

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(s),

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

Defendant(s),

and

DB ATLANTA, LLC, a Florida Limited Liability
Company, DB DURHAM, LLC, a Florida Limited
Liability Company, NORMANDY HOLDINGS 11, LLC, a
Florida Limited Liability Company, NORMANDY
HOLDINGS III, LLC, a Florida Limited Liability
Company, WATERSIDE ACQUISITIONS, LLC, a Florida
Limited Liability Company, DBKN GULF
INCORPORATED, a Florida Limited Liability Company,
OCEANSIDE ACQUISITIONS, LLC, a Florida Limited
Liability Company, DB BILOXI, LLC, a Florida Limited
Liability Company, DB BILOXI 11, LLC, a Florida
Limited Liability Company, DB BILOXI III, LLC, a
Florida Limited Liability Company, DBDS VERO
BEACH, LLC, a Florida Limited Liability Company, DB
TAMPA, LLC, a Florida Limited Liability Company. DB
SIMPSONVILLE, LLC, a Florida Limited Liability
Company, DBDS NORTH MIAMI, LLC, a Florida
Limited Liability Company, REDLANDS RANCH
HOLDINGS, LLC, a Florida Limited Liability Company,
DBDS BISCAYNE PARK, LLC, a Florida Limited
Liability Company. DB CARROLL STREET, LLC, a
Florida Limited Liability Company,

Relief Defendant(s).

MOTION FOR RELIEF FROM TEMPORARY INJUNCTION

Petitioner, FLORIDA COMMUNITY BANK, N.A., by and through its undersigned counsel, hereby files this Motion for Relief from Temporary Injunction and as grounds therefore states as follows:

1. This Motion seeks relief from the Court's Order of December 11, 2007 entering a temporary injunction (the "Temporary Injunction") enjoining all actions against Berman Mortgage Corporation ("Berman Mortgage") and M.A.M.C., Inc. ("MAMC") without further order of this Court. A copy of the Temporary Injunction is attached hereto as Exhibit "A".

2. On November 30, 2005, Bay Estates at Pinetree Drive, LLC (hereinafter, "Bay Estates"), provided a promissory note to Great Florida Bank n/k/a Florida Community Bank (hereinafter, the "FCB"). In order to secure repayment of the promissory note, Bay Estates executed and delivered that certain Mortgage, Assignment of Rents and Security Agreement (the "First Mortgage") to FCB encumbering real property (hereinafter, the "Property") legally described therein and located in Miami-Dade County, Florida, together with all tangible and intangible property owned by Bay Estates and used in connection with the Property. A true and correct copy of the First Mortgage is attached hereto as Exhibit "A". The First Mortgage was intended to and provided FCB with a first mortgage lien interest in the Property.

3. On November 30, 2005, Bay Estates also executed and delivered that certain Second Mortgage and Security Agreement (hereinafter, the "Second Mortgage") to forty-eight individual mortgagees (hereinafter and collectively, the "Second Mortgagees") with each holding an undivided fractional interest in the Second Mortgage. Berman Mortgage and MAMC are not Second Mortgagees under the Second Mortgage. However, Berman Mortgage is listed as the Second Mortgagees' loan servicer under the Second Mortgage. A true and correct copy of the Second Mortgage is attached hereto as Exhibit "B". The Second Mortgage encumbers the same

property as the Property as the First Mortgage. The Second Mortgage was intended to and provided Second Mortgagees with a second mortgage lien interest in the Property, behind the First Mortgage given to FCB.

4. On or about March 2, 2009, FCB filed a lawsuit against Bay Estates in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, styled Great Florida Bank, Plaintiff, vs. Bay Estates at Pinetree Drive, LLC., and Frank J. Amedia, et al., Case No. 2009-16591-CA-01 (the "Foreclosure Litigation") seeking to foreclose its first mortgage interests in the Property.

5. On June 24, 2014, FCB's Second Amended Complaint was deemed filed in the Foreclosure Litigation which named all Second Mortgagees as junior lien holder defendants. The Second Amended Complaint also named Berman Mortgage and MAMC as servicing agent for the Second Mortgagees. There are no direct claims asserted against Berman Mortgage or MAMC in the Foreclosure Litigation.

6. Since there are no direct claims in the Foreclosure Litigation that could be subject to the Temporary Injunction, FCB does not believe that relief from this Court is necessary to foreclose out all junior lien interests held by the Second Mortgagees in the Foreclosure Litigation. However, in an abundance of caution, FCB files the instant motion and seeks permission from this Court to proceed with the Foreclosure Litigation.


7. There is no basis for the Court to deny FCB's request since no valid defenses can be asserted in the Foreclosure Litigation by Berman Mortgage, MAMC or Second Mortgagees in the Foreclosure Litigation. As described above, there are no direct claims against Berman Mortgage or MAMC. Moreover, any potential claim by Second Mortgagees to foreclose their second mortgage lien in the Property is time-barred by the applicable statute of limitations.

WHEREFORE, for the aforementioned reasons Petitioner FLORIDA COMMUNITY BANK, N.A., respectfully requests that the Court grant its Motion for Relief from Temporary Injunction and permit Petitioner to proceed forward with the claims asserted in the Foreclosure Litigation.

CERTIFICATE OF SERVICE

I hereby certify that on this **26th** day of August, 2014, I filed the foregoing document with the Clerk of the Court for the 11th Judicial Circuit, in and for Miami-Dade County, Florida. I also certify that the foregoing document is being served this day on Joan Levit, Esq., *Counsel for Court-Appointed Receiver*, joan.levit@akerman.com.

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