

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT, IN AND FOR 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,

Defendant.

and,

**DB ATLANTA, LLC**, a Florida Limited Liability  
Company, **DB DURHAM, LLC**, a Florida Limited  
Liability Company, **NORMANDY HOLDINGS II,  
LLC**, a Florida Limited Liability Company,  
**NORMANDY HOLDINGS III, LLC**, a Florida  
Limited Liability Company, **ACQUISITIONS, LLC**, a  
Florida Limited Liability Company, **DBKN GULF  
INCORPORATED**, a Florida Limited Liability  
Company, **OCEANSIDE ACQUISITIONS, LLC**, a  
Florida Limited Liability Company, **DB BILOXI, LLC**,  
a Florida Limited Liability Company, **DB BILOXI II,  
LLC**, a Florida Limited Liability Company, **DB  
BILOXI III, LLC**, a Florida Limited Liability  
Company, **DBDS VERO BEACH, LLC**, a Florida  
Limited Liability Company, **DB TAMPA, LLC**, a  
Florida Limited Liability Company, **DB  
SIMPSONVILLE, LLC**, a Florida Limited Liability  
Company, **DBDS NORTH MIAMI, LLC**, a Florida  
Limited Liability Company, **REDLANDS RANCH  
HOLDINGS, LLC**, a Florida Limited Liability  
Company, **DBDS BISCAYNE PARK, LLC**, a Florida  
Limited Liability Company, **DB CARROLL STREET,  
LLC**, a Florida Limited  
Liability Company,

Relief Defendants.

**RECEIVER'S MOTION FOR AN ORDER APPROVING  
THE DISBURSEMENT OF UNENCUMBERED FUNDS**

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage  
Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., (the

**BERGER SINGERMAN**  
attorneys at law

*Boca Raton Fort Lauderdale Miami Tallahassee*

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-6308 Telephone 305-755-9500 Facsimile 305-714-4340

THE ORIGINAL  
FILED ON:  
NOV 17 2009  
IN THE OFFICE OF  
CIRCUIT COURT DADE CO. FL

“Receiver”) by and through undersigned counsel, hereby files this Motion for an Order Approving the Disbursement of Unencumbered Funds and states:

1. On July 17, 2009, this Court approved the settlement between Relief Defendant, DB Biloxi III, LLC (“DB Biloxi III”) and the first mortgagee of the real property owned by DB Biloxi III on which property the M.A.M.C. lenders held a second mortgage. The first mortgagee was allowed to foreclose on the property.

2. This Court has also previously authorized the Receiver to abandon DB Biloxi III, LLC as a result of the first mortgagee’s foreclosure, DB Biloxi III, LLC is no longer the owner of the real property upon which the MAMC Lenders held a second mortgage. A copy of the Court’s September 23, 2009 Order is attached hereto as **Exhibit A**.

3. DB Biloxi III held escrow deposit funds from contract purchasers of DB Biloxi III units, which contracts never closed. After approving the notice procedures used by the Receiver to notify any potential claimants to the funds, including contract purchasers of units in the DB Biloxi III project, the Court set a claims bar date of October 30, 2009 for potential claimants to make their claims against unclaimed escrow deposits.

4. The Court’s September 23, 2009 Order authorized the Receiver to retain, free and clear of all liens, any escrow deposit funds not claimed after October 30, 2009 by contract-purchasers of DB Biloxi III units. The majority of the prospective purchasers of the units cancelled their respective purchase and sale agreements and settled their claims with the Receiver.

5. The Court’s Order directed the Receiver to transfer the unencumbered funds to a new entity, M.A.M.C. Biloxi III, LLC for distribution pursuant to further motion and order from

this Court. The Court's Order also authorized the payment of the primed contributions of certain lenders from the unencumbered funds.

6. As of October 30, 2009, after payment of all claims made against the unclaimed escrow deposits, to which claims the Receiver did not object, the new entity, M.A.M.C. Biloxi III, LLC holds \$176,336.26 of unencumbered funds..

7. The Receiver seeks to pay certain administrative expenses from the unencumbered funds and repay the primed lender contributions as outlined herein.

8. This Court's Receivership Order dated December 11, 2007, at paragraph 19, authorized the Receiver to employ, without further order of the court, such employees, accountants and attorneys, etc., as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership assets.

9. Pursuant to paragraph 23 of the Receivership Order, the Receiver and his retained professionals are entitled to reasonable compensation and expenses recovered from receivership assets. The Receiver is authorized to pay from Receivership Estate funds 80 percent of the ordinary and reasonable fees and 100 percent of the costs of such outside professionals upon receipt of a bill from outside professionals. The Order further authorizes payment of fees in full upon application to the Court for approval of all fees and expenses.

10. At the time the Receiver was appointed, there were no unencumbered funds to pay the Receiver or his professionals for their services. Moreover, the MAMC Lenders informed the Receiver that they would not pay the Receiver and his professionals with "new" money and objected to their liens being primed to pay fees and costs as is permitted under Florida law. The Receiver and his professionals accepted these conditions and understood they would be paid out of unencumbered assets and funds. As such, the Receiver and his professionals worked on a

contingency basis and have essentially financed the administration of the receivership and all related lawsuits. Accordingly, the Receiver and the professionals have, for a significant part of this case, carried substantial receivables for fees and costs incurred and although provided for under the Berger Singerman Retainer Agreement, are not seeking to be paid interest on outstanding invoices. Accordingly, the Receiver and his attorneys have been paid from unencumbered funds as they have been recovered and approved by this Court from time to time.

11. The Receiver seeks an order authorizing distribution of \$50,000.00 of the remaining unclaimed unencumbered proceeds for payment of Receivership fees and costs and the Receiver's attorneys' fees and costs in equal parts to Akerman Senterfitt and Berger Singerman, P.A..

12. Berger Singerman, P.A. has represented the Receiver in this complicated Receivership and provided general representation and/or litigation services with respect to all Receivership projects including DB Biloxi III. Currently, both the Receiver's law firm, Akerman Senterfitt and the Receiver's attorneys, Berger Singerman, P.A. are each owed far in excess of the amount sought to be paid by this motion.

13. All invoices for attorneys' fees and costs incurred by the Receiver are reviewed by the Receiver and available for review at the Receiver's office. All invoices are also submitted the Executive Committee of Lenders for review which, as of the date of this Motion, has not as objected the Receiver's attorneys' fees. Each lender has the opportunity to file an objection on or before the date of the hearing, as to the requested relief.

14. The Receiver's counsel hereby certifies that a copy of this Motion and Notice of Hearing thereon have been distributed by electronic mail to all lenders and have been posted on the M.A.M.C. Receiver website for review.

15. Additionally, the Receiver seeks to pay \$24,500 to M.A.M.C. Incorporated as reasonable reimbursement for administrative expenses of M.A.M.C. Incorporated, which has advanced costs on behalf of the lenders and incurred expenses in providing substantial administrative services to all Receivership projects including the DB Biloxi III project. M.A.M.C. Incorporated has performed services for the Relief Defendants and Receivership projects including overseeing all accounting and the preparation of all tax returns and extensive efforts in the management and disposition of Receivership assets.

16. Finally, pursuant to the Court's September 23, 2009 Order, the Receiver seeks to pay the remaining \$101,836.26 to the lenders who contributed Primed Lender Contributions as further reimbursement of the Primed Lender Contributions.

**WHEREFORE**, the Receiver respectfully requests that this Court enter an Order:

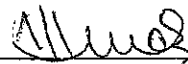
- a) granting the Receiver's instant Motion;
- b) authorizing the Receiver to make the payments and distributions outlined in this Motion; and
- c) awarding such other and further relief as this Court deems just and proper.

Respectfully submitted,

**BERGER SINGERMAN**

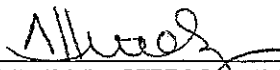
*Attorneys for Receiver, Michael Goldberg*  
200 South Biscayne Boulevard, Suite 1000  
Miami, FL 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340  
E-Mail: [jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)

By: \_\_\_\_\_

  
JAMES D. GASSENHEIMER  
Florida Bar No. 959987  
ARIADNA HERNANDEZ  
Florida Bar No. 020953

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail on this **16th day of November, 2009**, to the attached Service List.

By:   
ARIADNA HERNANDEZ  
Florida Bar No. 020953  
E-Mail: [ahernandez@bergersingerman.com](mailto:ahernandez@bergersingerman.com)

**SERVICE LIST**

**Cristina Saenz**  
**Assistant General Counsel**  
STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION  
401 N.W. 2<sup>nd</sup> Avenue, Suite N-708  
Miami, FL 33128

**Alan M. Sandler, Esquire**  
*Counsel for*  
*Joel and Deborah Sokol,*  
*Darlene Levasser,*  
*Robert Dzimidas IRA,*  
*Lawrence Meyer IRA,*  
*Lawrence Meyer Roth IR*  
*Mary Joe Meyer SD IRA*  
*Mary Joe Meyer Roth IRA*  
SANDLER & SANDLER  
117 Aragon Avenue  
Coral Gables, FL 33134

**Charles W. Throckmorton, Esquire**  
*Attorneys for Dana Berman*  
KOZYAK TROPIN THROCKMORTON, P.A.  
2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor  
Coral Gables, FL 33134

**Paul Huck, Esquire**  
**Dean C. Colson, Esquire**  
COLSON HICKS EIDSON  
255 Aragon Avenue, Second Floor  
Coral Gables, FL 33134

**Jason S. Miller, Esquire**  
*Counsel for Flagstar Bank*  
ADORNO & YOSS, LLP  
2525 Ponce de Leon Boulevard, Suite 400  
Coral Gables, FL 33134

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

2435662-2

IN THE CIRCUIT COURT OF THE ELEVENTH 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.

**ORDER ON RECEIVER'S MOTION TO ABANDON RELIEF DEFENDANT,  
DB BILOXI III, LLC AND FOR AN ORDER APPROVING  
THE DISBURSEMENT OF FUNDS**

THIS CAUSE having come before the Court on September 22, 2009 on Receiver's Motion to Abandon Relief Defendant, DB Biloxi III, LLC and Approving the Disbursement of Funds (the "Motion"), and the Court having heard the argument of counsel, having heard the position of the Receiver, having reviewed the papers, it is hereby:

**ORDERED AND ADJUDGED** that:

1. The Receiver's Motion is hereby GRANTED.
2. The Receiver is authorized to abandon Relief Defendant, DB Biloxi III, LLC and to assign the M.A.M.C. Lenders' residual interest in the Alterna Settlement to M.A.M.C. Biloxi III, LLC, as outlined in the Motion.
3. With respect to any unclaimed deposits, the Court finds that the notice provided and Bar Date of October 30, 2009 for making claims on the deposits are reasonable.





4. DB Biloxi III, LLC is entitled to retain any and all said deposits, unless a claim is made in this Court by the Bar Date of October 30, 2009. After the Bar Date, claims to the deposits by any person or entity shall be forever barred.

5. After October 30, 2009, the Receiver is authorized to transfer any remaining deposit funds held by DB Biloxi III, LLC which are not the subject of any claim filed in this Court to MAMC Biloxi III, LLC free and clear of any liens, claims or encumbrances.

6. The Receiver is further authorized to distribute from deposit funds the remaining "Primed Lender Contributions" plus accrued interest as set forth in paragraph 20 of the Motion prior to transferring the net deposit funds to M.A.M.C. Biloxi III, LLC.

**DONE AND ORDERED** in Chambers at Miami, Miami-Dade County, Florida on this \_\_\_ day of September 2009.

THOMAS S. WILSON, Jr.

THOMAS WILSON, JR., CIRCUIT JUDGE

Copies furnished to:

All Counsel of Record  
Posted on Receivership Website

Conformed Copy

SEP 23 2009

Thomas S. Wilson, Jr.  
Circuit Court Judge