

**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 TREAT ALL INVESTORS IN OCEANSIDE
ACQUISITIONS, LLC, GULF ISLAND RESORT, L.P., LTD
AND DBKN GULF INC. *PARI PASSU***

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 Treat all Investors in Oceanside Acquisitions, LLC, Gulf Island Resort, L.P., Ltd. and DBKN Gulf Inc. *Pari Passu* (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.

A. The Properties

4. The Gulf Island Beach and Tennis Club ("Gulf Island Club") is a residential condominium community located at the water's edge in Hudson, Florida. Three mid-rise buildings were constructed in 1985. Land set aside for a fourth building on the far west corner of the community remains undeveloped (the "Vacant Land").

5. Certain of the condominium units were sold to individuals. In February of 1993, the Federal Deposit Insurance Corporation sold the remaining condominium units, the Vacant Land, dock slips and parking spaces to Gulf Island Resort, L.P. ("GIR LP"), pursuant to that certain Quitclaim Deed recorded in the Official Records of Pasco County, Florida.

6. By Warranty Deed, dated October 19, 2001, GIR LP transferred ownership of the Vacant Land and condominium units located in building one at the Gulf Island Club ("Building One Units") to Gulf of Mexico Enterprises, Inc. ("Gulf Enterprises").

7. GIR LP maintained ownership of the units located in buildings two and three at the Gulf Island Club ("Association II units").

B. The Loans

8. On January 15, 2003, GIR LP, and its principal, Eisi Markovitz, borrowed the sum of \$877,500 from BMC. The loan (the "Gulf LP Loan") was funded by sixteen (16) of the Lenders and payment was secured by 14 Units in Buildings II and III (of the Gulf Island Beach and Tennis Association II). The GIR LP Loan is documented by a Promissory Note, Mortgage and Security Agreement, Assignment of Leases and Rentals and other loan documents recorded in the Official Records of Pasco County, Florida.

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

10. Dana Berman ("Berman") and Keith Novak ("Novak"), who were two of the principals in BMC, formed Oceanside Acquisitions, LLC ("Oceanside") for the purpose of purchasing the Building One Units from Gulf Enterprises along with one unit (201W) in Building II from GIR LP..

11. On February 21, 2003, Oceanside borrowed the sum of \$990,000 from BMC. The loan (the "First Oceanside Loan") was funded by thirty-eight (38) of the Lenders and payment was secured by the Building One Units. The First Oceanside Loan is documented by a Promissory Note, Mortgage and Security Agreement, Assignment of Leases and Rentals and other loan documents recorded in the Official Records of Pasco County, Florida.

12. On even date, BMC assigned its interest in the First Oceanside Loan documents to the thirty-eight Lenders, as recorded in the Official Records of Pasco County, Florida.

13. On February 21, 2003, Oceanside also borrowed the sum of \$650,000 from BMC. The loan (the "Second Oceanside Loan") was funded by ten (10) of the Lenders and payment

was secured by the same Building One Units. The Second Oceanside Loan is documented by a Promissory Note, Second Mortgage and Security Agreement, Assignment of Leases and Rentals and other loan documents recorded in the Official Records of Pasco County, Florida.

14. On even date, BMC assigned its interest in the Second Oceanside Loan documents to the ten Lenders, as recorded in the Official Records of Pasco County, Florida. The First Oceanside Loan and the Second Oceanside Loan (jointly, the "Oceanside Loans") were serviced by MAMC and are in default.

15. Additionally, Oceanside purchased one unencumbered unit in Building Two for the purpose of securing dock spaces and parking spaces in both buildings.

16. Berman and Novak formed DBKN Gulf Incorporated, LLC ("DBKN Gulf") for the purpose of acquiring the Vacant Land.

17. On February 21, 2003, DBKN borrowed \$875,000 from BMC. The loan ("DBKN Loan") was funded by twenty-four (24) of the 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.

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

19. Oceanside and DBKN Gulf are original Relief Defendants.

C. The Legal Challenges

20. The Building One Units, Building Two Units, and the Vacant Land, dock slips and parking spaces (collectively, the "Gulf Properties") securing all four loan positions (the GIR

LP Loan, the Oceanside Loans, both first and second positions, and DBKN Loan (collectively, the "Loans") have been the subject of multiple litigation and disputes since 2003. Immediately after these mortgage transactions and sales, title became marred due to legal proceedings. Alex Bistricher ("Bistricher"), a one-third owner of Gulf LP, claimed that his partner Eisi Markovitz did not have the right to transfer the Vacant Land and the Building One Units and commenced a quiet title action (the "Quiet Title Action") in Pasco County Circuit Court styled *Alex Bistricher, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Case No. 51-2003-CA-942ES.

21. After the commencement of the receivership, the Quiet Title Action was transferred to the Receivership Court. *See, Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*, dated June 13, 2008. The Receivership Court subsequently entered final summary judgment in favor of Oceanside and DBKN Gulf. In 2009, Bistricher appealed the Receivership Court's ruling to the Third District Court of Appeals, Case No. 3D09-3002, which affirmed the decision of the Receivership Court. Thereafter, Bistricher appealed to the Florida Supreme Court, Case No. SC11-1213. On December 12, 2011, the Florida Supreme Court dismissed the appeal for lack of jurisdiction. The legal battle began in 2003 and was not resolved until 2011. The legal battle over ownership of the nine remaining GIR mortgaged units continues.

D. Relief Requested

22. A total of forty-eight Lenders participated in the Loans. Of these, eighteen (18) Lenders hold mortgage position in only one of the Gulf Properties; twenty-three (23) Lenders have an interest in two of the Gulf Properties; and five (5) Lenders are in all three (3) of the Gulf Properties.

23. The First Oceanside Loan and the Second Oceanside Loan are in essence the same loan. The loan documents were prepared simultaneously. Not all of the Lenders in the second mortgage position realized that they were in a second position. Moreover, the second mortgage was filed before the first mortgage. Additionally, the DBKN Loan closed simultaneously with the Oceanside Loans – at the same location and on the same date.

24. During the lengthy litigation, some of the units securing the Oceanside Loans were sold (at a tremendous reduction in the bad market and with high cost in legal expense). One unit was mortgaged. GIR LP sold five units securing the GIR LP Loan and those Lenders were partially paid down.

25. Expenses, including legal fees, taxes and assessments were paid with money that had been comingled. Although both Oceanside and GIR LP occasionally had funds, all of the legal bills were charged to, and paid by Oceanside. The legal battle was of equal importance to all three properties, but accounts were not segregated.

26. There is little remaining value in the Oceanside and GIR LP units. The GIR LP units have not yet been foreclosed and are again embroiled in legal battle with Bistricer. The Vacant Land securing the DBKN Loan should someday have value above the amount of the DBKN Loan. The Receiver has stated that no monies over the initial mortgage commitment shall be repaid to Lenders. Having all of the positions *pari passu* will afford the greatest number of Lenders the chance for best recovery.

27. The Receivership Court has authorized the Receiver to sell the units which secure the Oceanside Loan. The Receiver is attempting to market the Properties in the best interest of the Lenders, which group the Receivership was designed to protect. The Receiver seeks to prevent conflicts among the Lender claiming lien priority as to their competing loans. The

Receiver seeks to have the Lenders share *pari passu* in any proceeds for the sale, liquidation or the like of the Properties and their assets.

28. 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 lender committees for Oceanside, Gulf Island Resorts and DBKN Gulf, each of whom have advised the Receiver that they approve his filing this Motion.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver over the Receivership Defendants, respectfully request this Court to enter an Order authorizing the Receiver to treat all investors in the Properties *pari passu* and to grant such further 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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