

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

STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION,

Plaintiff,

CASE NO. 07-43672 CA 09

vs.

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

Defendants,

and

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

Relief Defendants.

---

**ORDER GRANTING RECEIVER'S MOTION FOR APPROVAL  
OF SETTLEMENT AGREEMENT AND ENTRY  
OF BAR ORDER CONDITIONALLY ENJOINING LENDERS AND  
RECEIVORSHIP CREDITORS FROM  
PROSECUTING CLAIMS AGAINST MAMC's FORMER AUDITOR AND ITS  
INSURER**

This matter came before the Court on March 12, 2010, upon the hearing on the Motion for Approval of Settlement Agreement and Entry of Bar Order Conditionally Enjoining Lenders and Receivership Creditors From Prosecuting Claims Against Mallah Furman & Company, P.A., ("MAMC's former Auditor") and Lexington Insurance Company, ("Insurer") (the "Motion"), filed by Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation ("BMC") and

M.A.M.C. Incorporated ("MAMC") and Relief Defendants DB Atlanta, LLC, *et al.*<sup>1</sup> The Court, having reviewed the Motion and the Settlement Agreement, heard argument of counsel, finding good cause exists for the entry of this Order, and being otherwise fully advised in the premises, the Court makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. By Order dated December 11, 2007 (the "Receivership Order"), Michael I. Goldberg was appointed as Receiver over the assets of BMC, MAMC and the Relief Defendants (hereinafter, the "Receivership Defendants")

B. By Order dated April 16, 2008 (the "Hanzman Order"), Hanzman Gilbert, LLP predecessor to Michael A. Hanzman, P.A. Of Counsel to Ackerman, Link & Sartory was appointed Special Litigation Counsel to investigate and pursue the Lawsuit (as defined below).

C. By Order dated June 23, 2008 (the "Steering Order"), a Steering Committee was appointed to investigate and pursue the Lawsuit (as defined below).

D. The Receiver along with David Eastis and Gail Korenblum, on behalf of themselves and all others similarly situated ("the Class Members") filed a lawsuit against MAMC's former Auditor for (i) professional negligence; (ii) aiding and abetting breach of fiduciary duty; (iii) aiding and abetting fraud and (iv) negligence (the "Lawsuit"). MAMC's former Auditor denies any liability or wrongdoing in connection with the Lawsuit and has raised certain defenses thereoto.

---

<sup>1</sup> The Relief Defendants are DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC, Normandy Holdings III, LLC, Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC.

E. By Order dated March 24, 2009 (the "Transfer Order"), the Administrative Judge transferred the Lawsuit to the Receivership Division and assigned Case No. 09-14678 CA 09.

F. There are approximately 700 individual investors (the "Lenders") who allege that their monies were used by the Receivership Defendants to fund the acquisition and construction of commercial real estate projects.

G. The Court finds that the Receiver has the authority to enter into the Settlement Agreement with MAMC's former Auditor.

H. The Court finds that the Settlement Agreement is in the best interest of the Receivership Defendants.

I. The Court finds that notice of the Motion, Settlement Agreement and the proposed entry of the Order Permanently Enjoining Prosecution of Claims Against MAMC's former Auditor (the "Bar Order") have been provided to all parties who have filed a Notice of Appearance in this case, MAMC's former Auditor, the Lenders, the Receivership Creditors, and all other parties who would be enjoined pursuant to the Bar Order (collectively, the "Noticed Parties").

J. The Court finds that prior to approval of the Motion and entry of this Order, the Noticed Parties had an opportunity to review the Motion and the relief requested therein, discuss the matters addressed in the Motion with their attorney, attend the Court hearing on approval of the Motion and provide the Court with their comments and/or objections.

K. The Court finds that this Order is necessary and appropriate in order to achieve the finality and repose that is contemplated and an essential term of the Settlement Agreement and that good cause therefore exists for the entry of this Order.

L. Accordingly, the terms of the Settlement Agreement and this Order are binding on the Receiver, MAMC's former Auditor, the Lenders and Receivership Creditors, and inure to the benefit of the employees, agents, registered representatives, associated persons, predecessors in interest, successors in interest, heirs and assigns of the Receiver, MAMC's former Auditor, the Lenders and Receivership Creditors, and it is

**ORDERED and ADJUDGED** that:

1. The Motion is GRANTED. The Settlement Agreement is approved, ratified and its terms are incorporated herein.

2. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

3. All parties identified on the attached Exhibit A, including their successors, assigns, affiliates, and privies (the "Enjoined Parties"), shall unless otherwise expressly excluded from the terms of the Release, be *permanently* barred and enjoined from filing, commencing, prosecuting, conducting, or continuing in any manner, directly, indirectly, derivatively, or in any other capacity, any suit, action, or other proceeding (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against MAMC's former Auditor and its Insurer, for or as a result of any and all liabilities, judgments, rights, claims, cross-claims, counterclaims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description arising under common law, rule, regulation or statute, whether arising under

state or federal laws, whether presently known or unknown that the Enjoined Parties now have, ever had or may claim to have in the future arising out of, related to, or which was or could have been asserted against MAMC's former Auditor, based upon, relating to, or arising out of services rendered to the Receivership Defendants, and are barred from commencing, prosecuting, continuing or otherwise asserting any claims against MAMC's former Auditor.

4. In the event of any discrepancies or inconsistencies between the terms of the Settlement Agreement and the terms of this Order, the terms of the Settlement Agreement shall govern unless such term(s) was specifically amended herein.

5. The Court reserves jurisdiction to enforce and interpret the Settlement Agreement and enter any other related Orders.

**DONE AND ORDERED** in Chambers on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

---

Circuit Court Judge

Copies to all parties on attached list