

**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 AUTHORIZE DISTRIBUTION
OF PROCEEDS OF THE SALE OF THE MAMC IBEX, LLC PROPERTY**

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 Authorize Distribution of Proceeds of the Sale of the MAMC IBEX, LLC Property* (the "Motion"). In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, this Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* ("Receivership Order") appointing Michael Goldberg as the receiver for BMC and MAMC (the "Defendants") and the Relief Defendants (collectively, the

“Receivership Defendants”) to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the investors (the “Lenders”) who entrusted over \$192 million (“Lender Funds”) to the Receivership Defendants.

2. The Lender Funds were secured by mortgages on approximately 40 real estate projects and properties. As mortgagors defaulted on their loans, and if they were not an original Relief Defendant, the Receiver obtained Orders of this Court adding the projects to the receivership as additional relief defendants.

3. One of the loans was made to Ibex Cheoah, 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. The loan was serviced by MAMC.

4. The Loan Documents provided for an initial \$2 million loan to IBEX and four subsequent \$500,000 future advances. However, certain conditions precedent must have occurred before MAMC funded the future advances. After a dispute arose between IBEX and BMC, Dana Berman and MAMC (the "BMC Parties") concerning the future advances, IBEX filed a lawsuit against the BMC Parties.

5. 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. Moreover, the Receiver was entitled to the sum of \$192,655.05 (with the \$50,000, the "Settlement Proceeds") which had been held in trust during the dispute.

7. 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 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 claim or right to set-off.

8. On June 11, 2009, the Receiver and IBEX entered into modified loan documents, which were recorded in the Graham County Register of Deeds on June 17, 2009.

9. On July 29, 2009, the Court approved payment of administrative costs and the distribution of the net Settlement Proceeds to the Lenders in the sum of \$151,577.50.

10. IBEX subsequently 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, a special purpose entity created to hold title to the Property.

11. On January 30, 2013, the Court entered an Order granting the Receiver's motion to include MAMC IBEX, LLC as a Relief Defendant. The Court also granted the Receiver's request to loan MAMC IBEX, LLC funds to obtain insurance, pay outstanding real property taxes and cover closing costs.

{38237682;1}

12. Upon entry of the *Order Authorizing Distribution of the Proceeds from Insurance Settlement*, dated July 22, 2015, the Lenders received a second pro rata distribution in the sum of \$72,422.13.

13. The Court also authorized the Receiver to market the Property for sale. On March 15, 2016, the Receiver filed a Motion to Approve Sale of the IBEX Property (the "Sale Motion"). On April 15, 2016, the Court approved the Sale Motion and thereafter, the Receiver closed on the sale of the Property for the sum of \$215,000.00.

14. After payment of the broker's commission, documentary stamp taxes, fees and other closing expenses, the Receiver is in possession of net sale proceeds in the sum of \$196,576.86 (the "Sale Proceeds").

15. In addition to making a pro rata distribution to the Lenders, MAMC IBEX, LLC has incurred other priority expenses which it seeks to pay from the Sale Proceeds.

16. The Receiver seeks authority to distribute the Sale Proceeds as described in the attached **Exhibit 1**.

17. Thereafter, the Receiver will make a third distribution to the Lenders in the sum of \$152,690.51.

18. The Receiver has consulted with the IBEX lender committee¹, who has advised the Receiver that they approve of his making a third distribution.

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

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C., and related entities, respectfully request this Court to enter an Order in the form

¹ At the outset of the receivership, the Receiver set up committees comprised of lenders for each loan and one overall committee made up of at least one lender from each loan ("Executive Committee") to advise the Receiver.

attached hereto as **Exhibit 2** approving the sale and to grant such further relief as is just and proper.

Respectfully submitted,

AKERMAN LLP

Counsel for the Receiver

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By: /s/ Joan Levit

Joan M. Levit, Esquire

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this May 18, 2016, a true and correct copy of the motion 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 posted on the receivership website.

/s/ Joan Levit

Joan Levit, Esq.

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EXHIBIT 1

MAMC IBEX, LLC

Historical Information

Original Loan Amount	\$ 2,000,000.00
1st Distribution- 2009	\$ (151,577.50)
MTG Modification	\$ (1,298,422.50)
2nd Distribution - 2015 E & O	\$ (72,422.13)
Current Balance	\$ 477,577.87

Sale Proceeds

Sales Price	\$ 215,000.00
Closing costs	\$ (18,561.00)
Net proceeds	\$ 196,439.00

Cash in Bank - BofA	\$ 137.86	As of 4/25/16
Total available for distribution	\$ 196,576.86	

Internal Deductions (carrying costs) - MAMC ESTATE

Priority Loan Payoff - Principal	\$ (21,653.48)
Interest on PL - 4/21/2016	\$ (2,036.03)
Legal PL - 11/30/15	\$ (12,496.85)
Recent Legal Costs	\$ (4,500.00) ESTIMATE
2016 Accounting	\$ (500.00)
2016 Final Return Accounting & Mailing Expenses	\$ (1,500.00)
Distribution Motion PREP	\$ (1,200.00)
Total Due to Recivership Estate	\$ (43,886.36)

Net Distribution to Lenders \$ 152,690.51

Recovery based on current loan balance

Current Balance	\$ 477,577.87
Net Distribution to Lenders	\$ 152,690.51
Recovery	31.97%

Total Recovery

Original Loan Amount	\$ 2,000,000.00
Total principal recovery	\$ 376,690.14
Recovery	18.83%

NOTES

Does not include interest.

EXHIBIT 2

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

CIRCUIT CIVIL DIVISION

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,

Defendants,

and

DB ATLANTA, LLC, a Florida limited liability
company, *et al.*,

Relief Defendants.

**ORDER AUTHORIZING DISTRIBUTION OF
PROCEEDS OF THE SALE OF THE MAMC IBEX, LLC PROPERTY**

THIS MATTER came before the Court on _____, 2016, at the hearing on the *Motion to Authorize Distribution of Proceeds of the Sale of the MAMC IBEX, LLC Property* (the "Motion"), filed by Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation, 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 to the Receivership website and e-mail distribution to the lenders, 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 Receiver is authorized to distribute the proceeds of the sale of the MAMC

IBEX, LLC Property as more fully described in **Exhibit 1** to the Motion.

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