certain of the Gulf Island condominium units to Gulf Island Resort, L.P. ("Gulf"), pursuant to that certain Quitclaim Deed recorded in the Official Records of Pasco County, Florida.

6. On January 15, 2003, Gulf, and its principal, Eisi Markovitz, borrowed the sum of \$877,500.00 from BMC. The loan (the "Gulf Loan") was funded by sixteen (16) investors (the "Lenders") and payment was secured by a mortgage on certain of the condominium units (the "Units"), as more fully described in the Mortgage and Security Agreement (the "Mortgage").

7. On even date, BMC assigned its interest in the Gulf Loan documents to the sixteen Lenders.

8. Soon thereafter, title to the Units became marred in legal proceedings initiated by Alex Bistricher ("Bistricher"), a one-third owner of Gulf, who claimed that Eisi Markovitz did not have the right to encumber or transfer the Units. Bistricher commenced a quiet title action (the

“Quiet Title Action”) in Pasco County Circuit Court styled *Alex Bistricher, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Case No. 51-2003-CA-942ES.

9. After the commencement of the receivership, the Quiet Title Action was transferred to the Receivership Court. *See, Order Granting Receiver’s Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*, dated June 13, 2008.

10. Fidelity National Title Company (the "Title Company") provided title insurance for the Mortgage and defended the Receiver in the litigation commenced by Bistricher.

11. Despite multiple rulings in favor of the Receiver, litigation encumbering the Units endured for years, the result of which negatively impacted the value of the Units.

12. The Receiver has not had access to the Units and expects their condition to be very poor. Real property taxes and association assessments remain unpaid. In the event, the Receiver retained a broker to market the Units for sale, he does not expect to recover much, if any, money from a sale of the Units for the benefit of the Lenders.

13. The Receiver and the Title Company (jointly, the "Settling Parties") have agreed to settle their disputes. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

14. Pursuant to the Settlement Agreement, in exchange for payment in the sum of \$300,000, the Receiver shall assign the Lender's interest in the Mortgage to the Title Company. A true and correct copy of the Assignment is attached hereto as Exhibit 2.

15. The Receiver believes the settlement is in the best interest of the Lenders and the Receivership Estate.

16. By virtue of the Order Appointing Receiver, the Receiver has standing to institute, defend or compromise court proceedings as may in his judgment be necessary or proper for the collection, preservation and maintenance of receivership assets and/or on behalf of the Receivership Defendants. *See* Order at ¶ 21.

17. Notice of this Motion shall be provided by posting a copy (and the Notice of Hearing) on the Receivership website and sending a copy to the Lenders via e-mail.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver, respectfully request this Court enter an Order, in the form attached hereto as Exhibit 2, authorizing the relief requested herein and such further relief as is just and proper.

Respectfully submitted,

AKERMAN LLP

Counsel for the Receiver

Las Olas Centre II, Suite 1600

350 East Las Olas Boulevard

Fort Lauderdale, FL 33301-2229

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

Email: joan.levit@akerman.com

By: /s/ Joan M. Levit

Joan M. Levit, Esquire

Florida Bar No. 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of March, 2015, a true and correct copy of the forgoing was furnished via e-mail to Charles S. McCall, National Major Claims Counsel, Fidelity National Title Group, 601 Riverside Avenue, VG, Jacksonville, FL 32204 and to the parties on the attached Service List. A copy of the Motion will also be sent to the Lenders who have an interest in this property by e-mail and posted on the receivership website.

By: /s/ Joan M. Levit
Joan M. Levit, Esquire

SERVICE LIST

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EXHIBIT 1

**IN THE CIRCUIT COURT OF THE
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CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
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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.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between Michael I. Goldberg ("Receiver"), in his capacity as capacity the receiver for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC") and Fidelity National Title Company (the "Title Company"). The Receiver and the Title Company shall hereafter jointly be referred to as the "Settling Parties".

WHEREAS, on December 11, 2007, the Florida Office of Financial Regulation ("OFR") filed this case, seeking a temporary and permanent injunction against the above-captioned defendants and the appointment of a receiver.

WHEREAS, the OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors (the "Lenders") by offering fractional interests in short-term acquisition and/or construction mortgage loans; and that MAMC serviced the loans pursuant to servicing agreements entered into between the individual Lenders and MAMC.

WHEREAS, on December 11, 2007, this Court (the "Receivership Court") appointed Michael Goldberg as the receiver for BMC, MAMC and the Relief Defendants (collectively, the "Receivership Defendants").

WHEREAS, the Gulf Island Beach and Tennis Club ("Gulf Island Club") is a residential condominium community located at the water's edge in Hudson, Florida and consists of two mid-rise buildings constructed in 1985.

WHEREAS, in February of 1993, the Federal Deposit Insurance Corporation sold certain of the condominium units to Gulf Island Resort, L.P. ("Gulf"), as evidenced by that certain Quitclaim Deed recorded in the Official Records of Pasco County, Florida.

WHEREAS, on January 15, 2003, Gulf, and its principal, Eisi Markovitz, borrowed the sum of \$877,500.00 from BMC. The loan (the "Gulf Loan") was funded by sixteen (16) of the Lenders and payment was secured by a mortgage on certain of the condominium units (the "Units") as more fully described in the Mortgage and Security Agreement (the "Mortgage"). The Mortgage was recorded in the Official Records of Pasco County, Florida on January 16, 2003 at Book 5206, Pages 819-827.

WHEREAS, Fidelity National Title Company (the "Title Company") provided title insurance for the Mortgage.

WHEREAS, on even date, BMC assigned its interest in the Gulf Loan documents to the sixteen Lenders. The Assignment of Promissory Note, First Mortgage and Related Loan Documents was recorded in the Official Records of Pasco County, Florida on February 18, 2003 at Book 5243, Pages 764-766.

WHEREAS, soon thereafter, title to the Units became marred in legal proceedings initiated by Alex Bistricher, a one-third owner of Gulf, who claimed that Eisi Markovitz did not have the right to encumber or transfer the Units.

WHEREAS, after the commencement of the receivership, the Title Company defended the Receiver in the litigation; despite multiple rulings in favor of the Receiver, litigation encumbering the Units endured for years, the result of which negatively impacted the value of the Units.

WHEREAS, the Settling Parties have negotiated a consensual resolution of all issues between them under the terms set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. The foregoing recitals are true and correct and are incorporated in full herein.
2. The Title Company has agreed to pay the sum of \$300,000.00 to the Receiver in exchange for an assignment of the Mortgage.
3. This Agreement is expressly conditioned upon the Receiver obtaining approval of this Agreement from the Receivership Court.
4. Upon approval of this Agreement by the Receivership Court and after receipt of payment, the Receiver, in his capacity as the servicer for the Mortgage, shall execute an Assignment of the Mortgage in the form attached hereto as Exhibit A.

5. The Receiver and the Title Company shall execute any other documents necessary to complete the Assignment of the Mortgage to the Title Company.

6. Effective upon receipt in full of the settlement funds, the Receiver and the Title Company, for themselves, their predecessors, successors and assigns, hereby release and discharge each other and their respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, known or unknown, whether accrued or unaccrued, and whether sounding in contract, tort, statute or otherwise, that arise from or relate to the performance, nonperformance, or manner of performance of the Title Company's functions, duties and actions as title insurer. Further, upon receipt in full of the settlement funds, the title insurance policy at issue in this matter is terminated.

7. This Agreement sets forth the entire agreement between the Settling Parties and may be amended only by written agreement of the Settling Parties.

8. This Agreement shall be governed by Florida law.

9. If any action in law or equity is necessary between the Settling Parties to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements, including those arising out of any appeals, in addition to any other relief that may be awarded.

10. The Settling Parties hereto agree to execute any and all additional documentation reasonably necessary to complete or effectuate the terms of this Agreement.

11. This Agreement may be executed in counterparts, each of which shall be deemed an original. Such counterparts, when taken together, shall constitute but one agreement.

12. The Receivership Court shall retain jurisdiction to enforce all disputes arising out of this Agreement.

13. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered when personally delivered or received from an overnight delivery service in addition to service via e-mail, addressed as follows:

(a) If to the Receiver:

Michael I. Goldberg, Esq.
AKERMAN LLP
Las Olas Centre II, Suite 1600
350 East Las Olas Boulevard
Fort Lauderdale, FL 33301-2999
Phone: (954) 463-2700
Fax: (954) 463-2224
Email: michael.goldberg@akerman.com

(b) If to the Title Company:

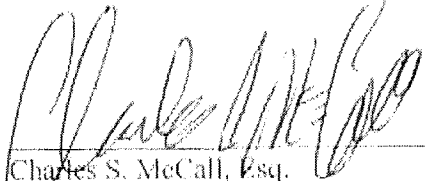
Charles S. McCall
National Major Claims Counsel
Fidelity National Title Group
601 Riverside Avenue, VG
Jacksonville, FL 32204
Phone: (904) 701-6145
Fax: (904) 357-1261
Email: charles.mccall@fnf.com

14. Each party to this Agreement represents and warrants that he is duly authorized to execute this Agreement and that the person through whom each party executes this Agreement is fully and duly empowered and authorized to execute it on the respective party's behalf.

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be executed and delivered as of the date set forth below.

Dated: March __, 2015

Michael I. Goldberg, Esq.
Court Appointed Receiver
Berman Mortgage Corporation, et al.



Charles S. McCall, Esq.
National Major Claims Counsel
Fidelity National Title Group

EXHIBIT 2

Prepared by, Record and Return To:
Charles S. McCall
Fidelity National Title Group, Inc.
601 Riverside Avenue, Bldg. V-G
Jacksonville, FL 32204

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of that certain Mortgage (herein "Assignor") whose address is c/o Akerman LLP, Las Olas Centre II, Suite 1600, 350 East Las Olas Boulevard, Fort Lauderdale, FL 33301-2229, does hereby grant, sell, assign, transfer and convey, unto Chicago Title Insurance Company, a corporation organized and existing under the laws of the state of Nebraska (herein "Assignee"), whose address is 601 Riverside Avenue, Bldg. VG, Jacksonville, FL 32204, that certain Mortgage dated January 15, 2003, made and executed by Gulf Island Resort, L.P., Ltd., to and in favor of Berman Mortgage Corporation, upon the following described property situated in Pasco County, State of Florida:

Condominium Units 805E, 808E, 603W, 604W, 605W, 608W, 611W, 614W, and 807W of GULF ISLAND BEACH AND TENNIS CLUB I, A CONDOMINIUM, according to the Declaration of Condominium thereof filed in Official Records Book 3300 at Page 208 of the Public Records of Pasco County, Florida

such Mortgage having been given to secure payment of \$877,500, (Original Principal Amount) which Mortgage is of record in Book 5206, page 819 of the Public Records of Pasco County, State of Florida, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.

TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on _____, 20__.

Witness (Print Name)

(Assignor)

Witness (Print Name)

By: _____
Michael I. Goldberg, in his capacity as the court-appointed Receiver for Berman Mortgage Corporation

Attest (Print Name)

Seal: