

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,

vs.

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 OBJECTION TO JAY ROTHLEIN'S MOTION TO PERMIT FILING A
LAWSUIT AGAINST DANA J. BERMAN AND INCORPORATED MOTION STAYING
ALL LAWSUITS AGAINST DANA J. BERMAN AS LONG AS DANA J. BERMAN
CONTINUES TO COOPERATE WITH THE RECEIVERSHIP AND PLEDGE ASSETS**

Michael I. Goldberg, as State Court Appointed Receiver ("Receiver"), by and through undersigned counsel, moves this Court of an Order Denying *Rothlein's Motion to Permit the Filing of a Lawsuit against Dana J. Berman, Individually, and Barring All Lawsuits Against Dana J. Berman As Long As Dana J. Berman Continues to Cooperate with the Receivership Estate and Continues to Pledge All Assets to the Receivership Estate*, and as grounds therefore states:

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1. On December 11, 2007, Michael Goldberg was appointed to Receiver of Berman Mortgage Corporation, M.A.M.C. Incorporated and Dana J. Berman, as owner of certain single asset real estate enterprises listed as Relief Defendants.

2. The Court, by its December 11, 2007 Order, precluded the Defendants, including Dana J. Berman, from conveying assets. Pursuant to the Temporary Restraining Order, the Receiver has jurisdiction over Dana Berman's assets.

3. Dana Berman has agreed to cooperate fully with the Receivership and to pledge all of his current personal assets to the Receivership estate. To date, the Receiver has no reason to believe Dana Berman is not cooperating and complying with these requirements.

4. Rothlein's Motion seeks permission from this Court to pursue an action for damages on a guarantee agreement against Dana Berman and obtain a judgment.

5. Receiver believes that allowing individual lawsuits against Dana Berman resulting in judgments would only encourage a race to the Courthouse of all creditors and potential creditors, including the 640 investors to obtain a priority claim against Receivership Assets. In accordance with the applicable Receivership law, the appropriate procedure is to stay all lawsuits and require creditors to file a claim with the Receivership Estate.

MEMORANDUM OF LAW

A Receiver is an arm of the Court and the funds in its possession are as though they were in the hands of the Court and held for the benefit of all lawful claimants. *Columbia Bank for Coop P. vs. Okeelanta Sugar*, 52 So.2d 670 (Fla.1959). Once property is placed under the control of the Court through appointment of a Receiver, no creditor may obtain preference by any lien rendered subsequent thereto, even if the suit under which the judgment lien is acquired

was commenced prior to the date of the Order Appointing the Receiver. *Mordat, Inc. vs. Penrose Industries Corp.*, 404 F.2d 72 (3rd Cir. 1968).

Once property is placed under control of the Court through the appointment of a Receiver, no creditor may obtain preference by any lien rendered subsequent thereto. *Sunland Mortgage Corporation vs. Lewis*, 515 So.2d 1337 (Fla. App. 5th DCA 1987). Further, there is no requirement that the Receiver track down and file a notice in every lawsuit, in Circuit and State before any stay is affected. The stay of litigation and claims becomes effective *nunc pro tunc* to the date of the entry of the Order Appointing Receiver. *Sunland Mortgage Corporation vs. Lewis*, 515 So.2d 1337 (Fla. App. 5th DCA 1987).

Upon issuance of a Temporary Restraining Order and Appointment of the Receiver, the Court is empowered to issue Orders and to stay all pending lawsuits and to enjoin any further suits affecting the Receiver's custody or possession of property, assets of the business or assets over which the Receivership estate has a claim. See 517.191 (Fla.Stat.) (2007).

WHEREFORE, The Receiver moves this Court for entry of an Order Denying Rothlein's Motion to Permit Filing of a Lawsuit against Dana J. Berman, individually, for the reasons set forth herein and for an Order enjoin, without prejudice, and staying all lawsuits against Dana Berman personally, without prejudice.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this **18th day of January 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer**

IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Michael P. Ehrenstein, Esquire**, *Counsel for The Amid Companies and Amedia Family Investors*, EHRENSTEIN CHARBONNEAU CALDERIN, 1111 Brickell Avenue, 2915 Mellon Financial Center, Miami, Florida 33131; and to **Bruce Scheinberg, Esquire**, *Counsel for Jay Rothlein*, THE SOUTH BAY CLUB, 800 West Avenue, Suite C-1, Miami Beach, Florida 33139.

Respectfully submitted,

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By: _____

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