

**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.

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**RECEIVER'S MOTION TO AUTHORIZE DISTRIBUTION  
OF THE REMAINING PROCEEDS OF THE SALE OF  
THE MAMC EMERALD CAY, LLC PROPERTY**

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 to Authorize Distribution of the Remaining Proceeds of the Sale of the MAMC Emerald Cay, LLC Property* (the "Motion"). In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, this Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* ("Receivership Order") appointing Michael Goldberg as the receiver for BMC and MAMC (the "Defendants") and the Relief Defendants (collectively, the

“Receivership Defendants”) to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the investors (the “Lenders”) who entrusted over \$192 million (“Lender Funds”) to the Receivership Defendants.

2. The Lender Funds were secured by mortgages on approximately 40 real estate projects and properties. As mortgagors defaulted on their loans, and if they were not one of the original Relief Defendants, the Receiver obtained Orders of this Court adding the projects to the receivership as additional relief defendants.

3. One of the loans was made to Emerald Cay Investments, LLC (the "Borrower") and secured by a First Mortgage and Security Agreement (the "Mortgage") on four parcels of approximately 7.84 acres of vacant land located at S.R. 535 at Polynesian Isle Boulevard & Oxford Drive, in Osceola County, Florida (the "Property"). The loan was serviced by MAMC.

4. After the Borrower defaulted under the loan documents, upon the direction of the Receiver, MAMC, on behalf of the Lenders, filed a Complaint in the Circuit Court of the Ninth Judicial Circuit of Osceola County Florida to foreclose the Mortgage. After the completion of the foreclosure, title to the Property was held in the name of MAMC Emerald Cay, LLC.

5. On August 17, 2010, upon notice and hearing, the Court entered an *Order Expanding the Receivership to Include MAMC Emerald Cay, LLC as a Relief Defendant* ("Order Expanding Receivership").

6. In 2013 and again in 2015, the Court entered Orders authorizing the Receiver to market the Property for sale. On May 1, 2016, the Court entered an Order approving the Receiver's Motion to Approve Sale of Property Owned by MAMC Emerald Cay, LLC (the “Sale Motion”) for the sum of \$2,000,000.00.

7. The sale provided for a non-refundable deposit of \$800,000.00. The remaining \$1,200,000.00, plus interest payable at a fixed rate of 7.5% (the "Remaining Proceeds") would be paid on or before one year from the date of closing on the sale of the Property. Payment of the Remaining Proceeds was evidenced by a Balloon Promissory Note in the sum of \$1,200,000.00 and secured by a Purchase Money Mortgage and Security Agreement.

8. On August 13, 2016, the Court entered an Order authorizing the Receiver to distribute the \$800,000 (the "Initial Proceeds"). After paying expenses associated with the Property, including 2010 – 2015 real property taxes, the Receiver distributed the sum of \$229,857.52 to the Lenders.<sup>1</sup>

9. The Receiver has received payment of the Remaining Proceeds in the sum of \$1,290,000.00 and now seeks authority to distribute the Remaining Proceeds to cover additional expenses and fees and make a distribution to the Lenders, as more fully described in the attached **Exhibit 1**.

10. After payment of the expenses described in Exhibit 1, the Receiver anticipates that he will make a pro rata distribution to the Lenders in the sum of \$1,257,548.33. Along with the prior distributions, this represents a 61% recovery for the Lenders.

11. The Receiver has consulted with the Emerald Cay lender committee<sup>2</sup>, who has advised the Receiver that they approve of his making this distribution of the Remaining Proceeds.

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

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<sup>1</sup> The Lenders previously received a pro rata distribution in the sum of \$51,172.26, pursuant to the *Order Authorizing Distribution of the Proceeds from Insurance Settlement*, dated July 22, 2015.

<sup>2</sup> At the outset of the receivership, the Receiver set up committees comprised of lenders for each loan and one overall committee made up of at least one lender from each loan ("Executive Committee") to advise the Receiver.

**WHEREFORE**, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C., and related entities, respectfully request this Court to enter an Order approving the distribution of the Remaining Proceeds and to grant such further relief as is just and proper.

Respectfully submitted,

**AKERMAN LLP**

*Counsel for the Receiver*

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By: /s/ Joan Levit

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this June 23, 2017, a true and correct copy of the motion 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 posted on the receivership website.

/s/ Joan Levit

Joan Levit, Esq.

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**EXHIBIT 1**

## MAMC Emerald Cay, LLC

### Distribution Summary

Original Loan Amount	\$ 2,500,000.00
1st Principal Distribution - 2015 E & O	\$ (51,172.26)
2nd Distribution - from Sale	\$ (229,857.52)
<b>Current Balance</b>	<b>\$ 2,218,970.22</b>

### 1st Mortgage Payoff

Principal Balance	\$ 1,200,000.00
Accrued Interest (12 months @ 7.5%)	\$ 90,000.00
<b>Total Received</b>	<b>\$ 1,290,000.00</b>

### Deductions

Legal Due + \$2,500 Reserve (distribution motion)	\$ (30,951.67)
Accounting Reserve - Final tax return	\$ (1,500.00)
<b>Total available for distribution</b>	<b>\$ 1,257,548.33</b>

### Recovery

Original Principal Amount	\$ 2,500,000.00
Total recovered	\$ 1,538,578.11
<b>T. Recovery (includes interest)</b>	<b>61.54%</b>