

**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.

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**RECEIVER'S MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE RECEIVER TO INITIATE  
FORECLOSURE CASES RELATING TO THE OCEANSIDE AND  
DBKN GULF PROPERTIES IN PASCO COUNTY, FLORIDA  
AND TO TRANSFER THE FORECLOSURE CASES TO THE  
RECEIVERSHIP COURT FOR LITIGATION PURPOSES**

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 Authorizing the Receiver to Initiate Foreclosure Case relating to the Oceanside and DBKN Gulf Properties in Pasco County, Florida and Transfer the Foreclosure Cases to the Receivership Court for Litigation Purposes (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 for Temporary and Permanent Injunction and Appointment of Receiver.

2. 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") to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the Lenders.

**A. The Properties**

4. Oceanside Acquisitions, LLC ("Oceanside") is one of the original Relief Defendants. Oceanside is an entity formed by Dana Berman and Keith Novak to purchase condominium units ("Oceanside Units") located at the Gulf Island Resort & Tennis Club ("Gulf Island Resort") in Pasco County, Florida.

5. Oceanside borrowed \$1,700,000 from thirty-eight of the Lenders to fund the purchase of the Oceanside Units. The loan was secured by the Oceanside Units and other related property as evidenced by the loan documents, including a First Mortgage and Security Agreement and a Second Mortgage and Security Agreement recorded in the Official Records of Pasco County, Florida. The loan was serviced by MAMC and is in default.

6. DBKN Gulf Incorporated, LLC ("DBKN Gulf") is another of the original Relief Defendants. DBKN Gulf was formed by Dana Berman and Keith Novak to purchase a parcel of vacant land adjacent to the Oceanside Units at the Gulf Island Resort (the "Vacant Land").

7. DBKN Gulf borrowed \$990,000 from twenty-four of the Lenders to fund the purchase of the Vacant Land. The loan was secured by the Vacant Land as evidenced by the loan documents, including a Mortgage and Security Agreement and a Notice of Future Advance; Modification of Note, Mortgage and Related Loan Documents recorded in the Official Records of Pasco County, Florida. The loan was serviced by MAMC and is in default.

#### **B. The Legal Challenges**

8. The Oceanside Units and the Vacant Land (collectively, the "Properties") have been the subject of multiple litigation and disputes since 2003. Lawsuits were filed in Pasco County as a result of non-payment of real property taxes and condominium assessments remain unpaid. However, as a result of the Receivership case, this Court (the "Receivership Court") stayed all foreclosure actions and other forms of collection against the Properties.

9. Alex Bistricher ("Bistricher") a prior owner of the Properties, asserted an interest in the Properties and commenced a quiet title action (the "Quiet Title Action") in Pasco County Circuit Court styled *Alex Bistricher, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Case No. 51-2003-CA-942ES.

10. After the commencement of the receivership, the Quiet Title Action was transferred to the Receivership Court. *See, Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*, dated June 13, 2008. The Receivership Court subsequently entered final summary judgment in favor of the receivership estate. In 2009, Bistricher appealed the Receivership Court's ruling to the Third District Court of

Appeals, Case No. 3D09-3002, which affirmed the decision of the Receivership Court. Thereafter, Bistricher appealed to the Florida Supreme Court, Case No. SC11-1213. On December 12, 2011, the Florida Supreme Court dismissed the appeal for lack of jurisdiction.

**C. Sale of Oceanside Units**

11. The Receivership Court has authorized the Receiver to sell individual Oceanside Units. Recently, in December of 2012, the Receivership Court entered an Order Granting Receiver's Motion for Entry of an Order Approving the Sale of Unit 401.

12. The sale of Unit 401 was problematic. The sale was "as is" due to its poor condition, including intrusion of mold. (This Court has previously found that the Oceanside Units were in a state of disrepair.<sup>1</sup>)

13. The Buyer had originally offered \$90,000 to purchase Unit 401 if the Receiver included a dock slip and parking space. However, upon receipt of the closing expenses, the Receiver discovered that the receivership estate would only lose approximately \$15,000 from the sale of Unit 401 as the parking space and boat slip have a value of \$20,000 if sold independently of a unit. The closing expenses totaled \$85,000, which included \$28,925 in real estate taxes and \$46,013.27 in monthly and special assessments owed to the Gulf Island Beach and Tennis Club Condominium Association, Inc. (the "Condominium Association").

14. The Receiver considered cancelling the sale of Unit 401 because he could not justify the sale if there was no benefit to the receivership estate.

15. The Receiver examined ways to reduce the closing costs. The Receiver asked the sales agent to reduce her commission, and she agreed. The Receiver also asked the condominium association to waive the \$12,835.30 in interest that had accrued on the

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<sup>1</sup> See Order Granting the Receiver's Motion to Sell the Property of Oceanside Acquisitions, LLC Free and Clear of Liens, Claims and Encumbrances, dated September 1, 2009.

assessments. Although the Condominium Association has been cooperative and eager to have the Receiver sell the Oceanside Units,<sup>2</sup> the Condominium Association refused to reduce the 15% interest on the unpaid assessments relating to Unit 401.

16. The Receiver was only able to complete the sale of Unit 401 for the benefit of the Lenders by selling dock slip and parking space separate from Unit 401.

17. The Vacant Land and nine Oceanside Units remain unsold. The Lenders will only recover their investments if the liens are reduced. Filing a foreclosure action will benefit the receivership estate.

#### **D. Relief Requested**

18. The Receiver aims to provide clear title to potential purchasers of the Properties. The Receiver envisions filing two separate foreclosure cases, one for the Vacant Land and the other for the Oceanside Units.

19. The Florida Statutes, Sec. 47.011 provides that "Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located." However, the Receivership Court has exclusive jurisdiction over all of the assets of the Receivership Defendants (Receivership Order ¶ 3). Accordingly, the Receiver seeks authorization from the Receivership Court to file the foreclosure cases in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, but to transfer the foreclosure cases to the Receivership Court through the entry of Final Judgment. Thereafter, the Receiver shall transfer the cases back to Pasco County for the purpose of scheduling the foreclosure sale.

20. The Receiver is authorized to take such action as he deems advisable or proper for the marshaling, maintenance or preservation of the receivership assets. *See* Receivership Order

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<sup>2</sup> On June 26, 2012, the Condominium Association filed a Motion Compelling the Receiver to Market and Sell the Oceanside Condominium Units or to Compel Receiver to Pay Past Due and Future Condominium Assessments.

at ¶ 17. The Receiver believes that filing the foreclosure cases is in the best interest of the receivership and is the best opportunity for the Lenders to partially monetize their investment in the Properties. Moreover, the Receiver believes that the Receivership Court is uniquely able to quickly and efficiently resolve any anticipated disputes that may arise relating the foreclosure cases.

21. 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 to advise the Receiver. The Receiver has consulted with the lender committees for Oceanside and DBKN Gulf each of whom have advised the Receiver that they approve his filing the foreclosure cases.

22. A proposed Order is attached hereto as **Exhibit 1**.

**WHEREFORE**, Michael I. Goldberg, in his capacity as Receiver over the Receivership Defendants, respectfully request this Court to enter an Order authorizing the Receiver to file foreclosure cases in Pasco County, Florida, transfer the foreclosure cases to the Receivership Court for litigation purposes and to grant such further relief as is just and proper.

Respectfully submitted,

**AKERMAN SENTERFITT**  
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By: 

Joan M. Levit, Esquire  
Florida Bar No. 987530

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12 day of February, 2013, a true and correct copy of the forgoing 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 sent to the Lenders who have an interest in this property by e-mail and posted on the receivership website.

By: \_\_\_\_\_

  
Joan M. Levit

**SERVICE LIST**

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# **EXHIBIT 1**

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

**CASE NO.: 07-43672 CA 09**

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BERMAN MORTGAGE CORPORATION,  
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INCORPORATED, a Florida corporation,  
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liability company, et al.,

Relief Defendants.

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**ORDER GRANTING RECEIVER'S MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE RECEIVER TO INITIATE FORECLOSURE CASES  
RELATING TO THE OCEANSIDE AND DBKN GULF PROPERTIES IN  
PASCO COUNTY, FLORIDA AND TO TRANSFER THE FORECLOSURE CASES  
TO THE RECEIVERSHIP COURT FOR LITIGATION PURPOSES**

**THIS MATTER** came before the Court on \_\_\_\_\_, 2013, upon the hearing on the Motion for Entry of an Order Authorizing the Receiver to Initiate Foreclosure Cases relating to the Oceanside and DBKN Gulf Properties in Pasco County, Florida and Transfer the Foreclosure Cases to the Receivership Court for Litigation Purposes (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, being familiar with the court file and otherwise fully advised in the premises, finds that good cause exists to:

**ORDER** that:

1. The Motion is granted.
2. The Receiver is authorized to file a Complaint to foreclose the mortgages(s) and related loan documents securing the loan to Oceanside Acquisitions, LLC. The loan was serviced by MAMC and is in default.
3. The Receiver is also authorized to file a Complaint to foreclose the mortgages(s) and related loan documents securing the loan to DBKN Gulf Incorporated, LLC. The loan was serviced by MAMC and is in default.
4. Since the properties securing the loans are located in Pasco County, Florida, the Receiver shall file the foreclosure cases in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida. Upon entry of the cases, the Clerk of the Court for the Sixth Judicial Circuit is instructed to transfer the cases to the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.
5. Thereafter, the Clerk of the Court for the Eleventh Judicial Circuit is instructed to transfer the cases to the Honorable Jerald Bagley, Civil Circuit Division 09.
6. This Court shall oversee the foreclosure cases through the entry of Final Judgment. Thereafter, the Clerk of the Court for the Eleventh Judicial Circuit is instructed to transfer the cases back to Pasco County for the purpose of scheduling the foreclosure sale.

**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida on this \_\_\_\_ day of \_\_\_\_\_, 2013.

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**THE HONORABLE JERALD BAGLEY  
CIRCUIT COURT JUDGE**

**Conformed copies to:**

All counsel of record

Posted to the Receiver's Web Site