

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

CASE NO. 07-43672 CA 09

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
and DANA J. BERMAN, as Owner and
Managing Member,

Defendants,

and

DB ATLANTA, LLC, a Florida Limited
Liability Company, *et al.*

Relief Defendants.

**RECEIVER'S MOTION TO APPROVE SETTLEMENT WITH CBRE, INC.
IN CONNECTION WITH THE ATLANTIC BEACH PROJECT**

Michael I. Goldberg ("Receiver"), as Court Appointed Receiver over Defendants Berman Mortgage Corporation ("BMC") and M.A.M.C. Incorporated ("MAMC") and Relief Defendants DB Atlanta, LLC, *et al.*, by and through undersigned counsel, files this Motion To Approve Settlement With CBRE, Inc. In Connection With The Atlantic Beach Project (the "Motion"). In support of the Motion, the Receiver states as follows:

1. On December 11, 2007, the State of Florida, Office of Financial Regulation ("OFR") filed a Complaint for Temporary and Permanent Injunction and Appointment of Receiver. The OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors (the "Individual Lenders") by offering fractional interests in short-term acquisition and/or construction mortgage loans. MAMC

{26278348;1}

serviced the loans pursuant to servicing agreements entered into between the individual Lenders and MAMC.

2. 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") to prevent the waste and dissipation of the Receivership Defendants' assets (the "Receivership Estate") to the detriment of the Individual Lenders.

3. In or about April, 2006, BMC raised \$9.65 million from 234 Individual Lenders, which funds were loaned to Atlantic Beach Oceanfront, LLC and Seventh Street Properties, LLC (collectively, the "Borrowers") and secured by a first mortgage ("Mortgage") on approximately 1.7 acres of land located in Myrtle Beach, South Carolina (the "Atlantic Beach Project"). The loan, as modified, was serviced by MAMC.

4. BMC also raised money from Green-East SC Lender, LLC ("Green-East") to fund the Atlantic Beach Project. The Borrowers and MAMC executed a modification of the Individual Lenders' Mortgage so that the Individual Lenders' note and Green-East's note were both secured by the Individual Lenders' Mortgage on a *pari passu* basis.

5. The Borrowers defaulted under the loan documents and in 2008, the Receiver, commenced a foreclosure suit against the Borrowers and other parties in the Court of Common Pleas for South Carolina. The Receiver, Green-East and the Borrowers subsequently reached settlement, which was approved by this Court on August 18, 2011 (the "Atlantic Beach Settlement Order").

6. Pursuant to the Atlantic Beach Settlement Order, the Court approved the employment of the law firm of Smith Moore Leatherwood LLP to pursue pending or possible claims against CB Richard Ellis, Inc. d/b/a CBRE Valuation & Advisory Services (k/n/a CBRE,

Inc.) ("CBRE") and possibly other entities associated with CBRE arising from tort (alleged negligent appraisals) and contract claims relating to the Atlantic Beach property.

7. Receiver's counsel filed an action on behalf of the Receiver and Green-East against CBRE in the Court of Common Pleas in Horry County, South Carolina on July 21, 2011, assigned Case No. 2011CP2606214. On August 23, 2011, CBRE removed the case to the United States District Court for the District of South Carolina, assigned Case No. 4:11-CV-02237-RBH.

8. On that same date, CBRE also filed a Motion to Stay the Proceedings and Compel Arbitration. The arbitration was scheduled for the week of May 20, 2013 in Atlanta.

9. The parties have engaged in mediation and reached a confidential settlement which will result in a settlement payment to the Receivership Estate by CBRE in return for a full release and an order of dismissal with prejudice, with each party to bear his/its own legal fees and costs.

10. Although the settlement is confidential, the parties are aware that the settlement is subject to notice to the Individual Lenders associated with the Atlantic Beach Project and approval by the Receivership Court. Under the terms of the settlement, the Receiver is entitled to send an unredacted copy of the settlement agreement to the Individual Lenders, but not file it with the Receivership Court. Moreover, a copy of the settlement agreement will be provided to the Receivership Court for an *in camera* inspection.

11. 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.

12. As this court is aware, the Receiver has received three Orders from the Receivership Court authorizing the Receiver to loan money to the Atlantic Beach Project for payment of attorney's fees, carrying costs and taxes. The settlement funds will first be applied to repay the Receivership estate for the loans.

13. The Receiver believes that the settlement is in the best interest of the Individual Lenders and the Receivership Estate and recommends that the Receivership Court approve the terms of the settlement.

WHEREFORE, the Receiver requests the Court approve the settlement with CBRE and grant such other relief as is just and proper.

Respectfully submitted,

/s/ Joan Levit

Joan Levit, Esq.
Florida Bar Number: 987530
AKERMAN SENTERFITT
Counsel for the Receiver
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: joan.levit@akerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2013, a true and correct copy of the forgoing was furnished via e-mail and U.S. Mail to the parties on the attached Service List. A copy of the Motion will also be sent by e-mail to all Lenders who have an interest in this property and a copy will be posted on the receivership website.

By: /s/ Joan Levit
Joan M. Levit

SERVICE LIST

Pury Santiago
Assistant General Counsel
STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
401 N.W. 2nd Avenue, Suite N-708
Miami, FL 33128
pury.santiago@fiofr.com

Alan M. Sandler, Esquire
SANDLER & SANDLER
117 Aragon Avenue
Coral Gables, FL 33134
asandlerlaw@aol.com

Charles W. Throckmorton, Esquire
KOZYAK TROPIN THROCKMORTON, P.A.
2525 Ponce de Leon Boulevard, 9th Floor
Coral Gables, FL 33134
cwt@kttl.com

Dean C. Colson, Esquire
COLSON HICKS EIDSON
255 Aragon Avenue, Second Floor
Coral Gables, FL 33134
dean@colson.com

Mark A. Basurto, Esquire and
Charles Evans Glausier, Esquire
BUSH ROSS, P.A.
Post Office Box 3913
Tampa, Florida 33601-3913
mbasurto@bushross.com

Maurice Baumgarten, Esquire
ANANIA, BANDKLAYDER,
Bank of America Tower — Suite 4300
100 SE 2nd Street
Miami, FL 33131
maurice.baumgarten@wilsonelser.com

Deborah Poore Fitzgerald, Esquire
WALTON LANTAFF, LLP
Corporate Center, Suite 2000
100 East Broward Boulevard
Fort Lauderdale, FL 33301
dfitzgerald@waltonlantaff.com

James D. Gassenheimer, Esquire
BERGER SINGERMAN
1000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
jgassenheimer@bergersingerman.com

Christopher S. Linde, Esquire
BURR FORMAN
200 S. Orange Avenue, Suite 800
Orlando, Florida 32801
clinde@burr.com

Charles L. Neustein, Esquire
CHARLES L. NEUSTEIN, P.A.
777 Arthur Godfrey Road
Second Floor
Miami Beach, FL 33140
cln@neusteinlaw.com

Don Rosenberg
PECKAR & ABRAMSON
ONE S.E. THIRD AVE., SUITE 3100
Miami, FL 33131
drosenberg@pecklaw.com

Peter Valori, Esquire
DAMIAN & VALORI, LLP
1000 Brickell Avenue, Suite 1020
Miami, FL 33131
pvalori@dvllp.com