

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR  
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Case No. 07-2492-CA

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida  
limited liability company, et al.,

Defendants.

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MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Michael I. Goldberg, as Receiver over MAMC Windward, LLC, M.A.M.C. Incorporated, and on behalf of the Second Mortgage Holders (as that term is defined in the Complaint), who have been served with process (hereinafter collectively referred to as the "Defendants") by and through undersigned counsel, files this Memorandum in Opposition to Plaintiff Kenneth D. Goodman, Trustee's Motion for Summary Judgment, seeking to have Plaintiff Kenneth D. Goodman, Trustee's Motion for Summary Judgment (the "Motion") denied or the hearing on the Motion continued<sup>1</sup>, and states as follows:

Overview

The Motion should be denied because the Parties have not had a reasonable opportunity to conduct discovery. The Defendants were served on August 3, 2008. Because M.A.M.C. Windward is in receivership, on behalf of M.A.M.C. Windward, on August 23, 2008, the Receiver filed a motion to stay this action. Although, the stay was denied, the order denying the

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<sup>1</sup> Although this Opposition repeatedly states that the Defendants seek denial of the Motion, in the alternative, the Defendants seek to have the hearing on the Motion continued until meaningful discovery has occurred.

motion was not issued until July 14, 2008, and by order of this Court, M.A.M.C. Windward was required to file its response to the Complaint on or before August 4, 2008 – it filed its Answer on August 1, 2008. Clearly, the Parties have had no time to conduct discovery in this matter, and the law could not be clearer about how courts should respond to summary judgment motions when discovery is pending and/or little or no discovery has been conducted – **they should be denied**. Because there has been virtually no time for the Parties to engage in discovery, and there is discovery pending, the Plaintiff's Motion for Summary Judgment should be denied.

**I. THE DEFENDANTS HAVE NOT HAD THE OPPORTUNITY TO ENGAGE IN MEANINGFUL DISCOVERY, AND THUS, THE MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED**

**A. The Procedural Background Plainly Establishes the Infancy of this Matter**

The Complaint in this matter was served upon the Defendants just 4 months ago, on April 3, 2008. See Summons served upon M.A.M.C. Incorporated, f/k/a Berman Mortgage Corporation, attached hereto as Exhibit "A." At the time the Complaint was served upon the Defendants, the Defendants were subject to Receivership Proceedings that began on December 11, 2007. The Receivership Proceedings are pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, and M.A.M.C. Incorporated is one of the defendants in the Receivership Proceedings. See Temporary Injunction and Agreed Order Appointing Receiver attached hereto as Exhibit "B." MAMC Windward is an asset of the Receivership, is Managed by M.A.M.C. Incorporated, and thus clearly is subject to the Receivership and the Receivership Order.<sup>2</sup> In fact, Judge Thomas Wilson, Jr., who presides over the Receivership Proceedings issued an order specifically expanding the receivership to include

<sup>2</sup> MAMC Windward was created to take title to assets that were collateral for a loan serviced by M.A.M.C. Incorporated and funded by The Investor Group for whose benefit the Receivership is primarily established. The former borrower filed bankruptcy and the lenders were converted to equity as part of a sale in the bankruptcy.

MAMC Windward. See Order Expanding Receivership to Included MAMC Windward attached hereto as Exhibit "C." Consequently, Windward lost the power to act on its own behalf. See, e.g., *O'Neal et al., v. General Motors Corp.*, 841 F. Supp. 391, 398 (M.D. Fla. 1993) ("Under Florida law, once a receiver is appointed for a business, the business loses power to transfer or otherwise act with regard to the property subject to the receivership."), citing *Sunland Mortgage Corp. v. Lewis*, 515 So.2d 1337, 1339 (Fla. 5<sup>th</sup> DCA 1987). See also, *Wilson et al., v. Hartman et al.*, 95 B.R. 841, 843, n. 4 (S.D. Fla. 1989) (same).

Therefore, on behalf of the Defendants, on April 23, 2008 – before any response to the Complaint was due – the Receiver filed a motion to stay the instant matter until further ruling by the Miami-Dade County Circuit Court. The motion to stay was denied, and an order denying the motion to stay was not issued until **July 14, 2008 (less than one month ago)**. See Order on Defendant MAMC Windward, LLC's Motion to Stay The Case Until Further Order of Judge Wilson attached hereto as Exhibit "D." Furthermore, and just as important, this Court issued an order on July 18, 2008, stating that M.A.M.C. Windward had to file a response to the Complaint by August 4, 2008. See Order on Defendant MAMC Winward, LLC's Motion for Enlargement of Time attached hereto as Exhibit "E." M.A.M.C. Windward complied with the order and filed an answer and affirmative defenses on August 1, 2008. See Answer and Affirmative Defenses attached hereto as Exhibit "F." Clearly, this case is in its infancy.

**B. Defendants Have Not Had the Opportunity to Conduct Meaningful Discovery**

This action has essentially been pending for just about 4 months, 3 months of which the Parties spent waiting for an order on a pending motion to stay. As such, the Defendants have not had the opportunity to conduct meaningful discovery, which, according to the Second Circuit Court of Appeals, warrants denial of the Motion:

Summary judgment should not be granted until the facts have been sufficiently developed for the court to be reasonably certain that no genuine issue of material fact exists. *Singer v. Star*, 510 So.2d 637, 639 (Fla. 4th DCA 1987). As a general rule, a court should not enter summary judgment when the opposing party has not completed discovery. *Singer*; *Colby v. Ellis*, 562 So.2d 356 (Fla. 2d DCA 1990). Here, the court granted summary judgment in favor of the defendant approximately six months after the plaintiff filed suit. Mr. Brandauer had not yet deposed any representative of the corporate defendant. While we reiterate that a party does not have an unlimited right to discovery before a hearing on a motion for summary judgment ... we hold the entry of summary judgment under these facts was premature.

*Brandauer v. Publix Super Markets, Inc.*, 657 So.2d 932, 933-34 (Fla. 2<sup>nd</sup> DCA 1995) (emphasis added). Just like in *Brandauer*, there have been no depositions taken here, although a deposition of the Plaintiff has been noticed. See Notice of Taking Deposition attached hereto as Exhibit "G." Even more, the instant case is more favorable to the Defendants than *Brandauer*, as in *Brandauer*, 6 months had gone by without discovery – only 4 months have passed in the instant matter.

Markedly, the First, Third, Fourth, and Fifth District Courts of Appeal all agree with the Second Circuit:

A summary final judgment is appropriate only when the moving party demonstrates that there are no genuine issues of material fact, and in addressing this issue the court must construe all inferences against the moving party. *Greenleaf v. Amerada Hess Corp.*, 626 So.2d 263 (Fla. 4th DCA 1993); *Spradley v. Stick*, 622 So.2d 610 (Fla. 1st DCA 1993). Because the factual underpinnings are critical, cases such as *Greenleaf* and *Spradley* caution that the courts should be reluctant to grant summary judgment before the opposing party has an adequate opportunity for meaningful discovery. See also *Smith v. Smith*, 734 So.2d 1142 (Fla. 5th DCA 1999). In opposing summary judgment below, appellant's counsel emphasized to the court that discovery in the case was "still in its infancy," no depositions had yet been taken, and that it was premature to grant summary judgment. We agree with appellant that it was error to grant summary judgment before allowing appellant an opportunity for meaningful discovery. We

further conclude that there are no uncontroverted facts which would justify summary judgment as a matter of law, and that the existence of unresolved factual issues precludes summary judgment at this stage.

*Ray's Plumbing Contractors, Inc. v. Trujillo Const., Inc.*, 847 So. 2d 1086, 1088-89 (Fla. 1st DCA 2003) (emphasis supplied); *Collazo v. Hupert*, 693 So.2d 631, 631 (Fla. 3d DCA 1997) (holding that a trial court should not entertain a motion for summary judgment while discovery is still pending). Like in all of the aforementioned appellate cases, there has not been an opportunity for meaningful discovery in this matter. Accordingly, the Motion should be denied.

**C. There is Pending Discovery**

In addition, there is discovery pending in this matter. In fact, the Plaintiff has served interrogatories upon the Defendants. See the Notice of Service of Interrogatories attached hereto as Exhibit "H." Clearly, the Plaintiff's own action of serving interrogatories indicates that the Plaintiff believes that there is a need to conduct discovery. Furthermore, the Defendants have served a notice of taking deposition of the Plaintiff. Obviously, then, there are issues that need to be resolved through discovery, and Florida law is well-settled that the entry of summary judgment is premature where discovery is pending:

It is axiomatic that Summary Judgment may not be granted unless the moving party is able to show that no genuine issues of material fact exist. See *Holl v. Talcott*, 191 So.2d 40, 43-44 (Fla. 1966); *Kemper v. First Nat'l Bank of Dayton, Ohio*, 111 So.2d 804 (Fla. 3d DCA 1973). Where discovery is not complete, the facts are not sufficiently developed to enable the trial court to determine whether genuine issues of material facts exist. See *Singer v. Star*, 510 So.2d 637, 639 (Fla. 4th DCA 1987). **Thus, where discovery is still pending, the entry of Summary Judgment is premature.** See *Smith v. Smith*, 734 So.2d 1142, 1144 (Fla. 5th DCA 1999) ("Parties to a lawsuit are entitled to discovery as provided in the Florida Rules of Civil Procedure including the taking of depositions, and it is reversible error to enter summary judgment when discovery is in progress and the deposition of a party is pending."); *Henderson v. Reyes*, 702 So.2d 616, 616 (Fla. 3d DCA 1997) (reversing the entry of Summary Judgment where

depositions had not been completed and a request for the production of documents was outstanding.); *Collazo v. Hupert*, 693 So.2d 631, 631 (Fla. 3d DCA 1997) (holding that a trial court should not entertain a motion for summary judgment while discovery is still pending); *Spradley v. Stick*, 622 So.2d 610, 613 (Fla. 1st DCA 1993); *Singer v. Star*, 510 So.2d 637 (Fla. 4th DCA 1987).

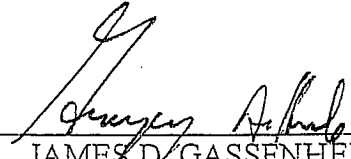
*Payne v. Cudjoe Gardens Property Owners Ass'n, Inc.*, 837 So. 2d 458, 461 (Fla. 3d DCA 2002) (emphasis supplied). Without being allowed to engage in the pending discovery, and other discovery that may stem there from, "the facts are not sufficiently developed to enable the trial court to determine whether genuine issues of material facts exist." *Id.* Accordingly, the Motion should be denied as a matter of law.

WHEREFORE, the Receiver, on behalf of MAMC Windward, LLC, M.A.M.C. Incorporated, and on behalf of the Second Mortgage Holders (as that term is defined in the Complaint), who have been served with process, respectfully requests that the Plaintiff's Motion for Summary Judgment be denied, and for such other and additional relief as the Court deems just and proper.

Respectfully Submitted,

BERGER SINGERMAN  
*Attorneys for Defendants*  
200 South Biscayne Boulevard, Suite 1000  
Miami, FL 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340

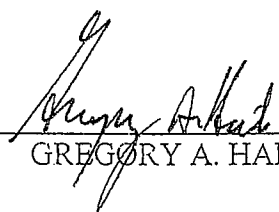
By: \_\_\_\_\_

  
JAMES D. GASSENHEIMER  
Florida Bar No. 959987  
GREGORY A. HAILE  
Florida Bar No. 606421

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 4th day of August, 2008 by E-Mail to **J. Michael Coleman, Esq.**, Coleman Hazzard & Taylor, P.A., 2640 Golden Gate Parkway, Suite 304, Naples, FL 34105, and by U.S. Mail to **Maurice Baumgarten, Esquire**, ANANIA, BANDKLAYDER, BLACKWELL, BAUMGARTEN, TORRICELLA & STEIN, Bank of America Tower – Suite 4300, 100 SE 2<sup>nd</sup> Street, Miami, FL 33131, **Charles L. Neustein, Esquire**, CHARLES L. NEUSTEIN, P.A., 777 Arthur Godfrey Road, Second Floor, Miami Beach, Florida 33140, **Scott A. McLaren, Esquire**, HILL, WARD AND HENDERSON, P.A., 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602, **Pete Hutchison Brock, II, Esquire**, JOHNSON, AUVIL, BROCK & WILSON, P.A., P.O. Box 2337, Dade City, Florida 33526, **William Dufoe, Esquire**, **Robert W. Lang, Esquire** and/or **William H. Bartlett, Esquire**, HOLLAND & KNIGHT, LLP, 100 North Tampa Street, Suite 4100, Tampa, Florida 33602, **Deborah Poore Fitzgerald, Esquire**, WALTON LANTAFF SCHROEDER & CARSON, LLP, Corporate Center, Suite 2000, 100 East Broward Boulevard, Fort Lauderdale, Florida 33301 and **Peter Valori, Esquire**, DAMIAN & VALORI, LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131.

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

  
GREGORY A. HAILE

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,  
Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida  
limited liability company, et al.,  
Defendants.

DATE: SEP 10 2008  
TIME: 10:50 AM  
BY: [Signature]  
BADGE # 000000  
MIAMI-DADE POLICE DEPARTMENT  
OFFICE OF THE  
METROPOLITAN SHERIFF  
COURT SERVICES BUREAU  
MIAMI-DADE COUNTY, FLORIDA  
CASE NO. 07-2492-CA

**SUMMONS**

TO: Berman Mortgage Corporation as to an undivided 26% interest C/O Registered Agent  
James Gassenheimer, Baker, Cronig, Gassenheimer LLP, 307 Continental  
PL., 3250 Mary St., Coconut Grove, FL 33133

A lawsuit has been filed against you. You have 20 calendar days after this summons and Notice of Lis Pendens is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court, you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

J. Michael Coleman, Esq.  
Coleman, Hazzard & Taylor, P.A.

2640 Golden Gate Parkway, Suite 304  
Naples, Florida 34105-3220  
(239) 298-5200

THE STATE OF FLORIDA

TO EACH SHERIFF OF THE STATE: You are commanded to serve this summons and a copy of the complaint in this lawsuit on the above-named defendant.

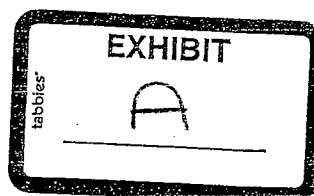
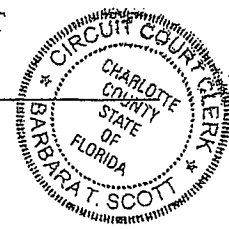
DATED this 3<sup>rd</sup> day of April, 2008.

In accordance with the Americans with Disabilities Act, if you are a person with a disability who needs accommodation in order to participate in the proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA coordinator at 350 East Marion Avenue, Punta Gorda, Florida 33950, telephone (941) 637-2281 within two (2) working days of your receipt of this notice. If you are hearing or voice impaired, call 1-800-955-8771.

BARBARA T. SCOTT  
CLERK OF THE CIRCUIT COURT

(SEAL)

BY: Jamie Boye  
As Deputy Clerk





## IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, a privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Se desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

\_\_\_\_\_  
Demandante o Abogado

\_\_\_\_\_  
Calle  
\_\_\_\_\_

## IMPORTANT

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligé de déposer votre réponse écrite, avec mention de numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pouvez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

\_\_\_\_\_  
Plaignant ou à son avocat

\_\_\_\_\_  
Rue  
\_\_\_\_\_

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,

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, DB DURHAM, LLC, a Florida Limited  
Liability Company, NORMANDY HOLDINGS II,  
LLC, a Florida Limited Liability Company, NORMANDY  
HOLDINGS III, LLC, a Florida Limited Liability Company,  
WATERSIDE ACQUISITIONS, LLC, a Florida Limited Liability  
Company, DBKN GULF INCORPORATED, a Florida Limited  
Liability Company, OCEANSIDE ACQUISITIONS, LLC,  
a Florida Limited Liability Company, DB BILOXI, LLC, a Florida  
Limited Liability Company, DB BILOXI II, LLC, a Florida  
Limited Liability Company, DB BILOXI III, LLC, a Florida  
Limited Liability Company, DBDS VERO BEACH, LLC, a  
Florida Limited Liability Company, DB TAMPA, LLC, a  
Florida Limited Liability Company, DB SIMPSONVILLE,  
LLC, a Florida Limited Liability Company, DBDS NORTH MIAMI,  
LLC, a Florida Limited Liability Company, REDLANDS RANCH  
HOLDINGS, LLC, a Florida Limited Liability Company,  
DBDS BISCAVNE PARK, LLC, a Florida Limited Liability  
Company, DB CARROLL STREET, LLC, a Florida Limited  
Liability Company,

Relief Defendants.

A TRUE COPY  
CERTIFICATION ON LAST PAGE  
MAR 27 2008, CLERK

EXHIBIT

B

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TEMPORARY INJUNCTION AND AGREED ORDER  
APPOINTING RECEIVER

This cause having come before the Court upon the State of Florida, Office of Financial Regulation's Complaint for a Temporary and Permanent Injunction and Appointment of a Receiver, and, after having reviewed the Complaint and Answer thereto filed by the Defendants and the Relief Defendants, and being otherwise advised in these premises, and further having heard of the agreement of the Parties, the Court does hereby:

ORDER AND ADJUDGE as follows:

1. It appears to the Court that an emergency exists in that the Defendants, Berman Mortgage Corporation ("Berman Mortgage"), M.A.M.C. Incorporated ("M.A.M.C."), and Dana J. Berman ("Berman") (collectively "Defendants"), and DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC, Normandy Holdings III, LLC, Waterside Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC, who are defendants solely for purposes of equitable relief (the "Relief Defendants"), have violated and may continue to violate state securities laws and state mortgage lender laws in connection with the placement and servicing of mortgage loans which have been placed with investors who invested approximately \$192 million.

2. The Court is also concerned, and the evidence tendered to the Court shows that there is an imminent danger that the property of the Defendants and Relief

Defendants may be further dissipated and/or commingled if a Temporary Injunction and the appointment of a receiver is not issued.

3. The Court hereby takes exclusive jurisdiction and possession of the assets of the Defendants, Berman Mortgage, M.A.M.C., and Relief Defendants, the "Receivership Assets", which includes, but are not limited to: files, records, documents, leases, mortgages, investments, contracts, effects, lands, agreements, judgments, bank accounts, books of accounts, rents, goods, chattels, rights, credits claims, both asserted and unasserted, pending court actions and appeals, files and documents in the possession of attorneys and accountants of all of the Defendants and Relief Defendants, all other property, business offices, computers, servers, electronic data storage units, offsite storage locations, safety deposit boxes, monies, securities, choses in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated of the Defendants, Berman Mortgage and M.A.M.C., and Relief Defendants. The Receiver shall retain custody and control of all of the foregoing pursuant to the terms of this Agreed Order. The Receiver shall file an inventory of the "Receivership Assets" within sixty (60) days of the entry of this Agreed Order.

4. The Court further finds that a temporary injunction shall be entered against all of the Defendants and Relief Defendants, and a Receiver appointed for Defendants, Berman Mortgage and M.A.M.C., and all Relief Defendants to prevent immediate and irreparable injury to the investors who have entrusted over \$192,000,000 to the Defendants and Relief Defendants.

5. Immediate and irreparable injury will result to numerous investors if, as alleged by Plaintiff in its Complaint, the Defendants' representatives are allowed to

transfer or commingle any assets(s) acquired with investor funds; or if the Defendants' and Relief Defendants' financial information is disturbed in any way which would have the effect of frustrating examination by the Court or the receiver. Any such injury would diminish the ability of the Defendants and Relief Defendants to satisfy an order of restitution or effect any rescission.

6. The Court has determined that it is probable that the Plaintiff would prevail on the claims and that the Plaintiff has no adequate remedy at law.

7. The appointment of a Receiver is both necessary and appropriate in this matter in order to prevent further waste and dissipation of the assets of the Defendants and Relief Defendants, to the detriment of its investors.

8. The State of Florida, Office of Financial Regulation is the agency charged, pursuant to Chapters 494 and 517, Florida Statutes, to protect the public from the illegal acts of mortgage brokerage and mortgage lending businesses and securities dealers and securities issuers, and the Court is therefore, waiving the bond requirement in this matter.

9. The Court finds that Plaintiff has a clear legal right to a statutory injunction as provided by Sections 494.0013 and 517.191, Florida Statutes.

IT IS FURTHER ORDERED AND ADJUDGED:

10. M.A.M.C., its officers, agents, servants, personal representatives, legal representatives, employees, and all other persons or entities acting in concert or cooperation with it, are hereby restrained and enjoined from the following acts:

A. Any and all violations of sections 494.0025 (4)(a), (b), (c) and (5), and 494.0072(2)(e), (f), (g) and (h), Florida Statutes;

B. Continuing to service loans for others in violation of Section 494.00721, Florida Statutes;

C. Co-mingling of investor funds in violation of 494.0076(1)(a)2, Florida Statutes.

11. The named Defendants and Relief Defendants, their officers, agents, servants, personal representatives, legal representatives, employees, and all other persons or entities acting in concert or cooperation with them, are hereby restrained and enjoined from the following acts:

A. Selling or offering to sell an unregistered security in this state, without first registering the security with the Office of Financial Regulation, in violation of section 517.07, Florida Statutes;

B. Selling or offering to sell any securities in or from offices in this state, or selling securities to persons in this state from offices outside this state, by mail or otherwise, without first being registered as a dealer, associated person, or issuer with the Office of Financial Regulation, in violation of section 517.12, Florida Statutes;

12. The named Defendants and Relief Defendants, their officers, agents, servants, personal representatives, legal representatives, employees, and all other persons or entities acting in concert or cooperation with them, are hereby restrained and enjoined from the following acts:

A. Dissipating, selling, conveying, alienating, divesting themselves of, withdrawing, pledging as security, transferring, assigning, giving away, or in any manner whatsoever disposing of any of the monies or assets, including checking accounts, savings accounts, money market accounts, certificates of deposit, or any deposit of cash,

securities or other things of value and any and all real property and improvements thereon, and any motor vehicle, vessel, aircraft, jewelry, art and any other personal property or other assets of any description, obtained with or derived directly or indirectly from any investor monies obtained by the Defendants from the placing and servicing of loans, mortgages, and investments, no matter how ownership or title is held, including, but not limited to, Berman Mortgage, M.A.M.C. and Berman, or in the names of any of the Relief Defendants, DB Atlanta, LLC, DB Durham LLC, Normandy Holdings II, LLC., Normandy Holdings III, LLC, Waterside Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC.

13. Michael I. Goldberg, whose telephone number is 954-463-2700, is appointed Receiver for Berman Mortgage Corporation, M.A.M.C. Incorporated, DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC., Normandy Holdings III, LLC, Waterside Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC, and the Receivership Assets. The Receiver is hereby authorized to take and have possession of the Receivership Assets. The Receiver shall have complete and exclusive control, possession and custody of all Receivership Assets. The Receiver shall be vested with the usual powers and duties of equity receivers in like cases and is hereby authorized and

instructed to take possession of and control over the Defendants and Receivership Assets as defined herein, without any limitation of any kind as to his general duties.

14. All persons, including Berman Mortgage and MAMC, (the "Receivership Defendants"), all of their partners, directors, officers, agents, servants, employees, stockholders, personal representatives, legal representatives, attorneys, accountants, as applicable, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and specifically including any bank, brokerage company, or other financial or depository institution holding accounts for or on behalf of the Receivership Defendants shall promptly deliver to the Receiver all Receivership Assets in the possession or control of any one or more of them, and shall promptly surrender all books and records of any kind pertaining to the Receivership Defendants. This paragraph shall specifically apply to any and all depository and/or brokerage accounts held on behalf of the Receivership Defendants.

15. All persons, including the Receivership Defendants, and all of their partners, directors, officers, agents, servants, employees, stockholders, personal representatives, legal representatives, attorneys, accountants, as applicable, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are stayed from:

(a) Commencing, continuing or enforcing any suit or proceeding against the Receiver or the Receivership Assets, except with the prior permission of the Court;

(b) Using self-help or executing or issuing or causing the execution or

A TRUE COPY  
CERTIFICATION ON LAST PAGE  
HARRY BLUM, CLERK



issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of the Receivership Assets or the Receiver, wherever situated;

(c) Attempting to modify, cancel, terminate, call, extinguish, revoke, or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement, or other agreement with any of the Receivership Assets or any entity controlled by them.

(d) Doing any act or thing whatsoever to interfere with the taking control, possession, or management, by the Receiver of the Receivership Assets and asset owned, controlled or in the possession of the entity in receivership, or to in any way interfere with or harass the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Assets; and,

(e) Causing the issuance of a subpoena on the Receiver, except with the prior permission of the Court.

16. The Receiver is hereby authorized to make appropriate notification to the United States Postal Service and/or any private delivery/messenger service to forward delivery of any mail addressed to the Receivership Defendants, or any company or entity under the direction or control of the Receivership Defendants, to the Receiver. The Receiver is also authorized to open and inspect all such mail, to determine the location or identity of assets or the existence and amount of claims or any other purpose authorized by this Order.

17. The Receiver is further authorized to make such ordinary and necessary

payments, distributions, and disbursements and execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls, including the authority to endorse all checks and drafts now or hereafter made payable to the Receivership Defendants.

18. Until further Order of the Court, this Order prohibits the prosecution of any civil action or other proceeding or the enforcement of any judgments against the Receivership Defendants.

19. The Receiver is hereby authorized to employ, without further order of the Court, such employees, accountants, and attorneys, consultants, investigators, and other professionals ("Outside Professionals") as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership Assets, including entities of which the Receiver is a shareholder, to furnish legal, accounting and other advice to the Receiver for such purposes as may be reasonable and necessary during the period of receivership.

20. The Receiver is hereby authorized to receive and collect any and all sums of money due and owing to the Receivership Defendants, whether the same are now due or shall hereafter become due and payable, and is authorized to incur such expenses, satisfy such liabilities, and make such disbursements as are deemed, in his discretion, necessary and proper for the collection, preservation, maintenance and operation of the

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Receivership Assets. The Receiver may abandon Receivership assets to duly perfected secured or lien creditors, if after due investigation and notice to parties in interest, he determines that either the Receivership Defendants have no equity in such asset(s) or such asset(s) are burdensome to the estate or are of inconsequential value and harmful to the Receivership estate. Further, the Receiver shall maintain appropriate insurance for the Receivership assets, their premises and/or locations, if appropriate in the Receiver's sole discretion.

21. The Receiver is hereby authorized and specifically has standing to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection of the Receivership Assets or proceeds thereof, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal courts as may in his judgment be necessary or proper for the collection, preservation and maintenance of the Receivership Assets and/or on behalf of the Receivership Defendants.

By this authorization and empowerment, this Court specifically determines that the Receiver is not prohibited and shall not be barred from bringing any action or proceeding due to the doctrine of in pari delicto. In addition, the Receiver is further empowered and authorized to file suit against any person(s) or entity(ies) to recover property of any of the Receivership Defendants, including, but not limited to, fraudulent conveyances and other claims and causes of action of the Receivership Defendants.

The Receiver is authorized to set depositions and demand production of documents on five (5) business days' notice. Any objections to documents requested by the Receiver may be stated at the deposition and reserved for hearing.

22. Any and all attorney(ies), accountants and any and all other professionals handling any matter for the Receivership Defendants shall cooperate with the Receiver and deliver all files, including attorney/client privileged communications and documents and all work product to the Receiver at his direction, notwithstanding any claim of a retaining lien which, if valid, is not extinguished by the delivery of the documents.

Further, Berman Mortgage Corporation, M.A.M.C. Incorporated, Dana J. Berman, the Relief Defendants, and their officers, agents, partners, servants, employees and transferees shall cooperate fully with the Receiver and comply with the Receiver's request(s) for information, records and documentation so that the Receiver may perform his duties with full information and knowledge.

23. The Receiver and his retained personnel or professionals are entitled to reasonable compensation and expense reimbursement out of the Receivership Assets. The Receiver is authorized to pay from the receivership estate's funds eighty percent (80%) of the ordinary and reasonable fees and one hundred percent (100%) of the costs of such Outside Professionals upon receipt of a bill from the Outside Professionals. The remaining twenty percent (20%) of fees shall be withheld (the "holdback") pending final application to the Court for approval of all fees and expenses of such Outside Professionals, including the holdback.

24. The Receiver and his attorneys and his agents are entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for their own good faith compliance with any order, rule law, judgment, or decree. In no event shall the Receiver or his attorneys or his agents be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver, attorney, or agent for

Receiver, nor shall the Receiver or his attorney or his agents be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act, as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties. The Receiver and his attorneys and his agents shall be indemnified and held harmless out of the Receivership Assets for all costs and expenses, including reasonable attorney's fees, incurred as a result of such actions. The Receiver and his attorneys and his agents may rely on, and shall be protected in acting upon, any resolution, certificate, statement, opinion, report, notice, consent, order, or other paper or documents believed to be genuine and to have been signed or presented by the proper party or parties. The Receiver may consult with legal, financial, or accounting advisors for any action taken or omitted to be taken by it in accordance with the advice thereof. Persons dealing with the Receiver shall only look to the receivership Assets to satisfy any liability, and neither the Receiver nor his attorneys or his agents or professionals shall have any personal liability to satisfy any such obligation.

25. From time to time, upon the application of the Receiver, the Court may amend or reissue this Order.

26. The Receiver shall not be required to post any bond.

IT IS FURTHER ORDERED:

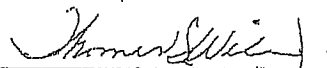
27. That this Court shall retain jurisdiction of this action for all purposes.

28. The Receiver is hereby authorized, empowered, and directed to apply to this Court, with notice to the Receivership Defendants named in this action for issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Order.

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FILED

IT IS FURTHER ORDERED that this Order will remain in effect until and unless modified by further Order of this Court.

DONE AND ORDERED in Chambers, in Miami, Miami-Dade County, Florida, on this 11 day of December 2007.



CIRCUIT COURT JUDGE

THOMAS S. WILSON, JR.

Copies furnished to:

Alan L. Goldberg, Chief Restructuring Officer, M.A.M.C.

Dana J. Berman

Daren A. Schwartz

Michael I. Goldberg, Esquire, Receiver

Cristina Saenz, Assistant General Counsel, Office of Financial Regulation

STATE OF FLORIDA, COUNTY OF MIAMI-DADE

I hereby certify that the foregoing is a true and correct copy of the original on file in this office 12/11 AD 2007

HARVEY FLANN, CLERK  
Circuit and County Courts

(SEAL)

Deputy Clerk 



IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF FINANCIAL  
REGULATION,

CASE NO.: 07-43672 CA.09

Plaintiff,

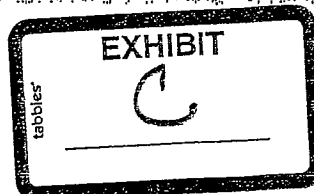
BERMAN MORTGAGE CORPORATION, a  
Florida corporation, M.A.M.C.  
INCORPORATED, a Florida corporation, DANA  
J. BERMAN, as Owner and Managing Member,

Defendant.

and,

DB ATLANTA, LLC, a Florida Limited Liability  
Company, DB DURHAM, LLC, a Florida  
Limited Liability Company, NORMANDY  
HOLDINGS II, LLC, a Florida Limited Liability  
Company, NORMANDY HOLDINGS III, LLC,  
a Florida Limited Liability Company,  
WATERSIDE ACQUISITIONS, LLC, a Florida  
Limited Liability Company, DB KN GULF  
INCORPORATED, a Florida Limited Liability  
Company, OCEANSIDE ACQUISITIONS,  
LLC, a Florida Limited Liability Company, DB  
BILOXI, LLC, a Florida Limited Liability  
Company, DB BILOXI II, LLC, a Florida  
Limited Liability Company, , DB BILOXI III,  
LLC, a Florida Limited Liability Company, DBDS  
VERO BEACH, LLC, a Florida Limited Liability  
Company, DB TAMPA, LLC, a Florida Limited  
Liability Company, DB SIMPSONVILLE, LLC,  
a Florida Limited Liability Company, DBDS  
NORTH MIAMI, LLC, a Florida Limited  
Liability Company, REDLANDS RANCH  
HOLDINGS, LLC, a Florida Limited Liability  
Company, DBDS BISCAYNE PARK, LLC, a  
Florida Limited Liability Company, DB  
CARROLL STREET, LLC, a Florida Limited  
Liability Company,

Relief Defendants.



ORDER GRANTING RECEIVER'S MOTION TO  
EXPAND RECEIVERSHIP TO INCLUDE ADDITIONAL  
RELIEF DEFENDANT M.A.M.C. WINDWARD PARTNERS, LLC

THIS CAUSE HAVING come on before the Court on May 5, 2008, upon the *above-styled*

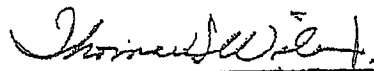
*Motion*, and the Court having heard argument of counsel; having heard the position of the Receiver;  
and having reviewed the papers, and having been otherwise duly advised in the premises, it is hereby,

ORDERED AND ADJUDGED that:

1. -The Receiver's Motion is Granted.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, on this

5 day of May, 2008.



THOMAS WILSON, JR., CIRCUIT JUDGE

cc: All Counsel of Record  
Posted on Receiver's Website  
E-Mailed to Investor Group



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida  
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

**ORDER ON DEFENDANT, M.A.M.C. WINDWARD, LLC's**  
**MOTION TO STAY THE CASE UNTIL FURTHER ORDER OF JUDGE WILSON**

*THIS CAUSE* having come on to be heard upon Defendant, M.A.M.C. WINDWARD, LLC.'s Motion to Stay the Case Until Further Order of Judge Wilson and the Court being fully advised in the premises it is:

**ORDERED AND ADJUDGED** that Defendant, M.A.M.C. WINDWARD, LLC.'s Motion to Stay the Case Until Further Order of Judge Wilson is hereby denied.

**DONE AND ORDERED** in Chambers, in Charlotte County, Florida, this 14<sup>th</sup> day of

July, 2008.

Elisabeth Adams E. Kyle  
Elisabeth Adams, Circuit Court Judge

Conformed copies to:

J. Michael Coleman, Esq.  
James D. Gassenheimer, Esq.  
James P. LeShaw, Esq.  
Andrew Zaron, Esq.

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JUL 30 2008



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida  
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

ORDER ON DEFENDANT M.A.M.C. WINWARD, LLC's  
MOTION FOR ENLARGEMENT OF TIME

THIS CAUSE having on the be heard on Defendant M.A.M.C. WINDWARD, LLC'S Motion for  
Enlargement of Time and the Court having reviewed the Motion and the Response of Plaintiff and being  
fully advised in the premises it is:

ORDERED AND ADJUDGED as follows:

1. Defendant, M.A.M.C. WINDWARD, LLC Motion for Enlargement of Time is granted.
2. Defendant, M.A.M.C. WINDWARD, LLC will file a response to the Complaint within  
fifteen (15) days of the date of the entry of the Order Denying the Stay.

DONE AND ORDERED in Punta Gorda, Charlotte County Florida this 18 day of July 2008.

LS/ Bruce E Kyle  
Elisabeth Adams, Circuit Court Judge

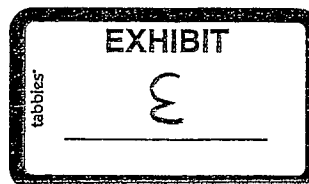
Conformed copies to:

J. Michael Coleman, Esq.  
James D. Gassenheimer, Esq.  
James P. LeShaw, Esq.  
Andrew Zaron, Esq.

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REC'D-CH&T

JUL 30 2008



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR  
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

CASE NO. 07-2492-CA

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida  
limited liability company, et al.,

Defendants.

---

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Michael I. Goldberg, as Receiver over MAMC Windward, LLC, M.A.M.C. Incorporated, and on behalf of the Second Mortgage Holders (as that term is defined in the Complaint), who have been served with process (hereinafter collectively referred to as the "Defendants"), by and through undersigned counsel, files this answer and affirmative defenses to the Kenneth D. Goodman Trustee Complaint ("Complaint"), and states:<sup>1</sup>

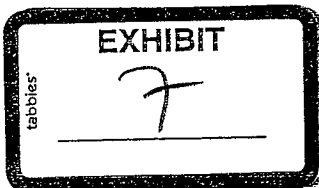
1. Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 1 of the Complaint.
2. Admitted.
3. Admitted.
4. Denied.

---

<sup>1</sup> The Receiver and undersigned counsel do not file an answer on behalf of the defendants identified as the Percentage Interest Borrowers who have been served. The Receiver is in the process of hiring separate counsel to represent these interests.

BERGER SINGERMAN  
attorneys at law

200 South Biscayne Boulevard Suite 1000 Miami,



File Miami Tallahassee

305-755-9500 Facsimile 305-714-4340

5. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 5 of the Complaint.

6. Denied.

7. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 7 of the Complaint.

8. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 8 of the Complaint.

9. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 9 of the Complaint.

10. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 10 of the Complaint.

11. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 11 of the Complaint.

12. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 12 of the Complaint.

13. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 13 of the Complaint.

14. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 14 of the Complaint.

15. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 15 of the Complaint.

16. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 16 of the Complaint.

17. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 17 of the Complaint.

18. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 18 of the Complaint.

19. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 19 of the Complaint.

20. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 20 of the Complaint.

21. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 21 of the Complaint.

22. M.A.M.C. Windward LLC admits that it owns real property in Charlotte County, Florida, but denies the remaining allegations contained in paragraph 22 of the Complaint.

COUNT I  
PROMISSORY NOTE

23. The Defendants restate the responses to the allegations as contained in paragraphs 1-9 above.

24. The Defendants admit that this purports to be an action for damages in excess of \$15,000, exclusive of interest, costs, and attorneys' fees, but deny that any damages exist.

25. Denied.

26. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 26 of the Complaint.

27. Paragraph 5 of the Promissory Note attached to the Complaint as Exhibit "A" speaks for itself.

28. Admitted.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 35 of the Complaint.

36. Denied.

The Defendants deny that the Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 36 of the Complaint.

COUNT II  
FORECLOSURE AS TO CONDOMINIUMS

37. The Defendants restate the responses to the allegations as contained in paragraphs 1-4, and 6-22 above.

38. The Defendants admit that this purports to be an action to foreclose a mortgage on real property in Charlotte County, Florida.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Admit.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 50 of the Complaint.

51. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 51 of the Complaint.

52. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 52 of the Complaint.

53. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 53 of the Complaint.

54. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 54 of the Complaint.

55. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations in paragraph 55 of the Complaint.

56. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 56 of the Complaint.



57. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 57 of the Complaint.

58. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 58 of the Complaint.

59. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 59 of the Complaint.

60. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 60 of the Complaint.

61. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 61 of the Complaint.

62. The Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 62 of the Complaint.

63. Denied.

64. Denied.

The Defendants deny that Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 64 of the Complaint.

COUNT III  
FORECLOSURE AS TO PARCEL ONE-VACANT LAND

65. The Defendants restate the responses to the allegations as contained in paragraphs 1-4, 6-9, and 19-22 above.

66. The Defendants admits that this purports to be an action to foreclose a mortgage on real property in Charlotte County, Florida.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Admit.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 78 of the Complaint.

79. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 79 of the Complaint.

80. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 80 of the Complaint.

81. The Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 81 of the Complaint.

82. Denied.

83. Denied.

The Defendants deny that Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 83 of the Complaint.

COUNT IV  
FORECLOSURE AS TO PARCEL TWO-VACANT LAND

84. The Defendants restate the responses to the allegations as contained in paragraphs 1-4, 6-9, and 19-22 above.

85. The Defendants admit that this purports to be an action to foreclose a mortgage on real property in Charlotte County, Florida.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Admit.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 97 of the Complaint.

98. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 98 of the Complaint.

99. This allegation is not directed towards the Defendants, and thus the Defendants do not respond. The Defendants are otherwise without sufficient knowledge, and therefore deny the allegations contained in paragraph 99 of the Complaint.

100. The Defendants are without sufficient knowledge, and therefore deny the allegations contained in paragraph 100 of the Complaint.

101. Denied.

102. Denied.

The Defendants deny that Kenneth D. Goodman, Trustee, is entitled to any of the relief sought in the Wherefore clause following paragraph 102 of the Complaint.

#### AFFIRMATIVE DEFENSES

##### First Affirmative Defense

Defendants have been discharged from any and all duties, responsibilities and liabilities on the Promissory Note.

**Second Affirmative Defense**

Plaintiff should be estopped from enforcing any rights arising from its business transaction with the Defendants.

**Third Affirmative Defense**

Plaintiff waived any rights arising from its business transaction with the Defendants.

**Fourth Affirmative Defense**

The Plaintiff's duty to act in good faith was a condition precedent to the bringing of each Count of the Complaint. That condition precedent has not occurred, or been performed, and has not been waived by the Defendants.

**Fifth Affirmative Defense**

The Plaintiff is barred from recovery, because it gave no consideration or there was a failure of its consideration.

**Sixth Affirmative Defense**

The Plaintiff has failed to mitigate its damages, if any.

**Seventh Affirmative Defense**

The Plaintiff's claims are barred in that the transaction between the parties is a usurious transaction and the interest allegedly charged, including all closing costs, prepayment penalties and payments made on the entire outstanding loan as opposed to interest payments made only on the amounts disbursed, is a greater rate of interest than is allowed by Florida law and the Plaintiff had the intent to willfully and knowingly take more than the legal rate of interest for the use of the money loaned.

### **Eighth Affirmative Defense**

The Plaintiff is not entitled to the total amount of the money loaned pursuant to the Promissory Note, plus interest, costs and attorney's fees. The Plaintiff, to the extent that the Court does determine a default thereunder, is only entitled to a judgment based on the total of the monies actually advanced on the loan and properly expended in the course of construction. The Plaintiff in this action has not advanced the full amount of the monies upon which it seeks a judgment. The Plaintiff is only entitled to a judgment based upon the funds actually paid out by the Plaintiff, not the entire loan amount.

### **Ninth Affirmative Defense**

The Defendants have acquired the services of Berger Singerman, P.A. and each is obligated to pay Berger Singerman, P.A. a reasonable fee for services rendered. The Defendants, jointly and severally, demand an award of attorney's fees and costs in defense of this action.

### **Tenth Affirmative Defense**

The Plaintiff is barred from recovery on its Complaint in whole or in part, due to its own unclean hands.

### **Eleventh Affirmative Defense**

M.A.M.C. Incorporated does not have the authority to accept service of process on behalf of any of the Percentage Interest Borrowers and the Second Mortgage Holders as those terms are defined in the Complaint.

### **Twelfth Affirmative Defense**

The Complaint should be dismissed for failure to join indispensable party Mitchell Morgan.

**Thirteenth Affirmative Defense**

M.A.M.C. Incorporated lacked the corporate authority to assign the interests of the Percentage Interest Borrowers.

**Fourteenth Affirmative Defense**

M.A.M.C. Incorporated lacked the corporate authority to obligate the Percentage Interest Borrowers to the Promissory Note attached as Exhibit "A" to the Complaint.

**Fifteenth Affirmative Defense**

The interests collaterally assigned in Exhibit "C" of the Complaint on July 14, 2006 were extinguished by a sale of the property in bankruptcy under 11 USC § 363 subsequently confirmed under a plan of reorganization under 11 USC § 1129 on October 25, 2006.

**Sixteenth Affirmative Defense**

MAMC Windward LLC took title free and clear of all liens by virtue of a Trustees deed which is superior in interest to all liens recorded prior to the date of the deed, said liens having been extinguished by a sale of the real property in Bankruptcy.

Respectfully submitted,

BERGER SINGERMANN  
*Attorneys for the Receiver, Michael I. Goldberg*  
1000 Wachovia Financial Centre  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340

By: 

JAMES D. GASSENHEIMER  
Florida Bar No. 959987

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this 1<sup>st</sup> day of August 2008, to: J. Michael Coleman, Esquire, *Attorneys for Plaintiff*, COLEMAN HAZZARD & TAYLOR P.A., 2640 Golden Gate Parkway, Suite 304, Naples, Florida 34105.

Respectfully submitted,

BERGER SINGERMANN  
*Attorneys for the Receiver, Michael I. Goldberg*  
1000 Wachovia Financial Centre  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340

By: 

FOR  
JAMES D. GASSENHEIMER  
Florida Bar No. 959987

1242960-1



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,  
IN AND FOR CHARLOTTE COUNTY, FLORIDA

CIVIL DIVISION

KENNETH D. GOODMAN, TRUSTEE,

CASE NO. 07-2492 CA

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida  
limited liability company, et al.,

Defendants.

RECEIVER'S RE-NOTICE OF TAKING DEPOSITION  
PURSUANT TO FLA. R. CIV. P. 1.310(b)(6)  
DUCES TECUM OF PLAINTIFF'S REPRESENTATIVE

*(This notice cancels & resets deposition of 9/15/08;  
Telephone notice given & agreed to among the parties herein on 8/4/08)*

TO: *J. Michael Coleman, Esquire*  
COLEMAN HAZZARD & TAYLOR P.A.  
2640 Golden Gate Parkway, Suite 304  
Naples, Florida 34105

PLEASE TAKE NOTICE that the Receiver, Michael I. Goldberg, as Receiver over MAMC Windward, LLC, M.A.M.C. Incorporated, and on behalf of the Second Mortgage Holders (as that term is defined in the Complaint) will take the deposition of the below-named person on the date and at the hour and place indicated below for the purposes of discovery and for use as evidence in said cause. The Plaintiff's representative will be deposed as to the items listed in Schedule "A" attached hereto, and the deponent shall also bring with him or her at the time of the deposition the items listed in Schedule "B" attached hereto.

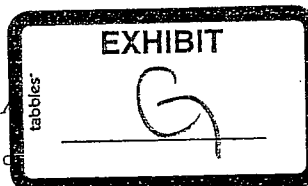
NAME: Representative of KENNETH D. GOODMAN, TRUSTEE, or his agent(s), and/or representative(s) with the most knowledge of the subject matters identified on Schedule "A" attached hereto.

DATE: Tuesday, September 23, 2008

TIME: 10:00 A.M.

BERGER SINGERM  
attorneys at law

350 East Las Olas Boulevard Suite 1000 Fort Lauderdale, Florida 33301



Lauderdale Miami Tallahassee

Telephone 954-525-9900 Facsimile 954-523-2872

PLACE: VERITEXT COURT REPORTERS  
 501 Goodlette Road, Suite D-100  
 Naples, FL 34112  
 Telephone: (239) 261-2888

Said deposition will be taken before VERITEXT COURT REPORTERS, a Notary Public or any officer authorized to administer oaths by the laws of the State of Florida, a person who is neither a relative nor employee of such attorney or counsel, and who is not financially interested in this action. The deposition shall be taken pursuant to the Florida Rules of Civil Procedure in such cases provided and will continue from hour to hour and from day to day until completed.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this 4<sup>th</sup> day of August 2008, to the above-named addressee.

Respectfully submitted,

BERGER SINGERMAN  
*Counsel for Receiver, Michael Goldberg*  
 1000 Wachovia Financial Centre  
 200 South Biscayne Boulevard  
 Miami, Florida 3313  
 Phone: (305) 755-9500 / Fax: (305) 714-4340

By: 

JAMES D. GASSENHEIMER  
 Florida Bar No. 959987  
[jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)  
 GREGORY A. HAILE  
 Florida Bar No. 606421  
[ghaile@bergersingerman.com](mailto:ghaile@bergersingerman.com)

*If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Gregory A. Haile, Esq., Berger Singerman, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301; telephone number (954) 525-9900 within two (2) working days of your receipt of this Subpoena Duces Tecum for Deposition; if you are hearing or voice impaired, call 1-800-955-8771 via Florida Relay Service.*

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BERGER SINGERMAN  
 attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

350 East Las Olas Boulevard Suite 1000 Fort Lauderdale, Florida 33301 Telephone 954-525-9900 Facsimile 954-523-2872

I. DEFINITIONS

As used in this subpoena, the following words shall have their common meanings and shall include the meanings indicated:

A. "You", "Your", or "Representative" as used herein means Representative of KENNETH D. GOODMAN, TRUSTEE, any of your affiliates, predecessors or assigns, and any agents and any other person or entity acting or purporting to act on your behalf.

B. "Person" as used herein means any natural person or any entity, including without limitation any individual, firm, corporation, company, joint venture, trust, tenancy, association, partnership, business, agency, department, bureau, board, commission, or any other form of public, private or legal entity. Any reference herein to any public or private company, partnership, association, or other entity include such entity's subsidiaries and affiliates, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of the entity, its subsidiaries or its affiliates.

C. "Documents" shall mean the original or copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever. Without limiting the generality of the foregoing, "documents" shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including inter-office and intra-office memoranda, memoranda for files, memoranda of telephone or other conversations, including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, drawings, graphs, charts, photographs, phone records, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained. Copies of documents, which are not identical duplications of the originals or which contain additions to or deletions from the originals or copies of the originals if the originals are not available, shall be considered to be separate documents.

D. "Documents" shall also include all electronic data storage documents including but not limited to e-mails and any related attachments, electronic files or other data compilations which relate to the categories of documents as requested below. Your search for these electronically stored documents shall include all of your computer hard drives, floppy discs, compact discs, backup and archival tapes, removable media such as zip drives, password protected and encrypted files, databases, electronic calendars, personal digital assistants, proprietary software and inactive or unused computer disc storage areas.

E. "Communications" shall mean any oral or written statement, dialogue, colloquy, discussion or conversation and, also, means any transfer of thoughts or ideas between persons by means of documents and includes an transfer of data from one location to another by electronic or similar means.

F. "Related to" shall mean, directly or indirectly, refer to, reflect, mention, describe, pertain to, arise out of or in connection with or in any way legally, logically, or factually be connected with the matter discussed.

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BERGER SINGERMAN  
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

350 East Las Olas Boulevard Suite 1000 Fort Lauderdale, Florida 33301 Telephone 954-525-9900 Facsimile 954-523-2872

G. As used herein, the conjunctions "and" and "or" shall be interpreted in each instance as meaning "and/or" so as to encompass the broader of the two possible constructions, and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any Request.

H. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of the Request.

I. Unless otherwise specified herein, the time frame for each Request is from and including January 1, 2006 to the present.

J. If you contend that you are entitled to withhold any responsive document(s) on the basis of privilege or other grounds, for each and every such document specify:

1. The type or nature of the document;
2. The general subject matter of the document;
3. The date of the document;
4. The author, addressee, and any other recipient(s) of the document; and
5. The basis on which you contend you are entitled to withhold the document.

K. If you assert that any document called for by this request is protected against disclosure as the attorney's work product doctrine or by the attorney-client privilege, you shall provide the following information with respect to such document:

1. the name and capacity of the person or persons who prepared the documents;
2. the name and capacity of all addresses or recipients of the original or copies thereof;
3. the date, if any, borne by the document;
4. a brief description of its subject matter and physical size;
5. the source of the factual information from which such document was prepared; and
6. the nature of the privilege claimed.

L. You must produce all documents within your case, custody or control that are responsive to any of these Requests. A document is deemed within your care, custody or control if you have the right or ability to secure the document or a copy thereof from any other person having physical possession thereof.

M. If you at any time had possession, custody or control of a document called for under this request and if such document has been lost, destroyed, purged, or is not presently in your possession, custody or control, you shall describe the document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

N. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof any documents which might otherwise be construed to be outside the scope hereof.

SCHEDULE A

MATTERS ON WHICH EXAMINATION IS REQUESTED

Discussions, negotiations, and terms of the settlement agreement between the plaintiff and M.A.M.C. Incorporated.

SCHEDULE B

DOCUMENTS TO BE PRODUCED

All documents, including but not limited to, all e-mails, correspondence, and records relating to the negotiations and terms of the settlement agreement between plaintiff and M.A.M.C. Incorporated.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
CHARLOTTE COUNTY, FLORIDA CIVIL ACTION

KENNETH D. GOODMAN, TRUSTEE,

Plaintiff,

v.

M.A.M.C. WINDWARD, LLC, a Florida  
limited liability company, et al.,

Defendants.

CASE NO. 07-2492-CA

NOTICE OF SERVICE OF INTERROGATORIES

Plaintiff, KENNETH D. GOODMAN, TRUSTEE, hereby gives notice that original Interrogatory Number 1 was served on Defendant, M.A.M.C. WINDWARD, LLC, by telefax.

CERTIFICATE OF SERVICE

*I HEREBY CERTIFY*, that a true and correct copy of the foregoing was furnished by telefax and regular U.S. Mail to James D. Gassenheimer, Esq., and Monica F. Klein, Esq., The Gassenheimer Law Firm, 307 Continental Plaza, 3250 Mary Street, Coconut Grove, FL 33133, this 27th day of March, 2008.

COLEMAN, HAZZARD & TAYLOR, P.A.

By: 

J. Michael Coleman, Esq.

Florida Bar No. 606618

Attorneys for Plaintiff

2640 Golden Gate Parkway

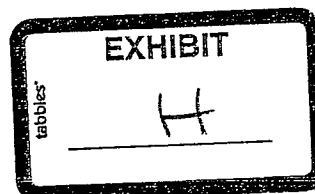
Suite 304

Naples, FL 34105

(239) 298-5200

(239) 298-5236 telefax

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Gregory Haile, Esq.  
 BERGER SINGERMAN  
 350 E. LAS OLAS BLVD  
 SUITE 1000  
 FT LAUDERDALE, FL 33301



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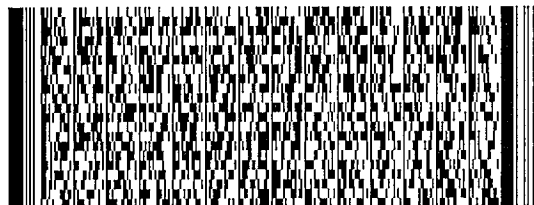
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**Charlotte County Courthouse**  
**350 E MARION AVE**

**PUNTA GORDA, FL 33950**

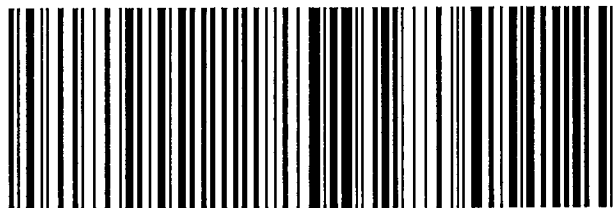


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