

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

CASE NO.: 07-43672 CA 09

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION, a
Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation, DANA
J. BERMAN, as Owner and Managing Member,

Defendant.

and,

DB ATLANTA, LLC, a Florida Limited Liability
Company, et al.,

Relief Defendants.

THE ORIGINAL
FILED ON:
NOV 05 2009
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

**RECEIVER'S MOTION FOR AN ORDER APPROVING THE RECEIVER'S
RETENTION OF COUNSEL IN RELATION TO THE SALE OF A PORTION OF DB
BILOXI, LLC'S PROPERTY**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta, LLC, et al., by and through undersigned counsel, hereby files this Motion for an Order Approving the Receiver's Retention of Counsel in Relation to the Sale of a Portion of DB Biloxi, LLC's Property and states:

1. On December 11, 2007, this Court appointed Michael Goldberg (the "Receiver") to be the Receiver for the Defendants and the Relief Defendants. *See* Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order"), previously filed with this Court.

2. DB Biloxi, LLC (DB Biloxi), one of the Relief Defendants, is a Florida limited liability company formed by Dana Berman which was funded by loans from a third party bank and loans from certain lender groups. The capital structure for DB Biloxi includes a first

BERGER SINGERMAN Boca Raton Fort Lauderdale Miami Tallahassee
attorneys at law

mortgage in favor of TransCapital Bank, on a portion of the land and junior mortgages in favor of the lender groups. The junior mortgages were serviced by Defendant M.A.M.C., Incorporated.

3. In April 2005, DB Biloxi purchased an 11-acre parcel located at 2660 Beach Boulevard on the Gulf Coast in Biloxi, Mississippi. The improvements on the Property included a 140-unit apartment complex, known as Edgewater Garden Apartments (the "Units"), which DB Biloxi was converting to condominiums. However, the Units suffered substantial damage from Hurricane Katrina and were subsequently demolished. The 11-acre parcel has since been subdivided into two parcels.

4. The Receiver has attempted to market the property in the best interests of the Lenders, which group the Receivership was designed to protect and obtained a Letter of Intent (the "LOI") from Wal-Mart Stores, Inc. for the 5.5 acres of the 8-acre back parcel (the "Property").

5. On September 23, 2009, the Court approved the proposed sale of the Property pursuant to the Letter of Intent and the Receiver's execution of the LOI. A copy the Court's September 23, 2009 Order is attached hereto as **Exhibit A**.

6. On October 8, 2009, the Court approved the proposed contract for the sale of the Property. A copy of the Court's October 8, 2009 Order is attached hereto as **Exhibit B**.

7. The Receiver executed the LOI and the Contract pursuant to the Court's Receivership Order vesting the Receiver with the usual powers and duties of equity receivers including the authorization to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants and the entities controlled by the Receivership Defendants which states that:

[t]he Receiver is further authorized to... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, ¶17. (emphasis added)

8. The Receivership Order also grants the Receiver the authority to employ "Outside Professionals" including employees, accountants, attorneys, and consultants, as necessary to accomplish Receivership purposes.

9. Accordingly, the Receiver now seeks the Court's approval, *nunc pro tunc* to October 7, 2009, to retain counsel in Mississippi to represent DB Biloxi, LLC in relation to the sale of the Property to Wal-Mart pursuant to the engagement letter attached hereto as **Exhibit C** (the "Engagement Agreement"), which the Receiver has executed pursuant to the above-cited authority and subject to this Court's approval.

10. The Receiver will utilize the notice procedures which were established by the Court in relation to this Motion. The Receiver will post this Motion including the Engagement Agreement, and Notice of Hearing to the Receivership website and distribute a copy of the Notice of Hearing and Motion to the Lenders via the posting and e-mail distribution procedures previously established by this Court for the purposes of the Receivership.

WHEREFORE, the Receiver moves this Court for entry of an Order:

- a. finding that the notice and established procedures by posting to the Receivership website and e-mail distribution to the Lenders constitute adequate notice of the instant motion and hearing thereon;
- b. approving the Receiver's retention of William Byrd and Bradley, Arant, Boulton, & Cummings, LLP pursuant to the terms of the Engagement Agreement and Receiver's execution of the Engagement Agreement *nunc pro tunc* to October 7, 2009;
- c. authorizing the Receiver to perform all acts and execute all documents necessary to effectuate the terms of the Engagement Agreement; and
- d. awarding such other and further relief this Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this **5th day of November 2009**, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

1000 Wachovia Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

Phone: (305) 755-9500 / Fax: (305) 714-4340

By: _____


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Counsel for Wal-Mart Stores, Inc.
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Gulfport, MS 39501

cc: The Honorable Jerald Bagley (*via U.S. Mail*)
Michael Goldberg, Esq., as Receiver (*via e-mail*)
The Investor(s)/Lender(s) Group (*via e-mail*)
Posted to the Berman Mortgage Website

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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO: 07-43672 CA 09

STATE OF FLORIDA, OFFICE
OF FINANCIAL REGULATION

Plaintiff(s),

vs.

BERMAN MORTGAGE CORPORATION
et al.

Defendant(s).

07-43672 CA 09

ORDER

GRANTING/DENYING
~~PLAINTIFF'S/DEFENDANT'S~~
RECEIVER'S MOTION
FOR AN ORDER APPROVING
SALE OF DB BILOXI, LLC
PROPERTY PURSUANT TO LOI

Receiver's THIS CAUSE having come on to be heard on Wednesday, September 23, 2009
on Plaintiff's/Defendant's Motion FOR AN ORDER APPROVING THE SALE OF A
PORTION OF DB BILOXI, LLC'S PROPERTY PURSUANT TO THE LETTER OF
INTENT TO PURCHASE BY WALMART STORES, INC. AND APPROVING LOI EXECUTION
and the Court having heard argument of counsel, and being otherwise advised in the premises, it is BY RECEIVER
hereupon (MOTION)

ORDERED AND ADJUDGED that said Motion be, and the same is hereby GRANTED.

THE COURT FINDS THAT THE NOTICE PROCEDURES USED BY THE RECEIVER CONSTITUTE
ADEQUATE NOTICE TO THE LENDERS OF THE MOTION AND HEARING THEREON.
THE COURT HEREBY APPROVES THE RECEIVER'S EXECUTION OF THE LETTER OF INTENT
ATTACHED TO THE MOTION, NUNC PRO TUNC TO JULY 25, 2009 - THE
RECEIVER IS AUTHORIZED TO COMPLY WITH THE TERMS OF THE LETTER OF
INTENT AND PERFORM SUCH ACTS AND EXECUTE ALL APPROPRIATE DOCUMENTS
TO EFFECTUATE THE TERMS OF THE LETTER OF INTENT.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 23rd day of

September, 2009

Thomas S. Wilson, Jr.
CIRCUIT COURT JUDGE

THOMAS S. WILSON, Jr.

Copies furnished to: Counsel of Record

117.01-554 1/03 POSTED TO RECEIVERSHIP WEBSITE



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI- DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

CASE NO.: 07-43672-CA-09

Plaintiff,

v.
BERMAN MORTGAGE CORPORATION ,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and
Managing Member,

Defendant.

and,

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

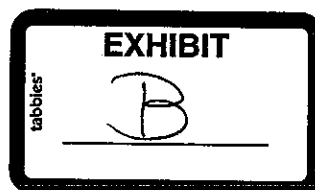
Relief Defendants.

**ORDER ON RECEIVER'S MOTION FOR AN ORDER APPROVING THE CONTRACT
OF SALE OF A PORTION OF DB BILOXI, LLC'S PROPERTY
AND DISBURSEMENT OF PROCEEDS OF SALE**

THIS CAUSE having come before the Court on October 8, 2009 on RECEIVER'S
MOTION FOR AN ORDER APPROVING THE CONTRACT OF SALE OF A PORTION OF
DB BILOXI, LLC'S PROPERTY AND DISBURSEMENT OF PROCEEDS OF SALE
("Motion"), and the Court having heard the argument of counsel, having heard the position of the
Receiver, and having reviewed the papers, it is hereby:

ORDERED AND ADJUDGED that:

1. The Receiver's Motion is hereby GRANTED.



2. The Court finds that the established notice procedures used by the Receiver constitute adequate notice to the Lenders with regard to the Motion and Notice of Hearing thereon.

3. The Court authorizes the Receiver to execute the contract for the sale of the subject property and to perform all acts and execute all documents necessary to effectuate the terms of the contract and close on the sale of the subject property.

4. The Court hereby authorizes the Receiver to distribute the Funds (as defined in the Motion) in the manner set forth in paragraph 12(a) through (g) of the Motion.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida on this ____ day of October 2009.

THOMAS WILSON, JR.,
CIRCUIT JUDGE

Copies furnished to:

All Counsel of Record
Posted to the Receivership Website

Conformed Copy

OCT 08 2009

Thomas S. Wilson, Jr.
Circuit Court Judge



October 7, 2009

Michael Goldberg,
As Receiver for DB Biloxi, LLC
E. Harold Gassenheimer
MAMC, Inc.
2401 Douglas Road
Coral Gables, Florida 33145

Dear Mr. Goldberg:

We are pleased that you have asked this firm to represent the Seller in the purchase of 5.5 acres of land in Biloxi, Mississippi. If at any time you have any questions or there is some action on our part that will better suit your needs, please contact us promptly. We want you to be fully satisfied with the legal services provided by us.

In our experience, a clear understanding, early in the representation, of the scope of the engagement and the fee arrangement assists both of us to establish a positive professional relationship and helps each of us avoid misunderstandings; it is thus often best to reduce these matters to writing. Accordingly, this letter and the attached printed General Provisions outline the basic scope of this engagement and the fee arrangement.

Scope of Employment

Our client in this matter will be (the "Company" or "you") and we will advise the Company in connection with, and the scope of our engagement and duties to the Company shall relate solely to The scope of our representation may be limited or expanded at your request from time to time, provided that any substantial expansion must be agreed to by us. You understand that we are not your general counsel and that the acceptance of this engagement does not involve representation of related entities and our representation of you is limited to the matter described in this letter.

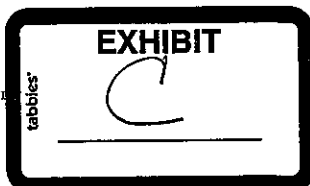
In performing our services we understand you will provide all information necessary for us to perform the requested legal services.

Delegation

During the course of our engagement, we will assign this project to professionals in our office who we believe can successfully accomplish the results you desire. I will be primarily responsible for the work on this matter, though I intend to use other partners, associates and legal assistants where appropriate. If you request, we will advise you of the names of the persons who are or will be working on your matter.

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One Federal Place 1819 Fifth Avenue North Bir



5.521.8000 FAX: 205.521.8800 BABC.COM

E. Harold Gassenheimer

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Fees

We suggest that the fee arrangement be on an hourly basis for the attorneys and legal assistants working on your matter. We customarily charge for time in ¼ hour increments. Our hourly rates vary depending on the experience level of the attorneys and legal assistants involved and are subject to periodic adjustment. My current hourly rate is \$360.00. We expect to utilize associates, or more junior partners, with lower hourly rates to do as much of the work as possible.

If requested, we will provide an estimate of the legal costs. Such estimate is not binding and is intended only to assist you in planning and budgeting, is subject to periodic revision and is not to be regarded as a guarantee of legal costs.

Disbursements

You will be expected to reimburse us for the expenses such as copy charges, computer assisted research, delivery and courier services, secretarial overtime, filing fees, travel expenses, and other costs reasonably incurred. Depending on the nature of the expense, the Firm may ask that certain out-of-pocket charges be billed to you and paid directly by you. Please see the General Provisions section for additional information on these matters.

Billing

Our billings will normally be monthly and will be due upon receipt. If you have any questions about any billing, please contact us immediately. *All Fees and this Agreement are Subject to Court approval.*

Conflicts and Possible Adverse Representations

Except as set forth below, we have made a conflicts check and are not presently aware of any conflicts. As we have discussed, we are a relatively large law firm, and we represent many other companies and individuals in a variety of matters. It is possible that during the time that we are representing the Company, some of our present or future clients will have disputes or transactions with the Company. You have agreed that this firm may continue to represent or may undertake in the future to represent other clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters are directly adverse to you or a related entity, and even if such representations would be simultaneous. We agree, however, that your prospective consent to conflicting representations shall not apply in an instance where, as the result of our representation of you, we have obtained sensitive, proprietary or other confidential or non-public information that, if known to any such other client of ours, could be used in any such other matter by such other client to your material disadvantage. You have also agreed that our representation of you will not preclude us from undertaking any matter for a new client that may be adverse to you, or a related entity, so long as our representation of you with regard to the matter described in this letter has been concluded or terminated and so long as the conditions set forth in the preceding sentence have been met. You should know that,

E. Harold Gassenheimer

October 7, 2009

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in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

We are presently acting as indemnification counsel for WalMart Stores, Inc. in Samuel C. Weldon v. Pacific Cycle, Inc. WalMart has waived the conflict of our firm representing you in this transaction provided we will withdraw from representing D.B. Biloxi, III, LLC if litigation ensues between D.B. Biloxi, III, LLC and WalMart or if WalMart believes that the parties have become fundamentally antagonistic or that it will suffer prejudice. We have agreed to the foregoing condition. We hereby request approval of the foregoing condition and your waiver of the conflict of us representing WalMart in the unrelated litigation matter set forth above and your signature below shall act as you consent to the condition and waiving the conflict.

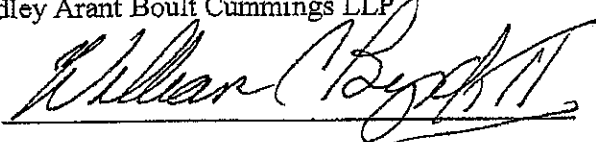
Termination of Engagement

Following termination of our engagement, any otherwise nonpublic information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you; our own files, including lawyer work product, pertaining to the matter will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such items retained by us within a reasonable time after the termination of the engagement.

Our attorney-client relationship will be considered terminated upon our completion of specific services that you have retained us to perform. If you later retain us to perform further or additional services, our attorney-client relationship will be revived, subject to these and any supplemental terms of engagement. The fact that we may inform you from time to time of developments in the law which may be of interest to you, by newsletter or otherwise, should not be understood as a revival of an attorney-client relationship. Moreover, we have no obligation to inform you of such developments in the law unless we are engaged in writing to do so.

While we would prefer to have a signed copy of this letter in our file before beginning work on this matter, we will, of course, begin work earlier if circumstances require. Accordingly, the performance of services with your knowledge will be considered consent to the terms of the letter until or unless we hear to the contrary from you.

Bradley Arant Boult Cummings LLP

By: 

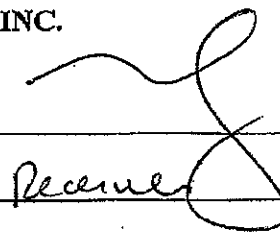
E. Harold Gassenheimer
October 7, 2009
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ACCEPTED:

MAMC, INC.

By: _____

Title: _____

A handwritten signature in black ink, appearing to be 'E. Harold Gassenheimer', written over two horizontal lines. The signature is stylized and cursive.

CONFIDENTIAL

BRADLEY ARANT BOULT CUMMINGS LLP

ENGAGEMENT LETTERS: GENERAL PROVISIONS

Except as modified by the accompanying engagement letter, the following provisions will apply to the relationship between Bradley Arant Boult Cummings LLP and our clients:

1. Fees for services rendered will be based on the reasonable value of those services as determined in accordance with the applicable rules of professional conduct. Such fees will be based primarily on our hourly billing rates; there is a different billing rate for each attorney, depending generally on that attorney's experience and years of practice, and these rates are adjusted from time to time by the firm. The time for which a client will be charged will include, but will not be limited to, telephone and office conferences with the client or clients, counsel for other parties, witnesses, consultants, and others; conferences among our legal personnel; factual investigation; legal research; responding to clients' requests for us to provide information to their auditors in connection with reviews or audits of financial statements; preparation of letters, agreements, prospectuses, pleadings, briefs and other documents; travel time; waiting time in court; and time in depositions and other discovery proceedings. In an effort to reduce legal fees, as appropriate we utilize junior lawyers and legal assistant personnel. Time devoted by legal assistants to client matters is charged at hourly billing rates, which also are subject to adjustment from time to time by the firm. Other factors may be taken into consideration in determining our fees, including the responsibility assumed, the novelty and difficulty of the legal problem involved, the benefit resulting to the client and any unforeseen circumstances arising in the course of our representation.

2. In addition to our fees, we will be reimbursed for costs and expenses incurred in performing services such as copy costs, messenger and delivery service, secretarial overtime, Westlaw and Lexis-Nexis research, travel (including mileage, parking, airfare, lodging, meals and ground transportation), court costs and filing fees. We use unit rates or similar charges for some expenses, such as copy(ies) (15 cents per page). For such items, the amount charged approximates our cost as closely as possible. We do not charge for routine incoming or outgoing facsimiles or for long distance phone calls. Items of a non-routine nature such as, but not limited to, conference calls and telephone interviews will be charged at the actual cost to the firm as submitted by the

carrier. We have negotiated favorable rates with Westlaw and Lexis-Nexis for the majority of their databases. Client charges for research performed in Westlaw and Lexis-Nexis are designed to recoup the aggregate cost to the firm for Westlaw and Lexis-Nexis. Unless special arrangements are made at the outset, fees and expenses of others (such as outside copy services, experts, investigators, witnesses, consultants and court reporters) will not be paid by us and will be the responsibility of, and billed directly to, the client.

3. Although we may from time to time furnish estimates of fees or costs that we anticipate will be incurred, these estimates are by their nature inexact, are subject to periodic review and revision, and are not binding except to the extent expressly set forth in the engagement letter.

4. Fees and expenses will be billed monthly and are payable upon presentation. We expect payment within 30 days. We reserve the right to postpone or defer providing additional services or to discontinue our representation if billed amounts are not paid when due.

5. A client shall have the right at any time to terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve the client of the obligation to pay for all services rendered and costs or expenses paid or incurred on behalf of the client prior to the date of such termination.

6. We reserve the right to withdraw from our representation if, among other things, the client fails to honor the terms of the engagement letter, the client fails to cooperate or follow our advice on a material matter, or any fact or circumstance would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, the client will take all steps necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and costs and expenses paid or incurred on behalf of the client to the date of withdrawal.

cc: Peggy McCain, Billing/Collections Manager