

**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 APPROVE LOANS TO CERTAIN
RECEIVERSHIP PROJECTS *NUNC PRO TUNC*, TO PAY
2014 - 2015 REAL PROPERTY TAXES AND OTHER ANNUAL EXPENSES**

Michael I. Goldberg, the Court-appointed receiver ("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 Approve Loans to Certain Receivership Projects *Nunc Pro Tunc*, to pay 2014 - 2015 Real Property Taxes and Other Annual Expenses, and in support, states as follows:

1. On December 11, 2007, this 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 ("Lenders") who entrusted over \$192 million to the Receivership Defendants.

2. As part of his duties in administering the receivership, the Receiver uncovered potential claims against the Receivership Defendants' accountants. Accordingly, the Receiver, in conjunction with a class of creditors, brought claims against the accountants. Subsequently, a settlement with the accountants was reached and a pool of money ("Accountant Settlement Proceeds") was available to satisfy certain creditors' claims.

3. On or about March 9, 2010, the Receiver filed a *Motion for an Order Approving the Proposed Priority of Distribution and Procedures for the Disbursement of Funds Recovered by Receiver in an Accounting Professional Liability Claim* (the "Distribution Motion"). The Court granted the Distribution Motion, and shortly thereafter, the Receiver made a distribution to the Lenders of a substantial portion of the Accountant Settlement Proceeds.

4. With the Court's permission, the Receiver held back several million dollars of the Accountant Settlement Proceeds to fund future and current administrative expenses as well as to make loans to various projects on an as-needed basis. More specifically, the Receiver is still administering ten (10) properties. Many of these properties are currently being marketed for sale and require that certain essential expenses, such as taxes, be paid in order to preserve their value.

5. The 2015 real property bills have been mailed by the Florida tax collectors. Although the taxes are due on or before March 31, 2015, Florida tax collectors offer a four percent discount off the total amount due, if the taxes are paid by November 30, 2015.

6. Early payment will result in a discount of the tax bill, while non-payment or late payment of the taxes will result in the accrual interest and fees. Moreover, in the event an owner is unable to timely pay its real property taxes, tax collectors are authorized to sell tax certificates

to cover payment of the taxes. After the passage of two years without payment, the tax certificate holder can apply for a tax deed. In the event of a tax deed sale, the mortgages in favor of the Lenders are stripped from the property. *See* Florida Statutes, Chap. 197.01, *et. seq.* Accordingly, it is in the best interest of the receivership estate to pay the real property taxes.

7. Through this Motion, the Receiver seeks authorization to extend loans to certain of the projects (individually, a "Project" and collectively the "Projects") for payment of the real property taxes and other annual expenses. The names of the Projects and a itemization of the annual expenses are attached hereto as Composite Exhibit 1.

8. The loans are not being made merely based on need. Rather, loans are 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 at four percent.

9. This request is not based solely on the Receiver's decision. The Receiver has consulted with the lender committee appointed for each of the Projects with regard to each project's ability to re-pay their respective loans. The Project committees and the Executive Committee have approved the loans and authorized immediate payment of the taxes in order to take advantage of the discounts.

10. The Projects will be charged interest at the rate of four percent per annum, simple interest. The Account Settlement Proceeds are currently being held in the Receiver's law firm's trust account and are earning substantially less interest. Accordingly, making the loans is a win-win situation for the receivership estate which will make more interest than it is currently earning and the amount of the taxes will be discounted as a result of early payment.

11. The Receiver, the Executive Committee and the Project Committees believe each of the loans is fully secured by the value of the corresponding property. The loans, together with

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all accrued interest, will be payable on sale of the corresponding property. Moreover, the Projects will reimburse the receivership estate \$250 in costs incurred in obtaining approval of their loan.¹ The Receiver and the Executive Committee believe making these loans are in the best interest of the receivership estate.

12. This Court has previously authorized the Receiver to loan funds from the Accountant Settlement Proceeds to certain receivership projects for payment of real property taxes and other expenses. The Receiver believes it is in the best interest of the receivership estate to loan the Projects money to pay the expenses described herein and the Lenders will receive a benefit from early payment of the taxes and timely payment of other annual expenses.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C. and related entities, respectfully request this Court to enter an Order authorizing the Receiver to make the loans described herein and to grant such further relief as is just and proper.

Respectfully submitted,

/s/ Joan Levit

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¹ This fee will be added to the outstanding loan balance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December 2015, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List, the lenders were notified by e-mail and a copy of this motion will be posted on the receivership web-page.

By: /s/ Joan Levit

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COMPOSITE EXHIBIT 1

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2014 PROPERTY CARRYING COSTS

	AHIFO	Bella Vista	Emerald Cay	Ibex	Project Mngrs	TOTAL
RE TAXES						
Due Nov 30 (4% discount)	\$ 9,247	\$ 29,227	\$ 22,215	\$ 3,145	\$ 1,009	\$ 64,842
OTHER EXPENSES						
Insurance	\$ 650	\$ 335	\$ 350	\$ 400	\$ 300	\$ 2,035
Maintenance	\$ 200	\$ 200	\$ 2,300	n/a	\$ 200	\$ 2,900
Association dues	n/a	n/a	\$ 6,500	n/a	n/a	\$ 6,500
Accounting	\$ 430	\$ 450	\$ 500	\$ 400	\$ 400	\$ 2,180
Corp filing	\$ 139	\$ 139	\$ 139	\$ 139	\$ 139	\$ 695
Salaries	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FedEx	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
K-1 Mialings	\$ 156	\$ 153	\$ 102	\$ 99	\$ 95	\$ 605
Total	\$ 1,575	\$ 1,277	\$ 9,891	\$ 1,038	\$ 1,134	\$ 14,915
TOTAL EXP	\$ 10,822	\$ 30,505	\$ 32,105	\$ 4,183	\$ 2,143	\$ 79,757
Less Bank Balance	\$ 784	\$ 329	\$ 3,806	\$ 10	\$ 306	\$ 5,235
Total Priority Loan	\$ 10,038.19	\$ 30,175.21	\$ 28,299.63	\$ 4,172.31	\$ 1,836.66	\$ 74,522.00

2015-2016 PROPERTY CARRYING COSTS & PRIORITY LOAN REQUEST

RE TAXES							
	AHIFO*	Bella Vista	Biloxi	Emerald Cay	Ibex	Project Mngrs	Total P. Loans
Due Nov 30, 2015 (4% discount)	\$ 9,417	\$ 28,778	\$ 3,000	\$ 22,065	\$ 2,004	\$ 65	\$ 65,328

OTHER EXPENSES							
Insurance	\$ 650	\$ 335	\$ 1,234	\$ 350	\$ 450	\$ 300	\$ 3,319
Maintenance	\$ 200	\$ 200	\$ 500	\$ 2,000	\$ -	\$ 200	\$ 3,100
Association dues	\$ -	\$ -	\$ -	\$ 6,516	\$ -	\$ -	\$ 6,516
Tax prep./filing	\$ 800	\$ 450	\$ 450	\$ 500	\$ 400	\$ 400	\$ 3,000
Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bank fees	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 600
Corp filing	\$ 139	\$ 139	\$ 139	\$ 139	\$ 139	\$ 139	\$ 834
Contractor Comp. (1099-MISC)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Mailings	\$ 163	\$ 160	\$ 212	\$ 105	\$ 103	\$ 98	\$ 841
Other - possible sign/gate installation	\$ 1,200	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,200
Total (other exp)	\$ 3,252	\$ 1,384	\$ 2,635	\$ 9,710	\$ 1,192	\$ 1,237	\$ 19,410
TOTAL Carrying Costs (taxes & other exp)	\$ 12,668	\$ 30,162	\$ 5,635	\$ 31,775	\$ 3,196	\$ 1,302	\$ 84,738

Less bank account balance \$ 1,530 \$ 80 \$ 257 \$ 12 \$ 449 \$ 43 \$ 2,371

TOTAL PRIORITY LOANS \$ 11,138 \$ 30,082 \$ 5,378 \$ 31,763 \$ 2,746 \$ 1,259 \$ 82,366

NOTES:

Biloxi's RE taxes is an estimate. Tax bill is not ready.

*Ahifo - RE Taxes of \$9,417 represents MAMC 50% share of the taxes owed. AHIFO's 50% has been received.

*Atlantic Beach - Taxes and insurance represent MAMC's share of 65.65%.