

**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 FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT WITH JOSE M. VENTURA AND JUAN CARLOS VENTURA,
GUARANTORS OF THE V-STRATEGIC LOAN**

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 for Entry of an Order Approving Settlement with Jose M. Ventura and Juan Carlos Ventura, Guarantors of the V-Strategic Loan (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 against the Defendants and Relief Defendants seeking the entry of a temporary and permanent injunction and the appointment of a receiver.

2. In the Complaint, 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").

4. Prior to the receivership case, MAMC serviced a loan the Lenders made to V-Strategic, LLC ("V-Strategic") for the purchase of land located at 2101 East Hallandale Beach Boulevard, Hallandale Beach, Florida (the "Property"). The V-Strategic loan was evidenced by a Promissory Note and secured by a First Mortgage and Security Agreement against the Property. Moreover, Juan Ventura and Jose Ventura (jointly, the "Venturas") executed a Guaranty, personally guarantying full and prompt payment of obligations under the Promissory Note, including any modifications thereto. The total amount of the loan (as modified) was \$8 million.

5. On March 31, 2009, after V-Strategic defaulted on its payments, the Receiver's counsel, on behalf of MAMC, Gerard R. Collins and the other Lenders who funded the V-Strategic loan (collectively, the "Plaintiffs"), filed a Complaint against V-Strategic and the Venturas in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the "Broward Court"), Case No. 09-18747-CA (05) (the "Broward Case"). The Complaint asserted

three causes of action: Count I - Foreclosure; Count II - Breach of Promissory Note; and Count III - Breach of Guaranty.

6. On November 12, 2009, upon the Plaintiffs' Motion for Partial Summary Judgment on Counts I and II, the Broward Court entered a Partial Final Judgment in favor of the Plaintiffs. On July 22, 2010, the Plaintiffs assigned the Partial Final Judgment and right to bid at the foreclosure sale to MAMC V-Strategic, LLC ("MAMC V-Strategic"), a single purpose entity created by the Receiver to hold title to the Property. MAMC V-Strategic was the successful bidder and on August 10, 2010, the Clerk of the Court recorded the Certificate of Title on behalf of MAMC V-Strategic.

7. On August 17, 2010, the Receivership Court entered an Order expanding the receivership estate to include MAMC V-Strategic as a relief defendant.

8. The Receiver marketed the Property for sale. On June 18, 2012, the Receivership Court entered an Order approving the sale of the Property to CVS Caremark Corporation through its affiliate, CVS 10078 FL, LLC, for the sum of \$5,900,000.

9. After payment of prorated real property taxes, closing costs, attorney's fees and reimbursement of loans the Receiver made MAMC V-Strategic to pay expenses and prior years' real property taxes, the sum of \$5,274,044.90 was available for distribution to the Lenders. This sum represents a 65.93% return on the Lenders' principal investment.

10. The Lenders sought to recover the remaining amounts owed to them from the Venturas and engaged the Law Offices of Robert L. Parks PL to file a lawsuit against the Venturas in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Miami-Dade Court"). The case, *Group of Lenders Assembles on the Loan v. Ventura, et al.*,

Case No. 2012-038306-CA (21) (the "Guarantor Case") was assigned to the Honorable Antonio Arzola.

11. Upon motion by the Receiver and Order the Broward Court,¹ the Broward Case was transferred to Miami-Dade County and assigned Case No. 2015-017301 CA 01 (21). Upon motion by the Receiver and Order of the Miami-Dade Court,² Case No. 2015-017301 CA 01 (21) was consolidated into the Guarantor Case. Soon thereafter, the consolidated case was scheduled for trial.³

12. The Receiver, the Lenders and the Venturas have agreed to settle their disputes. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

13. Pursuant to the Settlement Agreement, the Venturas agree to pay the sum of \$2,600,000 through eight bi-annual payments, commencing on December 1, 2016 and concluding on March 1, 2020). In the event the Venturas, individually or together, fail to make the scheduled payments, the Lenders shall be entitled to entry of a Default Judgment on an *ex parte* basis in the sum of \$9,000,000 (less any amounts received prior to the default).

14. The Settlement Agreement is subject to approval by the Receivership Court.

15. By virtue of the Order Appointing Receiver, the Receiver has standing to institute, defend or compromise court proceedings as may in his judgment be necessary or proper for the collection, preservation and maintenance of receivership assets and/or on behalf of the Receivership Defendants. *See* Order at ¶ 21.

16. The Receiver has conferred with the Lenders and believes the settlement is in the best interest of the Lenders and the Receivership Defendants.

¹ On July 8, 2015, the Broward Court entered an Order Granting Motion to Transfer Case.

² On November 16, 2016, the Miami-Dade Court entered an Agreed Order Consolidating Related Cases.

³ On January 25, 2016, the Miami-Dade Court entered an Order Setting Non-Jury Trial.

17. Notice of this Motion shall be provided by posting a copy (and the Notice of Hearing) on the Receivership website and sending a copy to the Lenders via e-mail.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver, respectfully request this Court enter an Order, in the form attached hereto as Exhibit 2, authorizing the relief requested herein and such further relief as is just and proper.

Respectfully submitted,

AKERMAN LLP

Counsel for the Receiver

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350 East Las Olas Boulevard

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Email: joan.levit@akerman.com

By: /s/ Joan M. Levit

Joan M. Levit, Esquire

Florida Bar No. 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this July 25, 2016, a true and correct copy of the forgoing was furnished via e-mail to all parties on the attached Service List and to Gabriel Garay, Esq., Law Offices of Robert L. Parks, P.L., 799 Brickell Plaza, Suite 900, Miami, Florida 33131, ggaray@rlplegal.com, and Raymond Carrero, Esq., Raymond Carrero, P.A., 7700 N. Kendall Drive, Suite 809, Miami, Florida 33156, www.carrerolegal.com. A copy of the Motion will also be sent by e-mail to the Lenders who have an interest in this property and posted on the receivership website.

By: /s/ Joan M. Levit

Joan M. Levit, Esquire

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EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into by and between THE GROUP OF LENDERS ASSEMBLED ON THE LOAN ("LENDERS"), JOSE M. VENTURA and JUAN CARLOS VENTURA (collectively "VENTURAS"). Collectively, LENDERS and VENTURAS are referred to herein as the "Parties," or singularly as the "Party." For the purposes of the Agreement, the term "Party" or "Parties" include all past, present, and future directors, officers, legal and equitable owners, shareholders, members, managers, principals, employees, associates, representatives, distributees, agents, attorneys, trustees, general and limited partners, lenders, insurers and reinsurers, direct and indirect parents, subsidiaries, affiliates, related entities, divisions, partnerships and/or corporations, executors, administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest to or of a Party. The "Effective Date" of this Agreement shall be the date on which the last of all the Parties and signatories has executed any copy hereof.

RECITALS

WHEREAS, a dispute has arisen between the Parties concerning certain promises to pay money, which dispute has resulted in consolidated civil actions pending in Miami-Dade County Court, Civil Division, styled *Group of Lenders Assembled on the Loan v. Juan Carlos Ventura and Jose M. Ventura*, Case No. 2012-038306 CA 01 (21) and *Gerard R. Collins and Additional Lenders Organized by M.A.M.C., Incorporated and M.A.M.C. Incorporated*, Case No. 2015-017301 CA 01 (21) (the "Court Cases"); and

WHEREAS, the Parties have determined and agreed that a settlement of the matters raised in the Court Cases is appropriate and would best serve the interests of all of the Parties;

WHEREAS, the VENTURAS provided LENDERS with sworn disclosures of their assets ("Sworn Disclosures") and that LENDERS relied on those Sworn Disclosures in reaching their decision to settle.

NOW, THEREFORE, for and in consideration of the following, the foregoing, the mutual covenants, promises, agreements, representations, and releases contained herein, and in exchange for other good and valuable consideration, the receipt, sufficiency, and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

AGREEMENT

1. Compromise and Settlement.

1.1. Settlement. JOSE M. VENTURA and JUAN CARLOS VENTURA shall pay or cause to be paid the amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00), in the form of a check made payable to The Law Offices of Robert L. Parks, P.L. Trust Account.

This amount is to be paid according to the following payment schedule. (the "Settlement Payments"):

PAYMENT SCHEDULE

- 1) December 1, 2016: \$150,000.00

- 2) June 30, 2017: \$250,000.00

- 3) December 31, 2017: \$200,000.00

- 4) June 30, 2018: \$500,000.00

- 5) December 31, 2018: \$500,000.00

- 6) June 1, 2019: \$500,000.00

- 7) December 31, 2019: \$250,000.00

- 8) March 1, 2020: \$250,000.00

These Settlement Payments and the Sworn Disclosures of assets owned at the time of signing this Agreement are JUAN CARLOS VENTURA and JOSE M. VENTURA's sole obligations in connection with the settlement of the Court Cases and is intended to also include settlement of the damages claimed by LENDERS in the Court Cases.

2. Mutual General Release and Covenant Not to Sue. Except for those obligations created by virtue of this Agreement, LENDERS to VENTURAS and VENTURAS to LENDERS, and each of their past, present, and future directors, officers, legal and equitable owners, shareholders, members, managers, principals, employees, associates, representatives, distributees, agents, attorneys, trustees, general and limited partners, lenders, insurers and reinsurers, direct and indirect parents, subsidiaries, affiliates, related entities, divisions, partnerships and/or corporations, executors, administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest, hereby finally and forever remise, release, relinquish, acquit, satisfy, and forever discharge, with prejudice, each other, of and from all, and all manner of action and actions, cause and causes of action, suits,

rights to conduct discovery, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which either Party, or which any past, present, and future directors, officers, legal and equitable owners, shareholders, members, managers, principals, employees, associates, representatives, distributees, agents, attorneys, trustees, general and limited partners, lenders, insurers and reinsurers, direct and indirect parents, subsidiaries, affiliates, related entities, divisions, partnerships and/or corporations, executors, administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest of said Party, has, hereafter can, shall or may have against the other Party, for, upon, or by reason of any matter, cause or thing whatsoever, whether or not currently asserted, known or discoverable, from the beginning of the world to the Effective Date, including but not limited to any and all claims directly or indirectly on, or in any way arising from, concerning, or related to the Court Cases.

3. **Miscellaneous.** (i) The provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective parents, subsidiaries, affiliates, divisions, principals, shareholders, heirs, executors, personal representatives, administrators, successors, transferees, and assigns; (ii) this instrument constitutes the entire understanding among the Parties with respect to the subject matter hereto, and neither this Agreement, nor any provision or term of this Agreement, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by the Parties; (iii) the Parties enter into this Agreement freely, after good faith, arm's-length bargaining, with the advice of counsel, and in the absence of coercion, duress, and undue influence; (iv) time is of the essence with respect to any Party's obligation to pay any sums as set forth herein; (v) this Agreement shall be deemed and treated as if drafted jointly by the Parties, and no term, condition, or provision of this Agreement shall be construed more strictly against any Party; (vi) this Agreement shall be governed by and construed in accordance with the laws of the State of Florida; (vii) in the event of any dispute arising out of this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and costs incurred at all pretrial, trial and appellate levels, only as to the Party or Parties prevailed against; (viii) the captions and headings within this Agreement are for ease of reference only and are not intended to create any substantive meaning or to modify the terms following them or contained in any other provision of this Agreement.

4. **Default.** In the event that VENTURAS either individually or together fail to pay to LENDERS the monies set forth in Paragraph 1.1 as indicated in the "Payment Schedule" set forth in Paragraph 1.1 of the Agreement, LENDERS may send, via email, a notice of default to VENTURAS through their attorney, Raymond Carrero, Esq., Raymond Carrero, P.A., Dadeland Square, 7700 N. Kendall Drive, Suite 809, Miami, Florida 33156, ray@carrerolegal.com. Should VENTURAS either individually or together fail to make said payments, LENDERS shall be entitled to an ex-parte default judgment, without hearing, against VENTURAS, jointly and severally, in the amount of \$9,000,000.00 minus any amount received at the time of default, upon the filing of an affidavit of default, without further notice to VENTURAS. In the event that VENTURAS either fail to disclose an asset as described in Paragraph 1.1 or fail to obtain written permission from LENDERS to sell, transfer or alienate any asset disclosed, LENDERS shall be entitled to an ex-parte default judgment, without hearing, against VENTURAS, jointly and severally, in the amount of \$9,000,000.00 minus any amount received at the time of default,


upon the filing of an affidavit of default, without further notice to VENTURAS. Nothing in this paragraph shall prohibit VENTURAS from conveying an asset to any person or entity holding a lien upon such asset in satisfaction of said lien (such as a deed in lieu of foreclosure or a deed in lieu of repossession of the asset).

5. **Authority.** The Parties agree that this Agreement is subject to approval by the Court. The Receiver shall file a motion with the Court seeking approval of this Agreement. All persons executing this Agreement, or any related documents, represent and warrant that they have the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms.

6. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. When the last of all of the Parties and signatories has executed any copy hereof, such execution shall constitute the execution of this Agreement for purposes of determining the Effective Date. The exchange of a fully executed Agreement in counterparts or otherwise by fax or email attachment shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties and signatories execute this Agreement as of the Effective Date hereof.

MICHAEL GOLDBERG, ESQ. in his capacity as Receiver of M.A.M.C. Incorporated, and representative for Plaintiffs



Signature

By: Michael Goldberg, Esq.
Signed on: July 14th, 2016.

JUAN CARLOS VENTURA

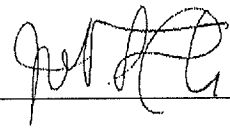


Signature

By: Juan Carlos Ventura
Signed on: July 9, 2016.

and

JOSE M. VENTURA



Signature

By: Jose M. Ventura
Signed on: July 9, 2016.

EXHIBIT 2

**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.

**ORDER APPROVING SETTLEMENT WITH JOSE M. VENTURA AND JUAN
CARLOS VENTURA, GUARANTORS OF THE V-STRATEGIC LOAN**

THIS MATTER came before the Court on _____, 2016, upon the hearing on the Motion for Entry of an Order Approving Settlement with Jose M. Ventura and Juan Carlos Ventura, Guarantors of the V-Strategic Loan (the "Motion"), filed by Michael I. Goldberg ("Receiver"), as the court appointed Receiver over Defendants Berman Mortgage Corporation and M.A.M.C. Incorporated and Relief Defendants DB Atlanta, LLC, *et al.* The Court, having reviewed the Motion, heard argument of counsel, finding that the notice and established procedures of posting the Motion on the Receivership website and e-mail distribution to the Lenders, who participated in the loan to V-Strategic, LLC, constitutes adequate notice of this

Motion, the hearing thereon and this Order, and being otherwise fully advised in the premises, does:

ORDER AND ADJUDGE that:

1. The Motion is GRANTED.
2. The Court approves the Settlement Agreement executed by the Receiver, in his capacity as Receiver of MAMC and as representative for the lenders who participated in the loan to V-Strategic, LLC, and Jose M. Ventura and Juan Carlos Ventura, as guarantors of the V-Strategic, LLC loan in the consolidated civil actions¹ pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida on this ____ day of _____, 2016.

THE HONORABLE JERALD BAGLEY
CIRCUIT COURT JUDGE

Conformed copies to:

All counsel of record
Posted to the Receiver's Web Site

¹ The consolidated cases are: *Group of Lenders Assembles on the Loan v. Ventura, et al.*, Case No. 2012-038306-CA 01 (21) and *Gerard R. Collins and Additional Lenders Organized by M.A.M.C., Incorporated v. V-Strategic Group, LLC*, Case No. 2015-017301 CA 01 (21).