

IN THE CIRCUIT COURT OF THE
11TH JUDICIALCIRCUIT 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.

**MEMORANDUM OF LAW IN OPPOSITION TO THE
FOUR AMBASSADORS ASSOCIATION, INC.'S EMERGENCY
MOTION FOR ORDER AUTHORIZING FORECLOSURE OF
CONDOMINIUM UNIT, AND FOR SANCTIONS AND ATTORNEYS FEES**

Michael I. Goldberg, Esquire, as State Court Appointed Receiver ("Receiver"), by and through undersigned counsel, hereby files this *Memorandum of Law in Opposition to the Four Ambassadors Association, Inc.'s Emergency Motion for Order Authorizing Foreclosure of Condominium Unit, and for Sanctions and Attorneys Fees*, and as grounds therefore states:

1. In violation of a Temporary Restraining Order issued by this Court, the Four Ambassadors Association, Inc., after entry of the Temporary Restraining Order, sought and obtained a Judgment and Foreclosure Sale of Unit 5-100 of the Four Ambassadors Condominium Association, Inc. to satisfy a \$172,000.00 condominium association lien representing

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approximately 6 months of past due condominium association fees and acceleration of the entire 2008 condominium fees.

2. The association - after being served with a Motion to set aside the judgment - has agreed to submit an Order vacating the judgment and cancelling the sale.

3. On January 18, 2008, the Association's counsel filed an Emergency Motion for an Order Authorizing the Foreclosure Sale. This is not an emergency. The Foreclosure Sale is not set until February 21, 2008. The motion is filed in bad-faith and cites case law from propositions other than provided therein. Moreover, under the controlling Florida Statutes and case law, this Court is barred from allowing the Association to proceed with its foreclosure action. Furthermore, under notions of equity, the Court should not allow a \$4 million dollar asset to be sold for \$172,000.00 on the courthouse steps, thereby depleting approximately \$3.8 million dollars worth of value from the Receivership estate.

4. The Receiver seeks attorneys' fees and costs for having to prepare and file this Memorandum of Law in response to the Association's motion.

MEMORANDUM OF LAW

Florida Statute 517.919 (2) authorizes the Court administering the Receivership to issue Orders and to stay all pending suits and enjoin any further suits affecting the Receiver's, custody or possession of property or assets.

Absent from the Association's Motion are citations to controlling legal authority regarding the very relief the Association seeks here. Receivership law provides that a creditor is not entitled to preference and cannot obtain a judgment following the appointment of a Receiver. A creditor, secured or otherwise, is simply a general creditor of the Receivership estate. See Sunland Mortgage Corporation vs. Lewis, 515 So. 2d 1337 (Fla. 3rd DCA 1987).

The Association suggests that by virtue of the case of Sierra M.D. vs. International Medical Centers, Inc., 538 So. 2d 102 (Fla. 3rd DCA 1989), that this Court has the authority to grant the relief sought by the Association. The Sierra case interprets provisions of the insurance code involving insurance insolvency. The provision in question, Section 631.041 (1)(d), provided for an automatic stay of litigation against the insurer; however, the statute specifically exempts secured claims. It is disingenuous to site this case for the proposition that a State Court Receivership, under Chapter 517, is subject to the provisions of the insurance code. Moreover, there is no similar exception within Chapter 517, providing preference to secured claims.

ARGUMENT

The Four Ambassadors' position is that, not allowing them to proceed on their motion and to foreclose the lien and collect a judgment, prejudices 747 other members of the condominium association. Unit 5-100 is but one of hundreds of units in this association, all contributing dues. It defies logic to argue that payment of one unit owner would have a significant impact on the budget of an association of this size.

The Receiver in this case was appointed on December 11, 2007, and has 40 separate projects to administer. The Receiver's plan is to meet with the investors in each project, form a committee, and allow the committee to come forward with a proposal to administer that particular investment. In this case, the meeting appointed the committee regarding the Four Ambassadors unit 5-100, occurred January 17, 2008. The committee should be provided with a reasonable amount of time to come up with a plan to obtain funding to pay the Association. It does anticipate that the plan should be in place within the next sixty (60) days.

WHEREFORE, the Receiver moves this Court for entry of an Order denying the Association's Emergency Motion as unauthorized by law, and providing the Association with preferential treatment within the Receivership estate, in violation of controlling Receivership law.


Respectfully submitted,

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BY: 
JAMES D. GASSENHEIMER
Florida Bar No. 959987

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile and U.S. Mail on this 22nd 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 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 **Richard R. Robles, Esquire, LAW OFFICES OF RICHARD ROBLES, P.A., Counsel for the Four Ambassadors Association, Inc.**, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131.

BY: 
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