

IN THE CIRCUIT COURT OF THE 11<sup>th</sup>  
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.

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**RECEIVER'S MOTION FOR AUTHORIZATION TO DEFEND ACTION RELATING  
TO TOP TWO LOAN**

Defendant, Michael I. Goldberg, in his capacity as Receiver for M.A.M.C. Incorporated (the "**Receiver**"), by and through undersigned counsel, hereby files this Motion for Authorization to Defend Action Relating to Top Two Loan. In support of this Motion, the Receiver states as follows:

1. On or about May 24, 2010, AHIFO-4, LLC ("**AHIFO**") filed an action against the Receiver, in his capacity as Receiver for MAMC., Inc., and Alan Goldberg styled: *AHIFO-4, LLC v. Michael Goldberg, as Receiver for M.A.M.C. Incorporated and Alan Goldberg*, Case No. 10-30070 CA 09 (the "**AHIFO Action**").

2. The AHIFO Action was subsequently transferred to this Division. In the AHIFO Action, AHIFO has asserted claims against the Receiver for declaratory relief and claims against Alan Goldberg for declaratory relief and negligent misrepresentation. A copy of the AHIFO Action is posted on the Receiver's website at [www.bermanmortgageinfo.com](http://www.bermanmortgageinfo.com).

3. As alleged in AHIFO's Complaint, AHIFO was a participating investor in a mortgage loan (the "**Top Two Loan**") to Top Two Development, Inc. ("**Top Two**") originated by Berman Mortgage Corporation ("**BMC**") and serviced by M.A.M.C. Incorporated ("**MAMC**"), a BMC affiliate. The original principal balance of the Loan was \$8,900,000.00. AHIFO alleges that it contributed \$5,000,000.00 to fund the loan and that 114 additional investors (the "**BMC Lenders**") funded the balance of \$3,900,000.00.

4. AHIFO alleges, among other things, that BMC and MAMC improperly modified the Top Two Loan and made additional advances of \$2,000,000.00 to Top Two without AHIFO's authorization, which diluted AHIFO's interest in the Loan. AHIFO contends that its interest and the interests of the BMC Lenders who originally participated in the Loan have priority over the interests of those investors who financed the additional \$2,000,000.00 in advances (the "**Future Advance Lenders**").

5. Plaintiff also seeks declaratory relief regarding the authority of Alan Goldberg, in his capacity as Chief Restructuring Officer for MAMC, to bind participating investors in the Top Two Loan to a certain May 7, 2007 Agreement regarding the Loan (the "**May 7 Agreement**") and the four parcels of real property securing the Top Two Loan (the "**Real Property**"). More specifically, the May 7 Agreement deferred the resolution of any priority dispute by and between AHIFO, the BMC Lenders and the Future Advance Lenders pending the sale of the Real Property. The May 7 Agreement also authorized AHIFO to negotiate the purchase of a mortgage

foreclosure judgment from Fifth-Third Bank, which held a superior mortgage on one of the four parcels of Real Property that secured the Top Two Loan. Under the terms of the May 7 Agreement, any funds advanced by AHIFO to purchase the Fifth-Third Judgment, together with interest and fees as set forth in the May 7 Agreement, were to be re-paid first from the sale of any of the parcels of Real Property securing the Top Two Loan. To the extent the value of the parcel subject to the Fifth Third Judgment is insufficient to cover the amount purportedly due AHIFO under the May 7 Agreement, the net effect of the transaction would be that the equity in the other three parcels of Real Property would be depleted to pay AHIFO for acquiring the Fifth Third Judgment that only encumbered a single parcel. The May 7 Agreement was executed on behalf of MAMC by Alan Goldberg, who was serving as MAMC's Chief Restructuring Officer at the time.

6. The BMC Lenders and Future Advance Lenders have questioned the authority of Alan Goldberg to have entered into the May 7 Agreement and to legally bind them to the terms and provisions of that Agreement. AHIFO maintains in its Complaint that Alan Goldberg was duly authorized to execute the May 7 Agreement on behalf of MAMC and for MAMC to bind the BMC Lenders and Future Advance Lenders as their agent.

7. AHIFO has filed a three-count Complaint in the AHIFO Action. In Count I, AHIFO seeks a declaration that AHIFO and the BMC Lenders have priority over the Future Advance Lenders with respect to the Real Property and any proceeds from the sale of the Real Property. In Count II, AHIFO seeks a declaration that Alan Goldberg had the authority to bind MAMC and the BMC Lenders and Future Advance Lenders to the May 7 Agreement and to a subsequent Operating Agreement. Lastly, in Count III, AHIFO has asserted a claim for damages against Alan Goldberg for negligent misrepresentation. The crux of AHIFO's claim is that, if it

is ultimately determined that Alan Goldberg lacked the authority to bind MAMC and the BMC Lenders and Future Advance Lenders to the May 7 Agreement, Alan Goldberg negligently misrepresented his authority to do so.

8. Both MAMC and BMC are currently in receivership in this action. The Receiver was appointed by an Order dated December 11, 2007. The Receiver is charged with marshalling the assets of the receivership estate and administering the receivership estate for the benefit of creditors.

9. As with all loans that are the subject of the Receivership Action, the Receiver has established a creditor investor committee for the Top Two Loan (the "Top Two Committee") which includes both BMC Lenders and Future Advance Lenders.

10. Following the service of the AHIFO Action upon the Receiver, the Receiver held a meeting of the Top Two Committee to discuss the handling of this matter. Among other things, the Receiver expressed concern about a possible conflict of interest by and between the BMC Lenders and Future Advance Lenders regarding the issue of whether the BMC Lenders should be entitled to priority over the Future Advance Lenders in the Top Two Loan and any proceeds realized from the Real Property.

11. The Top Two Committee has advised the Receiver that they want the Receiver and his counsel to defend the AHIFO Action on behalf of MAMC and the interests of both the BMC Lenders and Future Advance Lenders. With respect to the issue of any potential conflict between those creditor sub-groups, the Top Two Committee was in unanimous agreement that the BMC Lenders and Future Advance Lenders should be treated on a *pari-passu* basis as having equal priority in the Top Two Loan, which would resolve any potential conflict between them.

12. Based on the authorization and instruction of the Top Two Committee, the Receiver is filing this Motion seeking authorization from the Court for the Receiver and his counsel to appear in the AHIFO Action and to defend and represent the interests of MAMC and the BMC Lenders and Future Advance Lenders and to advance the position that all such creditors/investors in the Top Two Loan be treated on a pari-passu basis with equal priority.

13. This Motion is also intended to provide notice to the BMC Lenders and Future Advance Lenders who may object to the foregoing to allow them the opportunity to appear at the hearing on this Motion to voice said objections and/or to intervene in the AHIFO Action.

WHEREFORE, Michael I. Goldberg, as Receiver for MAMC, respectfully requests that this Court enter an Order authorizing the Receiver and his counsel to defend the AHIFO Action on behalf of the receivership estate and grant such other and further relief as the Court deems just and proper.

Dated: August 4, 2010.

**Respectfully submitted,**

**AKERMAN SENTERFITT**

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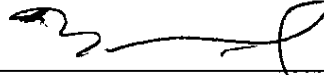
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*Attorneys for Defendant*

*Michael I. Goldberg, Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail this 4<sup>th</sup> day of August, 2010 to: **David W. Trench, Esq.**, Bilzin, Sunberg, Baena, Price & Axelrod, LLP, 200 S. Biscayne Blvd., Suite 2500, Miami, Florida 33131-5340 and **Alan Goldberg**, Crises Management, Inc., 111 SW Third Street Suite 701, Miami, Florida 33130; and served by U.S. Mail to all persons on the attached Mailing List.



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Ashley A. Sawyer, Esq.