

**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,

Defendants.

and

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

**RECEIVER'S MOTION TO CLARIFY COURT RECORD
TO FACILITATE SALE OF PROPERTY
OWNED BY MAMC EMERALD CAY, LLC**

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 Clarify Court Record to Facilitate Sale of Property Owned by MAMC Emerald Cay, LLC* (the "Motion"). In support of this Motion, the Receiver states as follows:

INTRODUCTION

1. On July 27, 2015, this Court entered an Order Granting Receiver's Motion to Approve the Sale of Property Owned by MAMC Emerald Cay. Fidelity National Title Insurance

Company (the "Title Company"), the title company insuring the sale of the property, has requested further documentation to facilitate the sale.

BACKGROUND

2. On December 11, 2007, the State of Florida, Office of Financial Regulation filed a Complaint for Temporary and Permanent Injunction and Appointment of Receiver against Defendants BMC, MAMC and Dana J. Berman, as owner and managing member. The Complaint also listed seventeen limited liability companies as Relief Defendants.

3. The Complaint alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors ("Lenders") by offering fractional interests in short-term acquisition and/or construction commercial mortgage loans.

4. The Complaint also alleged that MAMC serviced the loans pursuant to servicing agreements entered into between each investor and MAMC.

5. This Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* ("Receivership Order") dated December 11, 2007, appointing Michael Goldberg as the receiver for BMC and MAMC (the "Defendants") and the Relief Defendants (collectively, the "Receivership Defendants") listed on the Complaint.

6. Each of the loans was secured by a mortgage in favor of the specific Lenders whose investments were applied to the loan. When mortgagors defaulted on their loans, the mortgagors either voluntarily turned over ownership of the properties through settlement or were divested of ownership through the foreclosure process.¹

¹ Pursuant to the *Order Granting Receiver's Amended Motion to Determine Procedures by Which Receiver Can Make Decisions on Specific Loans and Projects*, dated, February 8, 2008, the Receiver is authorized in his sole discretion to make all decisions previously reserved to management under the loan serving agreements, including to declare a loan in default and to initiate foreclosure proceedings with respect to a loan.

7. Instead of taking title to the properties in the name of one of the existing Receivership Defendants, the Receiver set up separate limited liability companies for each of the properties as they became part of the receivership estate.

8. 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 vacant land located at S.R. 535 at Polynesian Isle Boulevard & Oxford Drive, comprising approximately 7.84 acres in Osceola County, Florida (the "Property"). A true and correct legal description of the Property is attached hereto as **Exhibit 1**. The loan was serviced by MAMC.

9. 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 in and for 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.

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

11. Upon motion, notice, hearing and approval of the Receivership Court, the Receiver retained brokers to market the Property for sale. On July 27, 2015, upon motion, notice and hearing, the Receivership Court entered an Order Granting Receiver's Motion to Approve the Sale of Property Owned by MAMC Emerald Cay.

RELIEF REQUESTED

12. The Title Company has requested further documentation from the Receiver prior to issuing title insurance for the Property.

13. The Receiver's *Motion to Expand Receivership to Include Additional Relief Defendant MAMC Emerald Cay, LLC* incorrectly described the Property as located in Orange County, Florida. The title company has requested that the court record be corrected to reflect that the Property is located in Osceola County. The Receiver has prepared a proposed order granting this Motion and clarifying the court record (the "Corrected Order"), which reflects that the Property is located in Osceola County. A copy of the proposed Corrected Order is attached hereto as **Exhibit 2**.

14. Moreover, the title company has requested that a certified copy of the Corrected Order Expanding Receivership be recorded in the official records of Osceola County, Florida. In order to avoid recording multiple orders, the Receiver proposes that the Corrected Order confirm that the Receivership Court expanded the receivership to include relief defendant MAMC Emerald Cay and that the Corrected Order be recorded in the official records of Osceola County, Florida.

15. The title company has further requested that the Court issue an Order discharging the Receiver as the receiver over the Property and releasing the Property from any receiver's lien or certificate of indebtedness. The Receiver proposes that the Corrected Order acknowledges that upon closing of the sale of the Property, the Receiver shall be discharged as the receiver over the Property and that the Property is released from the receivership estate.

16. 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 of BMC, MAMC and related entities, respectfully request this Court to enter an Order clarifying the court record 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

Joan M. Levit, Esquire

Florida Bar No. 987530

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this September 2, 2015, a true and correct copy of the forgoing was furnished to the parties on the attached Service List by U.S. mail, to the Lenders by e-mail and a copy of this motion will be posted on the receivership web-page.

/s/ Joan Levit

SERVICE LIST

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EXHIBIT 1

PARCEL 1:

LOT 3:

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East, along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning of SOUTHBRIDGE "TRACT 1" as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence continue South 89° 55' 59" East, along said North line of Section 2, 724.01 feet to a point on the Westerly right of way line of State Road 535; thence departing said North line, run South 36° 57' 19" East, along the Westerly right of way line of State Road 535, 42.13 feet to the Point of Beginning; thence continue South 36° 57' 19" East, along said right of way of State Road 535, 160.23 feet; thence departing said right of way line, run South 53° 02' 33" West, 466.61 feet; thence run North 36° 58' 54" West, 63.45 feet to the beginning of a curve concave Northeasterly, having a radius of 188.00 feet, a chord bearing North 23° 11' 54" West, a chord distance of 89.58 feet, through a central angle of 27° 34' 01", thence run along the arc of said curve 90.45 feet to the point of tangency; thence run North 09° 24' 53" West, 32.65 feet to the beginning of a curve concave Southeasterly, having a radius of 138.00 feet, a chord bearing of North 35° 27' 57" East, a chord distance of 194.75 feet, through a central angle of 89° 45' 39"; thence run along the arc of said curve 216.19 feet to the point of tangency; thence run North 80° 20' 46" East, 139.72 feet to the beginning of a curve concave Northwesterly, having a radius of 125.00 feet, a chord bearing of North 66° 40' 56" East, a chord distance of 59.06 feet, through a central angle of 27° 19' 40", thence run along the arc of said curve, 59.62 feet to the point of tangency; thence run North 53° 01' 06" East, 63.03 feet to the Point of Beginning.

LOT 1:

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East, along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning of SOUTHBRIDGE "TRACT 1", as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence departing said North line, run South 09° 24' 53" East along the Westerly line of SOUTHBRIDGE "TRACT 1", 535.15 feet; thence run South 19° 13' 22" East, 290.97 feet; thence run South 37° 00' 09" East 15.82 feet to a point on the Northerly right of way line of Polynesian Isles Boulevard; thence departing aforesaid Westerly line of SOUTHBRIDGE "TRACT 1", run North 73° 16' 10" East, along the right of way of Polynesian Isles Boulevard, 206.35 feet, to the Point of Beginning, thence departing said right of way line run North 16° 43' 50" West, 120.32 feet; thence run North 61° 43' 50" West, 82.86 feet; thence run North 09° 24' 53" West 68.24 feet; thence run North 80° 35' 07" East 36.59 feet to the beginning of a curve concave Northwesterly, having a radius of 114.00 feet, a chord bearing of North 47° 26' 29" East, a chord distance of 124.66 feet, through a central angle of 66° 17' 16", thence run along the arc of said curve 131.89 feet to the point of a non tangent line; thence run North 53° 01' 06" East 58.91 feet; thence run South 36° 58' 54" East, 107.49 feet to the beginning of a curve concave Westerly, having a radius of 100.00 feet, a chord bearing of South 13° 41' 32" East, a chord distance of 79.08 feet, through a central angle of 46° 34' 45", thence run along the arc of said curve 81.30 feet to the point of tangency, thence run South 09° 35' 51" West 34.01 feet to the beginning of a curve concave Easterly, having a radius of 100.00 feet, a chord bearing of South 11° 07' 24" East, a chord distance of 70.76 feet through a central angle of 41° 26' 30", thence run along the arc of said curve 72.33 feet to the point of tangency; thence run South 31° 50' 39" East, 18.28 feet to a point on the Northerly right of way line of Polynesian Isles Boulevard, said point also being a point on a non radial curve concave Northwesterly, having a radius of 533.69 feet, a chord bearing of South 65° 45' 01" West, a chord distance of 139.68 feet, through a central angle of 15° 02' 19", thence run along said right of way line and the arc of said curve

140.08 feet to the point of tangency; thence run South 73° 16' 10" West 31.17 feet to the Point of Beginning.

TRACT C:

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning, said point also being the Point of Beginning of SOUTHBRIDGE "TRACT 1" as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence continue South 89° 55' 59" East along said North line of Section 2, 724.01 feet to a point on the Westerly right of way line of State Road 535; thence departing said North line run South 36° 57' 19" East, along the Westerly right of way line of State Road 535, 42.13 feet; thence departing said Westerly right of way, run South 53° 01' 06" West, 63.03 feet to the beginning of a curve concave Northwesterly, having a radius of 125.00 feet, a chord bearing of South 66° 40' 56" West, a chord distance of 59.06 feet, through a central angle of 27° 19' 40"; thence run along the arc of said curve, 59.62 feet to the point of tangency; thence run South 80° 20' 46" West, 139.72 feet to the beginning of a curve concave Southerly having a radius of 138.00 feet, a chord bearing of a 70° 03' 23" West, a chord distance of 49.30 feet, through a central angle of 20° 34' 46", thence run along the arc of said curve, 49.57 feet to a radial line, thence run North 30° 13' 59" West along said radial line, 59.31 feet; thence run North 89° 55' 59" West, 416.82 feet to a point on the Westerly line of aforesaid SOUTHBRIDGE "TRACT 1"; thence run North 09° 24' 53" West, along said Westerly line, 85.47 feet to the Point of Beginning.

PARCEL 2:

Lot 3, CALYPSO CAY COMMERCIAL, PHASE II, Section 2, Township 25 South, Range 28 East, Osceola County, Florida, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida.

LESS AND EXCEPT:

TRACT "A":

A portion of Lot 3, CALYPSO CAY COMMERCIAL, PHASE II, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida, more particularly described as follows:

Commence at the Northwest corner of CALYPSO CAY COMMERCIAL, PHASE II, Section 2, Township 25 South, Range 28 East, Osceola County, Florida, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida, said point also being a point on the Southerly right of way of Polynesian Isles Boulevard; thence departing said Southerly right of way run South 37° 00' 09" East, along the Westerly lot line of aforesaid Lot 3, 449.30 feet; thence run South 69° 47' 21" East, 145.19 feet, to the Point of Beginning, thence departing said Westerly lot line of said Lot 3, run North 53° 02' 39" East, 132.71 feet to a point on the Easterly lot line of said Lot 3; thence run South 36° 57' 21" East, along said Easterly line of said Lot 3, 146.43 feet, to a point on the Southerly lot line of said Lot 3; thence run South 53° 02' 39" West, along said Southerly lot line, 63.26 feet to the Southwesterly corner of said Lot 3; thence run North 36° 58' 55" West, 38.83 feet; thence run North 69° 47' 21" West, 128.06 feet to the Point of Beginning.

EXHIBIT 2

**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,

Defendants.

and

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

**ORDER GRANTING RECEIVER'S MOTION
TO CLARIFY COURT RECORD TO FACILITATE SALE
OF PROPERTY OWNED BY MAMC EMERALD CAY, LLC**

THIS MATTER came before the Court on ____, 2015 upon the *Motion to Clarify Court Record to Facilitate Sale of Property Owned by MAMC Emerald Cay, LLC* (the "Motion") filed by 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.* (the "Relief Defendants").

Based on the proffers of counsel and the record in this case, the Court makes the following findings of fact and conclusions of law:

A. Pursuant to the *Temporary Injunction and Agreed Order Appointing Receiver* ("Receivership Order") dated December 11, 2007, Michael Goldberg is the Court-appointed Receiver over BMC and MAMC and the Relief Defendants (collectively, the "Receivership Defendants").

B. Prior to the entry of the Receivership Order, BMC brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors ("Lenders") by offering fractional interests in short-term acquisition and/or construction commercial mortgage loans.

C. MAMC serviced the loans pursuant to servicing agreements entered into between each investor and MAMC.

D. Pursuant to the *Order Granting Receiver's Amended Motion to Determine Procedures by Which Receiver Can Make Decisions on Specific Loans and Projects*, dated, February 8, 2008, the Receiver is authorized in his sole discretion to make all decisions previously reserved to management under the loan serving agreements, including to declare a loan in default and to initiate foreclosure proceedings with respect to a loan.

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

F. Upon motion, notice and hearing, this Court has entered Orders expanding the Receivership Defendants to add additional Relief Defendants. On August 14, 2010, this Court entered an *Order Granting the Receiver's Motion to Expand Receivership to Include Additional Relief Defendant MAMC Emerald Cay, LLC*. ("MAMC Emerald Cay").

G. MAMC Emerald Cay holds title to the Property described above. The Property is located in Osceola County, Florida. A true and correct legal description of the Property is attached hereto as **Exhibit A**.

H. Pursuant to the *Order Granting Receiver's Motion to Approve the Sale of Property Owned by MAMC Emerald Cay*, dated July 27, 2015, the Receiver is authorized to sell the Property and to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

The Court, having heard argument of counsel, reviewed the Motion, being familiar with the receivership case and the orders entered herein, and otherwise being fully advised in the premises, does hereby **Order** that:

1. The Motion is granted.
2. Upon the closing of the sale of the Property, the Receiver shall be discharged as the receiver over the Property and the Property shall be released from any receiver's lien or certificate of indebtedness.
3. The release of the Property shall not release any indebtedness owed by MAMC Emerald Cay to the Receiver, the Lenders or the receivership estate.
4. A copy of this Order shall be filed in the official records of Osceola County, Florida.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida on this ____ day of _____, 2015.

THE HONORABLE JERALD BAGLEY
CIRCUIT COURT JUDGE

Conformed copies to:
All counsel of record
Posted to the Receiver's Web Site

EXHIBIT "A"

PARCEL 1:

LOT 3:

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East, along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning of SOUTHBRIDGE "TRACT 1" as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence continue South 89° 55' 59" East, along said North line of Section 2, 724.01 feet to a point on the Westerly right of way line of State Road 535; thence departing said North line, run South 36° 57' 19" East, along the Westerly right of way line of State Road 535, 42.13 feet to the Point of Beginning; thence continue South 36° 57' 19" East, along said right of way of State Road 535, 160.23 feet; thence departing said right of way line, run South 53° 02' 33" West, 466.61 feet; thence run North 36° 58' 54" West, 63.45 feet to the beginning of a curve concave Northeasterly, having a radius of 188.00 feet, a chord bearing North 23° 11' 54" West, a chord distance of 89.58 feet, through a central angle of 27° 34' 01", thence run along the arc of said curve 90.45 feet to the point of tangency; thence run North 09° 24' 53" West, 32.65 feet to the beginning of a curve concave Southeasterly, having a radius of 138.00 feet, a chord bearing of North 35° 27' 57" East, a chord distance of 194.75 feet, through a central angle of 89° 45' 39"; thence run along the arc of said curve 216.19 feet to the point of tangency; thence run North 80° 20' 46" East, 139.72 feet to the beginning of a curve concave Northwesterly, having a radius of 125.00 feet, a chord bearing of North 66° 40' 56" East, a chord distance of 59.06 feet, through a central angle of 27° 19' 40", thence run along the arc of said curve, 59.62 feet to the point of tangency; thence run North 53° 01' 06" East, 63.03 feet to the Point of Beginning.

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Exhibit "A" continued

140.08 feet to the point of tangency; thence run South 73° 16' 10" West 31.17 feet to the Point of Beginning.

TRACT C:

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning, said point also being the Point of Beginning of SOUTHBRIDGE "TRACT 1" as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence continue South 89° 55' 59" East along said North line of Section 2, 724.01 feet to a point on the Westerly right of way line of State Road 535; thence departing said North line run South 36° 57' 19" East, along the Westerly right of way line of State Road 535, 42.13 feet; thence departing said Westerly right of way, run South 53° 01' 06" West, 63.03 feet to the beginning of a curve concave Northwesterly, having a radius of 125.00 feet, a chord bearing of South 66° 40' 56" West, a chord distance of 59.06 feet, through a central angle of 27° 19' 40"; thence run along the arc of said curve, 59.62 feet to the point of tangency; thence run South 80° 20' 46" West, 139.72 feet to the beginning of a curve concave Southerly having a radius of 138.00 feet, a chord bearing of a 70° 03' 23" West, a chord distance of 49.30 feet, through a central angle of 20° 34' 46", thence run along the arc of said curve, 49.57 feet to a radial line, thence run North 30° 13' 59" West along said radial line, 59.31 feet; thence run North 89° 55' 59" West, 416.82 feet to a point on the Westerly line of aforesaid SOUTHBRIDGE "TRACT 1"; thence run North 09° 24' 53" West, along said Westerly line, 85.47 feet to the Point of Beginning.

PARCEL 2:

Lot 3, CALYPSO CAY COMMERCIAL, PHASE II, Section 2, Township 25 South, Range 28 East, Osceola County, Florida, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida.

LESS AND EXCEPT:

TRACT "A":

A portion of Lot 3, CALYPSO CAY COMMERCIAL, PHASE II, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida, more particularly described as follows:

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