

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

CASE NO. 07-43672 CA 09

Plaintiff,

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.

**RECEIVER'S MOTION TO (I) EXPAND RECEIVERSHIP TO INCLUDE
MAMC IBEX, LLC, AS A RELIEF DEFENDANT (II) APPROVE
THE TRANSFER OF REAL PROPERTY TO MAMC IBEX, LLC
AND (III) LOAN FUNDS TO MAMC IBEX, LLC**

Michael I. Goldberg ("Receiver"), as 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 his Motion to (I) Expand Receivership to Include MAMC IBEX, LLC, as a Relief Defendant, (II) Approve the Transfer of Real Property to MAMC IBEX, LLC and (III) Loan Funds to MAMC IBEX, LLC. In support of this motion, the Receiver states as follow:

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.

2. During the real estate boom in the mid-2000's, BMC invested in 100 real estate projects and vacant properties, using \$192 million in funds loaned from approximately 640 individual lenders ("Lenders"). The loans were secured by the properties.

3. MAMC serviced the loans pursuant to servicing agreements entered into between the individual Lenders and MAMC. Initially, MAMC serviced about 100 mortgage loans.

4. BMC extended a loan to IBEX Cheoah, I, LLC ("IBEX") for the purchase of approximately 137 acres of real property located in the Cochran's Creek area of Yellow Creek Township, Graham County, North Carolina (the "Property"). The loan was evidenced by a Promissory Note and secured by a First Deed of Trust and Security Agreement ("Deed of Trust"), Assignment of Leases and Rentals and other loan Documents (collectively, the "Loan Documents"). The Deed of Trust was granted to the individual Lenders based on the proportional share of funds they contributed to the loan. The Deed of Trust was recorded in the Graham County Register of Deeds on January 19, 2007.

5. The loan was serviced by MAMC. A dispute arose between IBEX and BMC, Dana Berman and MAMC (the "BMC Parties") concerning the Loan Documents and IBEX filed a lawsuit against the BMC Parties. The lawsuit was stayed by the receivership case. However, IBEX obtained relief from the Receivership Order to proceed with the lawsuit. Thereafter, IBEX and the Receiver entered into a mediated settlement (the "IBEX Settlement"). On December 3, 2008, the IBEX Settlement was approved by Order of this court.

6. Under the terms of the IBEX Settlement, IBEX agreed to dismiss its lawsuit against the BMC Parties and to make a settlement payment in the sum of \$50,000 to the Receiver. The Receiver agreed to modify the Loan Documents to reflect a principal balance of \$550,000 under the Promissory Note and revise the maturity date ("Maturity Date") for payment of the principal balance of the Promissory Note to December 3, 2012, at which time all of the outstanding principal shall be due and payable, without any defense claim or right to set-off.

7. On June 11, 2009, the Receiver and IBEX entered into a Modification of Promissory Note, First Deed of Trust and Security Agreement, Assignment of Leases and Rentals, and Other Loan Documents and Cancellation of Certain Related Loan Documents (the "Modified Loan Documents"). The Modified Loan Documents were recorded in the Graham County Register of Deeds on June 17, 2009.

8. IBEX defaulted under the terms of the Modified Loan Documents due to its failure to pay the 2011 real property taxes. In lieu of defending a foreclosure proceeding, IBEX agreed to transfer its ownership in the Property to MAMC IBEX, LLC (which shall hold the Property for the benefit of the Lenders).

9. Counsel for IBEX and real estate counsel for the Receiver have executed documents to memorialize the transfer of the Property. The Lenders, through their servicing agent, MAMC, have agreed that the Property shall be held in the name of MAMC IBEX, LLC and have agreed to assign (the "Assignment") their interest in the Loan Documents and Modified Loan Documents to MAMC IBEX, LLC. IBEX has agreed to execute a General Warranty Deed in favor of MAMC IBEX, LLC and the parties have agreed to enter into additional documents as needed to consummate the orderly transfer of the Property without the need for litigation.

10. The Receiver seeks authority from this court to expand the receivership to include MAMC IBEX, LLC as a Relief Defendant and to enter into the Assignment and other closing documents on behalf of the Receivership Defendants.

11. The Receiver also seeks authority to loan MAMC IBEX, LLC the sum of \$9,289.00 to obtain insurance, pay the outstanding real property taxes for the Property and cover other closing costs.

12. As the Court is aware, the Receiver previously settled a large malpractice claim against MAMC's former accountants. Pursuant to authority granted by this Court, the Receiver made a distribution of a portion of the malpractice settlement funds to investors.

13. With the Court's permission, the Receiver held back several million dollars of the malpractice settlement proceeds to fund future and current administrative expenses as well as to make loans to various projects on an as-needed basis.

14. As with the other loans approved by this Court, the loan is not being made merely based on need. Rather, a loan is 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.

15. MAMC IBEX, LLC will be charged interest at the rate of four percent (4%) per annum, simple interest. Currently, the funds are being held in the Receiver's law firm's trust account and are earning substantially less interest. Accordingly, making the loan is a win-win situation for the receivership estate which will earn better interest than it is currently earning.

16. The Receiver has consulted with the Executive Committee of Lenders and IBEX Committee, who believe making this loan is in the best interest of the receivership estate. The Receiver and the IBEX Lender Committee believe the loan is fully secured by the value of the

Property. The loan, together with all accrued interest, will be payable upon sale of the Property. Moreover, the Property will reimburse the receivership estate \$250 in costs incurred in obtaining approval of this loan. (This fee will be added to the outstanding loan balance.)

WHEREFORE, the Receiver requests the Court to authorize the Receiver to expand receivership to include MAMC IBEX, LLC, as a Relief Defendant, approve the transfer of real property to MAMC IBEX, LLC, loan funds to MAMC IBEX, LLC and grant such other relief as is just and proper.


Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was furnished via e-mail and U.S. Mail to all parties on the attached Service List this 28 day of Nov., 2012 and was posted on the Receiver's website.

By: 
Michael I. Goldberg

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