

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.

**PLEASE READ THIS MOTION CAREFULLY AS IT MAY
AFFECT YOUR RIGHTS. PLEASE CONSULT YOUR
ATTORNEY IF YOU HAVE ANY QUESTIONS.**

**THIS COURT WILL HOLD A HEARING AT THE MIAMI-DADE
COURTHOUSE ON MARCH 12, 2010 AT 9:00 A.M. TO CONSIDER THIS
MOTION AND THE RELIEF REQUESTED HEREIN. IF YOU HAVE ANY
OBJECTION TO THE APPROVAL OF THE MOTION AND RELIEF
REQUESTED, YOU MUST ATTEND THE HEARING, OTHERWISE YOU
WILL BE BOUND BY THE TERMS OF THE BAR ORDER. THE DATE,
TIME AND LOCATION OF THE HEARING WILL ALSO BE POSTED ON
THE RECEIVERSHIP WEBSITE AND A NOTIFICATION WILL BE E-
MAILED TO ALL BMC/MAMC LENDERS AND CREDITORS AS TO
THE EXISTENCE OF THE WEB PAGE POSTING.**

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

Michael I. Goldberg ("Receiver"), 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.*, by and through undersigned counsel, files this Motion for Approval of Settlement Agreement and Entry of Bar Order Conditionally Enjoining Lenders and Receivership Creditors From Prosecuting Claims Against MAMC's former Auditor. In support of this motion, the Receiver states as follow:

1. On December 11, 2007, the Florida Office of Financial Regulation filed a complaint (the "Complaint") seeking an injunction against BMC, MAMC, Dana J. Berman (collectively, the "Defendants") and other related entities (the "Relief Defendants") and requesting appointment of a receiver.

2. The Complaint alleged that BMC and MAMC sold unregistered securities in the form of fractionalized interests in mortgages, operated as an unregistered securities dealer, made misrepresentations to investors, and misapplied investors' monies in connection with the funding of commercial mortgage loans.

3. The Complaint also alleged that BMC and MAMC obtained at least \$192,000,000 from more than 700 individual investors (the "Lenders"). The Lenders' monies were used to fund the acquisition and construction of commercial real estate projects, many of which are incomplete or in default. A LIST OF THE LENDERS – EACH OF WHOM WILL BE BOUND BY THE BAR ORDER PROPOSED TO BE ENTERED IN CONNECTION WITH THIS SETTLEMENT – IS ATTACHED AS EXHIBIT A. A LIST OF THE

RECEIVERSHIP CREDITORS - EACH OF WHOM WILL BE SIMILARLY BOUND BY THE BAR ORDER PROPOSED TO BE ENTERED IN CONNECTION WITH THIS SETTLEMENT - IS ATTACHED AS EXHIBIT B. THESE LENDERS AND RECEIVERSHIP CREDITORS ARE COLLECTIVELY REFERRED TO AS "ENJOINED PARTIES" IN THE PROPOSED BAR ORDER.

4. This motion does not seek to bar any governmental agency from prosecuting any claims, whether civil or criminal, it may have against MAMC's former auditor.

5. 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").

6. 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).

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

8. The Receiver is authorized to receive and collect all sums of money due and owing to the Receivership Defendants (Receivership Order at ¶ 20). Moreover, 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 (Receivership Order at ¶ 21).

9. 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 Auditors 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 thereto.

10. 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.

11. The Receiver, Class Members, MAMC’s former Auditors, the Auditors Insurer and their respective counsel have been engaged in protracted settlement discussions over the course of several months in an effort to settle their claims in the Lawsuit. This includes obtaining an order barring claims of individual investors and Receivership Creditors against MAMC’s former Auditor and its Insurer arising from transactions connected with MAMC and BMC.

12. The Receiver believes that it is in the best interest of all parties to avoid the cost, expense and uncertainty of litigation by settling the claims on the terms and conditions set forth in the Settlement Agreement executed by the parties. A copy of the Settlement Agreement shall be provided to the Court upon request.

13. ALTHOUGH THE MATERIAL TERMS OF THE SETTLEMENT AGREEMENT ARE SUMMARIZED HEREIN, THE LENDERS AND RECEIVERSHIP CREDITORS AND ALL OTHER INTERESTED PARTIES ENTITLED TO NOTICE IN THIS CASE ARE URGED TO READ THE SETTLEMENT AGREEMENT IN ITS ENTIRETY.

14. In exchange for a settlement payment of Thirteen Million and 00/100 Dollars (\$13,000,000.00), the Receiver and the prospective class members shall provide MAMC’s

former Auditor and its Insurer with a general release of claims they have against MAMC's former Auditor and its Insurer and are obligated to seek and obtain a Bar Order permanently barring the claims of all Lenders identified on the attached Exhibit A and are obligated to seek a Bar Order permanently barring the claims of all Receivership Creditors identified on the attached Exhibit B against MAMC's former Auditor and its Insurer, except as expressly limited by the terms of the release (the "Bar Order").

15. The Settlement Agreement is expressly conditioned upon the Receiver obtaining Court approval of all of the terms of the Settlement Agreement including, but not limited to, the entry of an order barring the Lenders and Receivership Creditors from bringing claims against MAMC's former Auditor and its Insurer. If the Receiver is unable to obtain the Bar Order, the Settlement Agreement shall be null and void and the parties shall be restored to the status quo.

16. The Receiver believes the Settlement Agreement is in the best interest of all Lenders, Receivership Creditors and the Receivership Defendants. The Executive Committee, comprised of eleven Lenders, has voted to authorize and direct the Receiver to enter into this Settlement. The Receiver also believes that the settlement terms are fair and reasonable in light of its terms and conditions.

17. By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction. Art. V, § 5(b), Fla. Const.; Fla. Stat. § 26.012(2)(c).; *Terex Trailer Corp. v. McIlwain*, 579 So.2d 237, 241 (Fla. 1 Dist. 1991); *English v. McCray*, 348 So.2d 293, 298 (Fla. 1977), citing *State ex rel. B.F. Goodrich Co., et al. v. Trammell, et al.*, 140 Fla. 500, 192 So. 175 (1939). As a court of equity, this court is vested with jurisdiction to enter the Bar Order.

18. The avoidance of a multiplicity of lawsuits is a basis to invoke equitable jurisdiction. *See Realty Bond & Share Co. v. Englar*, 142 So. 152, 154, 104 Fla. 329 (Fla. 1932) (The prevention of a multiplicity of actions at law is one of the special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used.) *See also Dotolo v. Schouten*, 426 So.2d 1013, 1015 (Fla. 2d DCA 1983); *NEC Electronics, Inc. v. VG Sales Co.*, 655 So.2d 1146, 1147 (Fla. 4th DCA 1995).

19. The Receiver seeks the entry of a Bar Order in order to prevent a multiplicity of suits against MAMC's former Auditor. The Settlement Agreement represents a fair and equitable resolution of the costs, delay, and uncertainty that would occur if the Receiver and multiple other parties proceeded with competing litigation against MAMC's former Auditor. Furthermore, if the Court allows the Lenders and Receivership Creditors to prosecute independent lawsuits on their individual claims, it risks the results of unequal recovery and depletion of funds available to all of the Lenders and Receivership Creditors. Accordingly, the entry of a Bar Order is a proper exercise of this Court's jurisdiction and in the best interest of the Receivership Entities, MAMC's former Auditor, the Lenders and Receivership Creditors.

20. A copy of this motion is being sent to (i) all persons who have filed a Notice of Appearance in this case; (ii) MAMC's former Auditor; (iii) all of the Lenders; (iv) all Receivership Creditors; and (v) any other persons who will be bound by the Bar Order upon its entry (collectively the "Noticed Parties").

21. The Noticed Parties are hereby informed of their right to attend, and be heard at, the hearing on approval of the motion for approval of this Agreement

WHEREFORE, the Receiver, Michael I. Goldberg, requests this Honorable Court to:

(i) enter an Order Approving the Settlement Agreement in the form attached hereto as EXHIBIT C; (ii) enjoin the Lenders and Receivership Creditors from prosecuting claims not otherwise excluded by the terms of the release against MAMC's former Auditor; (iii) reserve jurisdiction to enforce the terms of the Settlement Agreement; and (iv) grant such other relief as is just and proper.

Respectfully submitted,

Michael A. Hanzman, Esq.
2525 Ponce de Leon Boulevard
Suite 700
Coral Gables, Florida 33134

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was filed with the Court on this _____ day of _____, 2010. Upon receipt of a hearing date, the motion will be sent by U.S. mail to all parties on the attached Service List and a Certificate of Service will be filed with the court.

MICHAEL A. HANZMAN, P.A.
2525 Ponce de Leon Boulevard
Suite 700
Coral Gables, Florida 33134

By: _____
Michael A. Hanzman, Esq.
Florida Bar Number: 510637

**Additional Service List For
Receiver's Motion For Approval Of Settlement Agreement And Entry Of Bar Order
Conditionally Enjoining Lenders and Receivership Creditors From Prosecuting Claims
Against MAMC's former Auditor**

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