

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.

**AMENDMENT TO RECEIVER'S MOTION FOR COURT ORDER
DETERMINING RECEIVER'S AUTHORITY TO ACT WITH RESPECT TO
CERTAIN ASSETS SUBJECT TO DANA J. BERMAN'S DIVORCE SETTLEMENT**

Receiver, Michael Goldberg, by and through undersigned counsel, files this *Amendment* to his previously filed *Motion for Court Order Determining Receiver's Authority to Act with Respect to Certain Assets Subject to Dana J. Berman's Divorce Settlement*, and as grounds therefore states:

1. At the time the Receiver filed his original Motion on these issues, he was cognoscente of the fact that a Circuit Court Judge had previously ordered certain distribution pursuant to a settlement in the Berman Divorce matter, as more explained in the Motion and did

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not want to take a position on the motion until such time as Judge Kreeger had been advised of the Receivership. Michael Goldberg has now had an opportunity to have these matters addressed by the Circuit Court Judge handling the divorce matter, Judge Judith Kreeger, who has stated that the matters are correctly the subject of the Receivership Court and that she defers to the ruling of the Receivership Judge with respect to disposition of the assets.

2. In light of this ruling by Judge Kreeger, the Receiver has the right and authority to revisit pre-receivership contracts and seek to set them aside.

3. The Receiver has received strong objections from the creditors with respect to the pre-petition contracts between the Chief Restructuring Officer, the former wife and the former wife's counsel, Daniel Kaplan.

4. It is well settled under Receivership Law that a Receiver is not bound by executory contracts before his appointment, and the Receiver may repudiate such contracts if he deems it undesirable and not in the best interest of the creditors. *Fletcher Cyclopedia Section 7789, Athanson v. Hubbart*, 218 So.2d 475 (2nd DCA 1969); *Real Estate Marketers, Inc. v. Wheeler*, 298 So.2d 41 (1st DCA 1985).

5. In light of the ruling from Judge Kreeger, the Receiver seeks to reject the corporation's obligations under the settlement agreement between Dana J. Berman and Deborah Berman, with respect to its obligations to:

a. Pay portions of the proceeds of the sale of the Polk County Property over to the jurisdiction of the Divorce Court;

b. Pay the sums currently held in Trust for the benefit of Kevin Berman's education over to the jurisdiction of the Divorce Court;

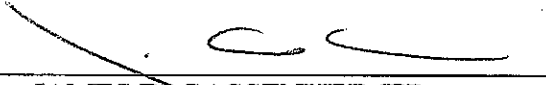
6. Receiver is currently reviewing other potential obligations that it may have under the Divorce Agreement and may seek to amend its claim for rejection.

WHEREFORE, the Receiver moves this Honorable Court for the granting of this motion for the reasons set forth herein, and for such other and further relief as the Court deems just and proper.

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 February 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 **Allan A. Joseph, Esquire**, *Counsel for The Amid Companies and Amedia Family Investors*, DAVID AND JOSEPH, P.L., 1001 Brickell Avenue, Suite 2002, 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:



JAMES D. GASSENHEIMER

cc: The Honorable Thomas Wilson, Jr. *(via hand-delivery)*
Daniel Kaplan, Esq. *(via Fax and U.S. Mail)*
Michael Goldberg, Esq., as Receiver *(via email)*
The Group of Lenders *(via email)*

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