

**IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-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, et al.,

Relief Defendants.

**RECEIVER'S MOTION TO AUTHORIZE LOAN FOR PAYMENT
OF REAL PROPERTY TAXES AND OTHER EXPENSES
RELATED TO DBKN GULF, INC., NUNC PRO TUNC**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this Motion to Authorize Loan for Payment of Real Property Taxes and Other Expenses Related to DBKN, Inc., *Nunc Pro Tunc* (the "Motion"). In support of the Motion, the Receiver states as follows:

1. On December 11, 2007, the State of Florida, Office of Financial Regulation ("OFR") filed a Complaint for Temporary and Permanent Injunction and Appointment of Receiver.

2. The OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors (the "Lenders") by offering fractional interests in short-term acquisition and/or construction mortgage loans. MAMC serviced the loans pursuant to servicing agreements entered into between the individual Lenders and MAMC.

3. On December 11, 2007, this Court (the "Receivership Court") appointed Michael Goldberg as the receiver for BMC, MAMC and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the Lenders.

4. Dana Berman ("Berman") and Keith Novak ("Novak"), who were two of the principals of BMC, formed DBKN Gulf Incorporated, LLC ("DBKN Gulf") for the purpose of acquiring certain vacant land (the "Vacant Land") located at the Gulf Island Beach and Tennis Club ("Gulf Island Club") on the water's edge in Pasco County, Florida.

5. On February 21, 2003, DBKN borrowed \$875,000 from BMC. The loan ("DBKN Loan") was funded by twenty-four (24) of the Lenders (the "DBKN Lenders") and payment was secured by the Vacant Land. The DBKN Loan is documented by a Promissory Note, Mortgage and Security Agreement, Notice of Future Advance; Modification of Note, Mortgage and related loan documents recorded in the Official Records of Pasco County, Florida.

6. On even date, BMC assigned its interest in the DBKN Loan documents to the DBKN Lenders, as recorded in the Official Records of Pasco County, Florida. The DBKN Loan was serviced by MAMC and is in default.

7. DBKN Gulf is an original Relief Defendant.

8. Title to the Vacant Land, along with two other properties located at the Gulf Club have been the subject of multiple litigation and disputes since 2003. The Receiver is working through the litigation and in March of 2013, the Receiver obtained authority from the Receivership Court to file a Complaint to foreclose the mortgages(s) and related loan documents securing the DBKN Loan.

9. However, the 2012 real property taxes remained unpaid and tax certificates have been sold or are being held by Pasco County. Although a stay of a tax deed sale exists, the majority of the real property taxes are accruing interest at 18% per anum. As of March 1, 2013, the total amount of real property taxes was \$106,393.18. Pasco County has also levied a paving assessment of \$3,450.

10. The DBKN Lenders believe there is equity in the Vacant Land. However, the interest accruing on the real property taxes continues to deplete the equity. Accordingly, the DBKN Committee has requested a loan in the total amount of \$113,475.00 for the purpose of paying the real property taxes and paving assessment and other carrying costs (collectively, the "DBKN Expenses").

11. As the Court is aware, the Receiver previously settled a large malpractice claim against MAMC's former accountants. Pursuant to authority granted by this Court, the Receiver made a distribution of a portion of the malpractice settlement funds to investors.

12. With the Court's permission, the Receiver held back several million dollars of the malpractice settlement proceeds to fund future and current administrative expenses as well as to make loans to various projects on an as-needed basis. This Court has previously approved loans to other Receivership properties for the purpose of paying taxes or other expenses. The Receiver

now seeks authority from the Court to loan money from funds he holds in trust for payment of the DBKN Expenses, (*nunc pro tunc* to March 28, 2013 for the 2012 real property taxes and April 5, 2013 for the other DBKN Expenses).

13. The loan is not being made merely based on need. Rather, a loan is only made to a project if the Receiver believes that there is a substantial likelihood that the project will ultimately be able to repay the loan, together with interest.

14. DBKN Gulf will be charged interest at the rate of four percent (4%) per annum, simple interest. Currently, the funds are being held in the Receiver's law firm's trust account and are earning substantially less interest. Accordingly, making the loan is a win-win situation for the receivership estate which will earn better interest than it is currently earning.

15. At the outset of the receivership, the Receiver set up committees comprised of lenders for each loan, and one overall "Executive Committee" made up of at least one lender from each loan to advise the Receiver. The Receiver has consulted with the Executive Committee of Lenders and the committee of DBKN Lenders, who believe making this loan is in the best interest of the receivership estate. The Receiver and the DBKN Lender committee believe the loan is fully secured by the value of the Vacant Land. The loan, together with all accrued interest, will be payable upon sale of the Vacant Land. Moreover, DBKN Gulf will reimburse the receivership estate \$250 in costs incurred in obtaining approval of this loan. (This fee will be added to the outstanding loan balance.)

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver over the Receivership Defendants, respectfully request this Court authorize the Receiver to make a first priority loan to

DBKN Gulf and grant such other relief as is just and proper.

Respectfully submitted,

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By: /s/ Joan Levit
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of April, 2013, a true and correct copy of the forgoing was furnished via e-mail and U.S. Mail to the parties on the attached Service List. A copy of the Motion will also be sent to the Lenders who have an interest in this property by e-mail and posted on the receivership website.

By: /s/ Joan Levit
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