

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

STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, CASE NO.: 07-43672 CA 09
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.

THE ORIGINAL FILED
ON FEB 07 2011
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

**RECEIVER'S RESPONSE TO
MOTION FOR RESCHEDULING OF HEARINGS**

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al, including Oceanside Acquisitions, LLC., (the "Receiver") files this response to Motion for Rescheduling of Hearings, (the "Response") and states:

I. BACKGROUND

1. On December 11, 2007, the State of Florida Office of Financial Regulation filed a complaint against Defendants Berman Mortgage Corporation, a Florida corporation, M.A.M.C. Incorporated, a Florida Corporation, Dana J. Berman as owner and managing member ("Defendants") and relief defendants which consisted of approximately 36 limited liability

companies that were controlled by Berman (the "Relief Defendants"). Oceanside Acquisitions, LLC is named as one of the relief defendants in the Receivership Action.

2. The Receiver has set two motions to be heard on March 3, 2011: [1] Receiver's Motion for an Order Approving the Receiver's Execution of Sales Contracts for the Sale of Additional Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC; and [2] Receiver's Second Amended Motion for an Order Approving the Receiver's Execution of All Future Sales Contracts for Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC (the "Motions").¹

3. On December 1, 2010, Judge Bagley set a hearing on the Motions in open court with counsel for both GIR² and Oceanside present. GIR's counsel did not raise an objection to the chosen hearing date.

4. Instead, counsel for GIR waited until the end of January to file his Motion for Rescheduling of Hearings. This is not the first time GIR has attempted to stonewall the Receiver's efforts to market and sell the Subject Units.

II. HISTORY OF STONEWALLING TACTICS EMPLOYED BY GIR

5. On April 7, 2009, the Receiver filed a Motion to Sell the Property of Oceanside Free and Clear of Liens, Claims, and Encumbrances (the "Motion to Sell Property Free and Clear"). GIR objected to the motion and an evidentiary hearing was held on July 15, 2009. On September 1, 2009, J. Wilson entered an Order granting the Motion to Sell Property Free and

¹ The Motions were originally set for hearing on February 11, 2011 but were rescheduled at Judge Bagley's request.

² Capitalized terms not defined herein shall have those meanings ascribed to them in the Motion for Rescheduling of Hearings.

Clear (the “September 1, 2009 Order”). The September 1, 2009 Order is attached hereto as **Exhibit A**.

6. The September 1, 2009 Order granted the Receiver the “exclusive authority to negotiate the sale of the [Condo] Units and execute purchase and sale contracts for the [Condo] Units with prospective purchasers subject to this Court’s approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court.” See Exhibit A, ¶ 21).

7. For reasons unknown to the Receiver, on September 17, 2009, GIR misfiled a Motion to Stay Order Dated September 1, 2009 Pending [Quiet Title] Appeal (the “Motion to Stay”) and did nothing to correct their error. As a result of this misfiling, the Motion to Stay was not heard for almost ten months. It was only after the Receiver found a potential buyer of two of the Condo Units and filed a Motion for an Order Approving the Receiver’s Execution of Sales Contracts for the Sale of Two Condominium Units Owned by Relief Defendant, Oceanside Acquisitions (the “Motion to Approve”) in the proper Court that GIR properly noticed their Motion to Stay for hearing.³

8. On July 2, 2010, Judge Bagley (“J. Bagley”) held an evidentiary hearing on both the Motion to Approve and the Motion to Stay at which time the Receiver presented evidence of [1] the continuing deterioration of the Condo Units, including an unhealthy accumulation of mold and pigeon droppings; and [2] the continuing decline in value of the Condo Units due to the accrual of multiple tax liens and penalties and condo association fee liens.

³ The Receiver marketed the Oceanside Units in the best interest of the Receivership Estate, including undertaking an evaluation of the Units and obtaining pricing recommendations. After considerable effort and despite the current economic climate, the Receiver obtained two contracts from a prospective buyer, Sunwest Investments, LLC/Anthony Linville for the Units for a purchase price of \$120,000.00 each.

9. The evidentiary hearing held on July 2, 2010 was almost identical to the evidentiary hearing held by Judge Wilson on July 15, 2009 “[with] almost identical witnesses...” as J. Bagley pointed out in his ruling on July 12, 2010. GIR used their Motion to Stay as an attempt to “relitigate matters previously decided by Judge Wilson [on September 1, 2009]...[and use J. Bagley] as an appellate court...there seem[ed] to be an intent to have [the J. Bagley] Court sort of review what Judge Wilson has done, in essence, and that is whether or not legal ownership is, in fact, in the hands of Oceanside Acquisitions.” The transcript of the July 15, 2009 hearing is attached hereto as **Exhibit B**.

10. Judge Bagley refused to reconsider the September 1, 2009 Order and on July 30, 2010 entered an Order Granting the Receiver’s Motion to Approve and denying the GIR’ Motion to Stay (the “July 30, 2010 Order”). The July 30, 2010 Order is attached hereto as **Exhibit C**.

11. The July 30, 2010 Order provided, in pertinent part, that “[GIR] shall have the right to seek a stay of this Court’s Order Granting the Motion from the Third District Court of Appeal on or before August 6, 2010...[i]f the request for a stay is denied by the Third District Court of Appeal, the sale which is the subject of the Motion may proceed without further order of this Court.” (*see* para. 2 of the July 30, 2010 Order).

12. On August 19, 2010, the Third District Court of Appeal denied GIR’s Motion for Review and/or Stay of Trial Court Permitting Sale of Condominium Units that are the Subject of the Quiet Title Appeal (the “Motion”) thereby permitting the Receiver to sell the Condo Units.

13. On November 22, 2010, the Receiver filed his *Motion for an Order Approving the Receiver’s Execution of Sales Contracts for the Sale of Additional Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC* (the “November 22 Motion”).

14. Despite the Court's September 9, 2009 and July 30, 2010 Orders allowing the Receiver to sell the Oceanside Units, GIR insists on having an evidentiary hearing on the November 22 Motion, wherein, it can be expected that counsel will use the same witnesses, testimony and evidence to make the same arguments against allowing the Receiver to enter into the sales contracts.

15. As there are approximately 15 unsold Oceanside Units remaining (including the three units which are the subject of the November 22 Motion), it can be assumed that GIR is going to seek an evidentiary hearing each time the Receiver seeks Court approval of additional sales contracts. Thus, the Receiver seeks to expand the scope of the November 22 Motion to cover all remaining units so as to avoid the need of coming before the Court for each individual future contract in his *Second Amended Motion for an Order Approving the Receiver's Execution of all Future Sales Contracts for Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC*.

16. Here, GIR's Motion for Rescheduling of Hearings is yet another attempt to seek relief that has been denied four times by four respected Courts. GIR seeks to have the hearing on the Motions stayed until such time as its appeals are completed. This motion is a backdoor attempt to stay the Receiver's ability to market and sell the Subject Units.

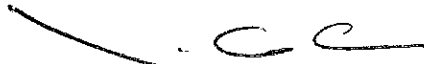
17. Thus, the Receiver requests GIR's Motion for Rescheduling of Hearings be denied and the Motions be heard by this Court on March 3, 2011.

WHEREFORE, the Receiver respectfully requests that this Court enter an Order (a) denying GIR's Motion for Rescheduling of Hearings; and (b) awarding such other and further relief this Court deems just and proper.

Respectfully submitted,

BERGER SINGERMANN
Attorneys for Receiver Michael Goldberg
200 South Biscayne Boulevard
Suite 1000
Miami, Florida 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

BY: _____


JAMES D. GASSENHEIMER
Florida Bar No. 959987
MONICA F. ROSSBACH
Florida Bar No. 13641

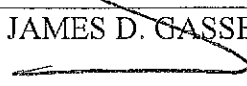
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2011 a true and correct copy of the foregoing was furnished via U.S. Mail to the parties on the attached Service List.

Respectfully submitted,

BERGER SINGERMANN
Attorneys for Receiver, Michael Goldberg
1000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Phone: (305) 755-9500 / Fax: (305) 714-4340

By: _____


JAMES D. GASSENHEIMER


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cc: The Honorable Jerald Bagley (via U.S. Mail)
Michael Goldberg, Esq., as Receiver (via e-mail)
The Investor(s)/Lender(s) Group (via e-mail)
Posted to the Berman Mortgage Website

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,

vs.

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

Defendants,

and,

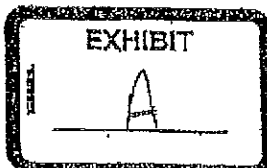
DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

ORDER GRANTING RECEIVER, MICHAEL I. GOLDBERG'S MOTION TO SELL
THE PROPERTY OF OCEANSIDE ACQUISITIONS, LLC FREE AND CLEAR OF
LIENS, CLAIMS, AND ENCUMBRANCES

THIS CAUSE came before the Court on Wednesday, July 15, 2009 at 1:30 p.m. for an evidentiary hearing upon the Motion of Michael I. Goldberg, as State Court Appointed Receiver over Relief Defendant, Oceanside Acquisitions, LLC ("Oceanside") to sell the Property of Oceanside Free and Clear of Liens, Claims, and Encumbrances, and the Court, having heard and considered the evidence presented by the parties through witness testimony and hearing exhibits,

FINDS as follows:



1. On December 11, 2007, this Court appointed Michael Goldberg as the Receiver (the "Receiver") over the Defendants and Relief Defendants in these Receivership proceedings.

2. One of the Relief Defendants, Oceanside, is an entity formed by Dana Berman and Keith Novak, which entity purchased condominium units at Gulf Island Resort in Pasco County, Florida (the "Units"). Two of the Units were sold prior to the establishment of the Receivership; a total of 17 units¹ remain unsold.

3. The Units were once owned by Gulf Island Resort, L.P. Gulf Island Resort, L.P. transferred the Units to Gulf of Mexico Enterprises, Inc. ("GME"). Later, Oceanside purchased the Units from GME, the record title owner. To complete its purchase of the Units, Oceanside borrowed \$1,700,000 from approximately 42 individuals (the "Lenders") through loans serviced by Defendant, M.A.M.C. Incorporated and secured as first and second position mortgages by the Units.

4. In 2003, Gulf Island Resort, L.P. and Alex Bistricear ("collectively, Bistricear") commenced a quiet title action in Pasco County Circuit Court styled *Alex Bistricear, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Sixth Judicial Circuit Case No. 51-2003- CA- 942 HS (the "Quiet Title Action"). On May 9, 2007, the trial Court in the Quiet Title Action quieted title to the Units in Oceanside. The May 9, 2007 Partial Final Judgment was presented to this Court and the Court has taken judicial notice of same.

5. On June 13, 2008, this Court entered its *Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*. The Pasco

¹ Four of the seventeen units were transferred to Keith Novak by Chief Restructuring Officer, Alan Goldberg. The Receiver contests the validity of the transfers and contends that he still holds equitable title to these units.

County Court also entered its order granting the Receiver's motion to transfer the cases to this Court. Accordingly, the Quiet Title Action is before this Court as Eleventh Judicial Circuit Case No. 08-79169 CA (09).

6. At the hearing on the Receiver's instant motion, Bistrice, through counsel, argued that the time to appeal the Partial Final Judgment in the Quiet Title Action had not run and thus, that this Court did not have the authority to order the sale of the Units free and clear of liens. The Court finds, based on the Partial Final Judgment Quieting Title and applicable case law, that Oceanside holds legal title to the Units at issue in the Quiet Title Action and which are the subject of the Receiver's instant motion to sell the property free and clear of liens. The Court has also considered the case law presented by the parties regarding the circumstances in which a court may properly order the sale of property free and clear of liens and finds that the Court is authorized to order the sale of the Units based on the evidence presented and factual findings contained herein for the reasons stated on the record.

7. Based on the testimony of the representative of the Executive Committee of Lenders in relation to the Oceanside project, Gail Corenblum, who has observed the condition of the Units and has personal knowledge of same, the Court finds that the Units are in a state of disrepair requiring a substantial investment to repair, improve or otherwise rehabilitate the Units. Approximately a year ago, Ms. Corenblum observed that some of the Units had mold infiltration, substantial ceiling damage, and pigeon droppings had accumulated on the balconies. Ms. Corenblum testified that most of the Units have been stripped of cabinetry, wiring, plumbing fixtures, and other fixtures and that all Units were without electric power. Ms. Corenblum also testified that several of the Units had been cited for fire code violations in relation to the windows and that some Units are missing locks on the sliding glass doors.

8. Based on the testimony of Ms. Corenblum regarding Oceanside's attempts to raise money from the Lender group, the Court finds that the individual Lenders are unwilling or unable to contribute monies to repair, improve, or otherwise rehabilitate the Units.

9. Based on testimony of E. Harold Gassenheimer, who is employed by the Receiver as Chief Operating Officer of M.A.M.C. Incorporated, regarding the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does have the funds to repair, improve, or otherwise rehabilitate the Units.

10. Based on Ms. Corenblum and Mr. Gassenheimer's testimony relating to the Receiver's past efforts to market the Units for sale, the Court finds that pending litigation, including the Quiet Title Action, renders the Units unmarketable due to an inability of a prospective purchaser to obtain title insurance.

11. Intervenor, Gulf Island Beach and Tennis Club Condominium Association (the "Association") has moved to intervene in this Receivership case to seek payment of past due condominium assessments on the Units from the Receivership, which assessments are estimated by the Association at over \$150,000.00 and confirmed by the testimony of Ms. Corenblum.

12. Based on Ms. Corenblum and Mr. Gassenheimer's testimony, the Court finds that ad valorem property taxes on the Units also remain unpaid for the years 2006, 2007, and 2008, which taxes total approximately \$200,000.00.

13. Based on the testimony of Mr. Gassenheimer relating to the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does not have the ability to pay to condominium fees and taxes for the Units, which condition places the Units in peril of loss to all interested parties by reason of foreclosure.

14. The Court finds that the circumstances render a sale of the Units necessary for the adequate protection of the rights of the parties. Under these circumstances, a sale of the units would preserve the real interests of the parties by transferring any claims and liens to the proceeds of sale.

15. The ultimate purpose of the Receivership is to provide a vehicle to marshal and preserve assets and maximize return to the lienholders. Allowing the Units to be sold would further the goals of the Receivership and all interested parties because monetizing the Units would prevent waste of the property while the Court adjudicates the different parties' right, title, and interest to the proceeds. It will also allow the Receivership to avoid liability for expenses associated with the Units such as the unpaid taxes and condominium association fees which continue to accrue and necessarily diminish the return for the Receivership, the Lenders and other interested parties. In this instance, the sale of the Units by the Receiver is expedient and proper.

16. This Court has the authority to order that title conveyed to any prospective purchasers be free and clear of any liens, claims, and encumbrances and that said claims, liens, and encumbrances be transferred to the proceeds of the sale of the Units.

17. Florida law requires the Court to monitor the sales of the Units by the Receiver carefully and to disapprove of any proposed sale for less than the property should reasonably be expected to sell.

Accordingly, it is ORDERED AND ADJUDGED that:

18. The Receiver is hereby authorized to market and sell the Units, including those units currently titled in the name of Oceanside and the four units transferred by Oceanside to

Keith Novak (which transfers the Receiver contests) should the latter become re-titled in the name of Oceanside.

19. The Receiver shall undertake an evaluation of the units, consult with and obtain pricing recommendations from no less than three licensed real estate brokers, and price the units in accordance with the average of the three estimates.

20. The Receiver is hereby authorized to contract with a real estate broker for the marketing and sale of the Units, subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court.

21. The Receiver shall have exclusive authority to negotiate the sale of Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contracts by motion and notice to all interested parties in the manner previously approved by the Court.

22. Upon approval by the Court of the proposed sale of any unit(s), the prospective purchaser(s) shall receive title to the subject unit(s) free and clear of any and all liens, claims, and encumbrances including, but not limited to, those liens, claims, and encumbrances, if any, held by the parties in the Quiet Title Action, any actions to foreclose liens for condominium assessments including those of Intervenor, Gulf Island Beach and Tennis Club Condominium Association, the mortgages held by M.A.M.C. Lenders, and any actions by contract purchasers of the Units, which actions were transferred to the Receivership Court from Pasco County Circuit Court.² The prospective purchaser(s) of the unit(s) shall receive clear title irrespective of

² The Pasco County cases ordered transferred to the Receivership Court are: a. *Deborah R. Abajian v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-07-CA-2370-WS; b. *Cyril Latona v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA3925-WS; c. *James R. Patterson and Eileen M. Patterson v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-3925-WS; d. *Cunningham*

any filings in the public records, including but not limited to, the filings of Gulf Island Resort, L.P. or Bistriceer.

23. The Receiver shall deposit the net proceeds from the sale of the Units, after payment of outstanding condominium fees and taxes, into the Court's Registry until further motion and order of this Court, which proceeds shall be subject to all liens, claims, and encumbrances, if any, claimed by any and all interested parties in the Units for future adjudication by the Court.

DONE AND ORDERED in Chambers this ____ day of August, 2009.

signed Copy

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THOMAS S. WILSON, JR.
CIRCUIT COURT JUDGE

Copies furnished to:

Counsel of Record
Receivership Website

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and *Ellas v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4792-WS; and *Tina Hinton v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4238-WS.

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

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Plaintiff,

vs.

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INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

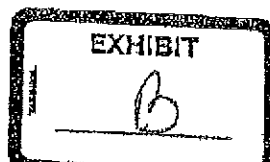
and,

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

Relief Defendants.

ORDER GRANTING THE RECEIVER'S MOTION FOR AN ORDER APPROVING
THE RECEIVER'S EXECUTION OF SALES CONTRACTS FOR THE SALE
OF TWO CONDOMINIUM UNITS OWNED BY RELIEF
DEFENDANT, OCEANSIDE ACQUISITIONS, LLC

THIS MATTER comes before the Court on the Motion of the Receiver for a Court Order Approving the Receiver's Execution of Sales Contracts for the Sale of Two Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC, pursuant to this Court's Order Granting Receiver, Michael I. Goldberg's Motion to Sell the Property of Oceanside Acquisitions, LLC (the "Motion"), for an evidentiary hearing on Friday, July 2, 2010 at 8:30 am followed by a hearing to issue ruling on July 12, 2010 at 8:30 am, and the Court having considered the



pleadings filed with the Court, the documents received in evidence and the testimony of the witnesses, it is:

ORDERED AND ADJUDGED as follows:

1. For the reasons stated in open Court on July 12, 2010, the Motion is GRANTED. As a result of the Court denying the Motion of Alex Bistriceer as limited partner of Gulf Island Resort LP for stay pending appeal of this Court's Order of September 1, 2009, in case no. 08-79619 CA (09), this ruling is without prejudice for Gulf Island Resort, L.P. ("GIR") to seek a stay of this Court's Order granting the Motion from the Third District Court of Appeal.

2. GIR shall have the right to seek a stay of this Court's Order granting the Motion from the Third District Court of Appeal on or before August 6, 2010. If a timely motion for stay is filed with the Third District Court of Appeal, the sale which is the subject of the Motion shall be stayed pending a ruling from the Third District Court of Appeal. If the request for a stay is denied by the Third District Court of Appeal, the sale which is the subject of the Motion may proceed without further order of this Court.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida,
on this ____ day of July, 2010.

Conformed Copy

JUL 30 2010

Jerald Bagley
THE HONORABLE JERALD BAGLEY
CIRCUIT COURT JUDGE

Copies furnished to:
Counsel of Record
Michael Goldberg, as Court Appointed Receiver
Posted to Receivership Website
E-Mail Distribution to Lenders/Investors

2941391-1

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR 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,

Defendant.

and,

DB ATLANTA, LLC, a Florida Limited Liability
Company, et al.

Relief Defendants.

RECEIVER'S MOTION FOR AN ORDER APPROVING THE RECEIVER'S
EXECUTION OF SALES CONTRACTS FOR THE SALE OF TWO CONDOMINIUM
UNITS OWNED BY RELIEF DEFENDANT, OCEANSIDE ACQUISITIONS, LLC

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., files this Motion for an Order Approving the Receiver's Execution of Sales Contracts for the Sale of Two Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC, and states:

1. On December 11, 2007, this Court appointed Michael Goldberg as Receiver for the Defendants and the Relief Defendants. Pursuant to this Court's Authority, the Receiver is vested with the usual powers and duties of equity Receivers with respect to the property of the Defendants and Relief Defendants. *See* Receivership Order, at ¶ 13.

BERGER SINGERMAN
attorneys at law

280 South Biscayne Boulevard Suite 1000 Miami

EXHIBIT

C

edale Miami Tallahassee

he 305-786-9800 fax(407) 306-714-4340

2. Oceanside Acquisitions, LLC ("Oceanside") is an entity formed by Dana Berman and the Keith Novak. Oceanside purchased condominium units at Gulf Island Beach and Tennis Club I ("Gulf Island Beach and Tennis Club") in Pasco County, Florida. In order to finance this purchase, Oceanside borrowed \$1,655,000 from approximately 42 individual lenders (the "Lenders") assembled through Receivership Defendant, Berman Mortgage Corporation, which loans were serviced by Receivership Defendant, M.A.M.C. Incorporated. Oceanside defaulted on its loans. Oceanside and the Condominium Units owned by Oceanside are Receivership Property.

3. After an evidentiary hearing, this Court granted the Receiver's Motion to Sell the Property of Oceanside Free and Clear Liens, Claims, and Encumbrances. A copy of the Court's September 1, 2009 Order Granting the Receiver's Motion to Sell the Property of Oceanside Acquisitions, LLC Free and Clear of Liens, Claims, and Encumbrances is attached hereto as Exhibit A.

4. The Court's Order granted the Receiver the "exclusive authority to negotiate the sale of the [Oceanside condominium] Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court. See Exhibit A at ¶ 21.

5. The Receiver's authority to enter into and close on contracts for the purchase and sale of the Units is also bestowed by this Court's Receivership Order authorizing the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants and the entities controlled by the Receivership Defendants. The Court's Receivership Order provides that:

[t]he Receiver is further authorized to... 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

BERGER SINGERMAN
attorneys at law

2
Good Ration Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-8308 Telephone 305-755-2500 Facsimile 305-714-4340

conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, at ¶17. (emphasis added)

6. The Receiver has attempted to market the Oceanside Units in the best interests of the MAMC Lenders, which group the Receivership was designed to protect. The Receiver has complied with the Court's Order allowing the Receiver to sell the Oceanside units, including by undertaking an evaluation of the units and obtaining pricing recommendations. After considerable effort, the Receiver has obtained two contracts from prospective buyer, Sunwest Investments, LLC for Units 601 and 706 at Gulf Island Beach and Tennis Club Condominium, which contracts are subject to this Court's approval and are the subjects of the instant motion. A copy of the "As Is" Contract for Sale and Purchase for Unit 601 is attached hereto as Exhibit B ("Sales Contract"). A copy of the sales contract for Unit 706, in substantially the same form and terms as Exhibit B, will be filed with a Notice of Filing in anticipation of the hearing on this Motion ("collectively, "Sales Contracts").

7. The Sales Contracts provide for the sale of two of the Oceanside Units (Units 601 and 706) for a cash purchase price of \$120,000.00 each with closing to occur on or about April 30, 2010.

8. This Court found that the Oceanside Units were in a state of disrepair requiring substantial improvement, that substantial condominium assessments and taxes were due on the Units and that Oceanside and the Receivership have limited assets and limited ability to pay condominium fees and taxes for the Units. Accordingly, the Receiver believes that the sales of the Units contemplated in the Sales Contracts are in the best interests of the Receivership Estate and the Lenders.

9. The Committee of Lenders regarding the Oceanside project have approved the proposed sale of the Units pursuant to the Sales Contracts.

BERGER SINGERMAN

attorneys at law

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Miami, Fort Lauderdale, Miami, Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-788-9500 Facsimile 305-714-4340

10. Pursuant to the notice procedures established by this Court, the Receiver will post this Motion including the Sales Contracts, and Notice of Hearing on the Receivership website and notify the Lenders of the posting via the e-mail distribution procedures established for the purposes of the Receivership.

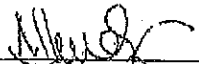
11. Upon the closing of the transaction, the Receiver shall deposit the net proceeds of the sale of the Units in the Court's Registry for distribution pursuant to further motion and order of the Court.

WHEREFORE, the Receiver respectfully requests that this Court enter an Order:

- a. finding that the notice and established procedures of posting to the Receivership website and e-mail distribution to the Lenders constitute adequate notice of the instant motion and hearing thereon;
- b. approving the sale of the two Oceanside Units pursuant to the Sales Contracts and the Receiver's execution of the Sales Contracts;
- c. authorizing the Receiver to perform all acts and execute all documents necessary to effectuate the terms of the Sales Contracts and close on the sale of the Units pursuant to the Sales Contracts; and
- d. awarding such other and further relief this Court deems just and proper.

Respectfully submitted,

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By: 
JAMES D. GASSENHEIMER
Florida Bar No. 959987
ARIADNA HERNANDEZ
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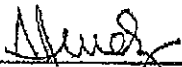
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Doral Miami Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5500 Telephone 305-755-9500 Facsimile 305-714-4340

CASE NO.: 07-43672 CA 09

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 11th day of March, 2010, to the attached Service List.

By: 
ARIADNA HERNANDEZ
Florida Bar No. 020953
E-Mail: ahernandez@bergersingerman.com

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6
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CASE NO.: 07-43672 CA 09

Peter Valori, Esquire
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Miami, FL 33131

cc: The Honorable Jerald Bagley *(via U.S. Mail)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*
Posted to the Berman Mortgage Website

2682612-1

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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,

vs.

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.

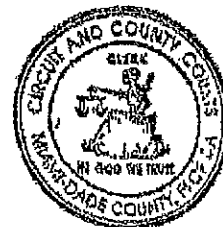
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ORDER GRANTING RECEIVER, MICHAEL I. GOLDBERG'S MOTION TO SELL
THE PROPERTY OF OCEANSIDE ACQUISITIONS, LLC FREE AND CLEAR OF
LIENS, CLAIMS, AND ENCUMBRANCES

THIS CAUSE came before the Court on Wednesday, July 15, 2009 at 1:30 p.m. for an
evidentiary hearing upon the Motion of Michael I. Goldberg, as State Court Appointed Receiver
over Relief Defendant, Oceanside Acquisitions, LLC ("Oceanside") to sell the Property of
Oceanside Free and Clear of Liens, Claims, and Encumbrances, and the Court, having heard and
considered the evidence presented by the parties through witness testimony and hearing exhibits,

FINDS as follows:

EXHIBIT "A"



1. On December 11, 2007, this Court appointed Michael Goldberg as the Receiver (the "Receiver") over the Defendants and Relief Defendants in these Receivership proceedings.

2. One of the Relief Defendants, Oceanside, is an entity formed by Dana Berman and Keith Novak, which entity purchased condominium units at Gulf Island Resort in Pasco County, Florida (the "Units"). Two of the Units were sold prior to the establishment of the Receivership; a total of 17 units¹ remain unsold.

3. The Units were once owned by Gulf Island Resort, L.P. Gulf Island Resort, L.P. transferred the Units to Gulf of Mexico Enterprises, Inc. ("GME"). Later, Oceanside purchased the Units from GME, the record title owner. To complete its purchase of the Units, Oceanside borrowed \$1,700,000 from approximately 42 individuals (the "Lenders") through loans serviced by Defendant, M.A.M.C. Incorporated and secured as first and second position mortgages by the Units.

4. In 2003, Gulf Island Resort, L.P. and Alex Bistricear ("collectively, Bistricear") commenced a quiet title action in Pasco County Circuit Court styled *Alex Bistricear, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Sixth Judicial Circuit Case No. 51-2003- CA- 942 ES (the "Quiet Title Action"). On May 9, 2007, the trial Court in the Quiet Title Action quieted title to the Units in Oceanside. The May 9, 2007 Partial Final Judgment was presented to this Court and the Court has taken judicial notice of same.

5. On June 13, 2008, this Court entered its *Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*. The Pasco

¹ Four of the seventeen units were transferred to Keith Novak by Chief Restructuring Officer, Alan Goldberg. The Receiver contests the validity of the transfers and contends that he still holds equitable title to these units.

County Court also entered its order granting the Receiver's motion to transfer the cases to this Court. Accordingly, the Quiet Title Action is before this Court as Eleventh Judicial Circuit Case No. 08-79169 CA (09).

6. At the hearing on the Receiver's instant motion, Bistrice, through counsel, argued that the time to appeal the Partial Final Judgment in the Quiet Title Action had not run and thus, that this Court did not have the authority to order the sale of the Units free and clear of liens. The Court finds, based on the Partial Final Judgment Quiet Title and applicable case law, that Oceanside holds legal title to the Units at issue in the Quiet Title Action and which are the subject of the Receiver's instant motion to sell the property free and clear of liens. The Court has also considered the case law presented by the parties regarding the circumstances in which a court may properly order the sale of property free and clear of liens and finds that the Court is authorized to order the sale of the Units based on the evidence presented and factual findings contained herein for the reasons stated on the record.

7. Based on the testimony of the representative of the Executive Committee of Lenders in relation to the Oceanside project, Gail Corenblum, who has observed the condition of the Units and has personal knowledge of same, the Court finds that the Units are in a state of disrepair requiring a substantial investment to repair, improve or otherwise rehabilitate the Units. Approximately a year ago, Ms. Corenblum observed that some of the Units had mold infiltration, substantial ceiling damage, and pigeon droppings had accumulated on the balconies. Ms. Corenblum testified that most of the Units have been stripped of cabinetry, wiring, plumbing fixtures, and other fixtures and that all Units were without electric power. Ms. Corenblum also testified that several of the Units had been cited for fire code violations in relation to the windows and that some Units are missing locks on the sliding glass doors.

8. Based on the testimony of Ms. Corenblum regarding Oceanside's attempts to raise money from the Lender group, the Court finds that the individual Lenders are unwilling or unable to contribute monies to repair, improve, or otherwise rehabilitate the Units.

9. Based on testimony of E. Harold Gassenheimer, who is employed by the Receiver as Chief Operating Officer of M.A.M.C. Incorporated, regarding the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does have the funds to repair, improve, or otherwise rehabilitate the Units.

10. Based on Ms. Corenblum and Mr. Gassenheimer's testimony relating to the Receiver's past efforts to market the Units for sale, the Court finds that pending litigation, including the Quiet Title Action, renders the Units unmarketable due to an inability of a prospective purchaser to obtain title insurance.

11. Intervenor, Gulf Island Beach and Tennis Club Condominium Association (the "Association") has moved to intervene in this Receivership case to seek payment of past due condominium assessments on the Units from the Receivership, which assessments are estimated by the Association at over \$150,000.00 and confirmed by the testimony of Ms. Corenblum.

12. Based on Ms. Corenblum and Mr. Gassenheimer's testimony, the Court finds that ad valorem property taxes on the Units also remain unpaid for the years 2006, 2007, and 2008, which taxes total approximately \$200,000.00.

13. Based on the testimony of Mr. Gassenheimer relating to the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does not have the ability to pay to condominium fees and taxes for the Units, which condition places the Units in peril of loss to all interested parties by reason of foreclosure.

14. The Court finds that the circumstances render a sale of the Units necessary for the adequate protection of the rights of the parties. Under these circumstances, a sale of the units would preserve the real interests of the parties by transferring any claims and liens to the proceeds of sale.

15. The ultimate purpose of the Receivership is to provide a vehicle to marshal and preserve assets and maximize return to the lienholders. Allowing the Units to be sold would further the goals of the Receivership and all interested parties because monetizing the Units would prevent waste of the property while the Court adjudicates the different parties' right, title, and interest to the proceeds. It will also allow the Receivership to avoid liability for expenses associated with the Units such as the unpaid taxes and condominium association fees which continue to accrue and necessarily diminish the return for the Receivership, the Lenders and other interested parties. In this instance, the sale of the Units by the Receiver is expedient and proper.

16. This Court has the authority to order that title conveyed to any prospective purchasers be free and clear of any liens, claims, and encumbrances and that said claims, liens, and encumbrances be transferred to the proceeds of the sale of the Units.

17. Florida law requires the Court to monitor the sales of the Units by the Receiver carefully and to disapprove of any proposed sale for less than the property should reasonably be expected to sell.

Accordingly, it is ORDERED AND ADJUDGED that:

18. The Receiver is hereby authorized to market and sell the Units, including those units currently titled in the name of Oceanside and the four units transferred by Oceanside to

Keith Novak (which transfers the Receiver contests) should the latter become re-titled in the name of Oceanside.

19. The Receiver shall undertake an evaluation of the units, consult with and obtain pricing recommendations from no less than three licensed real estate brokers, and price the units in accordance with the average of the three estimates.

20. The Receiver is hereby authorized to contract with a real estate broker for the marketing and sale of the Units, subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court.

21. The Receiver shall have exclusive authority to negotiate the sale of Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contracts by motion and notice to all interested parties in the manner previously approved by the Court.

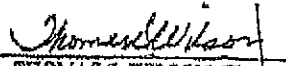
22. Upon approval by the Court of the proposed sale of any unit(s), the prospective purchaser(s) shall receive title to the subject unit(s) free and clear of any and all liens, claims, and encumbrances including, but not limited to, those liens, claims, and encumbrances, if any, held by the parties in the Quiet Title Action, any actions to foreclose liens for condominium assessments including those of Intervenor, Gulf Island Beach and Tennis Club Condominium Association, the mortgages held by M.A.M.C. Lenders, and any actions by contract purchasers of the Units, which actions were transferred to the Receivership Court from Pasco County Circuit Court.³ The prospective purchaser(s) of the unit(s) shall receive clear title irrespective of

³ The Pasco County cases ordered transferred to the Receivership Court are: a. *Deborah R. Abajian v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 31-07-CA-2370-WS; b. *April Latona v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 31-2007-CA-3923-WS; c. *James R. Patterson and Eileen M. Patterson v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 31-2007-CA-3923-WS; d. *Cunningham*

any filings in the public records, including but not limited to, the filings of Gulf Island Resort, L.P. or Districer.

23. The Receiver shall deposit the net proceeds from the sale of the Units, after payment of outstanding condominium fees and taxes, into the Court's Registry until further motion and order of this Court, which proceeds shall be subject to all liens, claims, and encumbrances, if any, claimed by any and all interested parties in the Units for future adjudication by the Court.

DONE AND ORDERED in Chambers this 1st day of Sept, 2009.


THOMAS S. WILSON, JR.
CIRCUIT COURT JUDGE

Copies furnished to:

Counsel of Record
Receivemship Website

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and *Hines v. Oceanwilde Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4792-WS; and *Hines v. Oceanwilde Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4238-WS.

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STATE OF FLORIDA COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the
original on file in this office. 03/03 AD 20 10
HARVEY RUVIN, CLERK, of Circuit and County Courts
Deputy Clerk  7325



THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR

"As Is" Contract For Sale And Purchase

"As Is"

1. PARTIES: Quinnville Acquisition, LLC ("Seller"),
2. and Simmons Investments LLC ("Buyer"),
3. hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")
4. pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):
5. I. DESCRIPTION:
6. (a) Legal description of the Real Property located in Pinellas County, Florida:
7. See Paragraph 20.
8. (b) Street address, city, zip, of the Property 6030 Saw Ranch Drive, Suite 303 Hydrex 34647-2545
9. (c) Personal Property includes washing machine(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless
10. specifically excluded below.
11. Other items included are None, this is a turnkey space only.
12.
13. Items of Personal Property (and leased items, if any) excluded are:
14.
15. II. PURCHASE PRICE (U.S. currency): \$ 72,120.00
16. PAYMENT: \$ 120,000.00
17. (a) Deposit held in escrow by Reynolds Title ("Escrow Agent") in the amount of (check or type in amount) \$ 1,000.00
18. Escrow Agent's address: Pinellas
19. (b) Additional escrow deposit to be made to Escrow Agent within 1 days after Effective Date in the amount of \$ 12,000.00
20. (c) Financing in the amount of (Loan Amount) and Paragraph IV below \$
21. (d) Other \$
22. (e) Balance to close by cash, wire transfer, LOCALLY DRAWN cashiers or draft bank check(s), and/or
23. to adjustments or prorations \$ 72,120.00
24. III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:
25. (a) If this offer is not accepted by and delivered to all parties OR FACT OF EXCLUSION communicated in writing between the parties on or
26. before March 15, 2010, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. Unless other-
27. wise stated, the time for acceptance of any counteroffer shall be 2 days from the date the counteroffer is delivered.
28. (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the
29. final counteroffer. If such date is not obtainable set forth in this Contract, then the "Effective Date" shall be the date determined above for
30. acceptance of this offer or, if applicable, the final counteroffer.
31. IV. FINANCING:
32. (a) This is a cash transaction with no contingencies for financing.
33. (b) This Contract is contingent on Buyer obtaining written loan commitment within _____ days (if blank, then 30 days) after Effective Date ("Loan Approval Date") for (CHECK ONLY
34. ONE): ☐ a fixed ☐ an adjustable rate loan, in the Loan Amount (See Paragraph II.(c)) at an initial interest rate not to
35. exceed _____%, and for a term of _____ years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date.
36. BUYER: Buyer shall use reasonable diligence to obtain Loan Approval; notify Seller in writing of receipt of Loan Approval by Loan Approval
37. Date; satisfy terms of the Loan Approval and obtain the loan. Loan Approval which requires a condition related to the sale of other property shall
38. not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. Buyer authorizes the mortgage lender(s) and
39. lender(s) to disclose information regarding the conditions, status, and progress of loan application and Loan Approval to Seller, Seller's attorney,
40. real estate licensee(s), and Escrow Agent.
41. SELLER: If Buyer does not deliver to Seller written notice of Loan Approval by Loan Approval Date, Seller may thereafter cancel this Contract by
42. delivering written notice ("Seller's Cancellation Notice") to Buyer, but not later than seven (7) days prior to Closing. Seller's Cancellation Notice shall
43. notify Buyer that Buyer has five (5) days to deliver to Seller written notice waiving this financing contingency, or the Contract shall be canceled.
44. COUNTERPARTS (for purposes of this financing Paragraph IV(b) only) If Buyer has used reasonable diligence but does not obtain Loan Approval
45. by Loan Approval Date, and thereafter either party elects to cancel the Contract, the deposit(s) shall be returned to Buyer. If Buyer obtains Loan
46. Approval or waives this financing contingency, and thereafter the Contract does not close, then the deposit(s) shall be paid to Seller, provided how-
47. ever, if the failure to close is due to (a) Seller's failure or refusal to close or Seller otherwise fails to meet the terms of the Contract, or (b) Buyer's lender
48. fails to receive and approve an appraisal of the Property in an amount sufficient to meet the terms of the Loan Approval, then the deposit(s) shall be
49. returned to Buyer.
50. (c) Assumption of existing mortgage (see rider for terms) or
51. (d) Purchase money note and mortgage to Seller (see "As Is" Standard B and Rider Riders: Addendum or special addendum for terms).
52. V. TITLE EVIDENCE: At least 3 days (if blank, then 5 days) before Closing a title insurance commitment with a title company of member status shall be
53. exceptions excepted therein ("Title Commitment") and, after Closing, all terms of the policy of the insurance (see Standard A for terms) shall be assumed by
54. (CHECK ONLY ONE): ☒ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney or
55. ☐ (2) Buyer at Buyer's expense.
56. (CHECK HERE) ☐ If an abstract of title is to be furnished instead of the insurance, and attach rider for terms.
57. VI. CLOSING DATE: The transaction shall be closed and the closing documents delivered on March 15, 2010 ("Closing"), unless
58. modified by other provisions of this Contract. In the event of extreme weather or other conditions or events constituting "force majeure", Closing will be
59. extended a reasonable time until restoration of utilities and other services essential to Closing, and (a) availability of Hazard, Wind, Flood, or Homeowners'
60. insurance, if such conditions continue more than _____ days (if blank, then 14 days) beyond Closing Date, then either party may cancel this Contract.

VI. RESTRICTIONS, EASEMENTS, LIMITATIONS: Seller shall convey, marketable title subject to comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority (restrictions and prohibitions appearing on the plat or otherwise) common to the subdivision containing all, and not more than 10 feet in width as to the rear or rear lines and 7 1/2 feet in width as to the side lines, taxes for year of closing and subsequent years, and easements, mortgages and any other encumbrances, if any, of which Seller is aware. Seller shall disclose, in writing, all such restrictions, easements, mortgages and any other encumbrances, if any, of which Seller is aware.

VII. OCCUPANCY: Seller shall deliver occupancy of Property to Buyer at time of closing unless otherwise stated herein. If Property is intended to be rented or occupied by others at closing, the fact and terms thereof shall be disclosed pursuant to "AS IS" standard. If occupancy is to be delivered before closing, Buyer assumes all risks of loss to Property from date of occupancy until he is responsible and liable for maintenance, repairs, and shall be deemed to have accepted Property in its existing condition at time of taking occupancy.

VIII. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, notes and addenda shall control all printed provisions of this Contract in conflict with them.

IX. ASSIGNABILITY (CHECK ONLY ONE): Buyer hereby assigns and thereby is released from any further liability under this Contract. Seller may assign but not be released from liability under this Contract or may not assign this Contract.

X. DISCLOSURES:

(a) The Property may be subject to unpaid special assessment tax(es) imposed by a public body (public body does not include a Condominium or Homeowners' Association). Such tax(es), if any, whether certified, confirmed and ratified, pending, or payable at maturity, as of closing, shall be paid as follows: By Seller at closing or by Buyer if left blank, then Seller at closing, if the amount of any assessment to be paid by Seller has not been finally determined as of closing, Seller shall be charged at closing an amount equal to the last estimate or assessment for the improvement by the public body.

(b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon or radon testing may be obtained from your County Public Health Unit.

(c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) Buyer acknowledges receipt of the Florida Energy Efficiency Rating Information Brochure required by Section 669.994, F.S.

(e) If the Real Property includes pre-1978 lead-based paint, then a lead-based paint risk is identified.

(f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

(g) BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE.

(h) PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT PAY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE, A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS, PROPOSED REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

XI. MAXIMUM REPAIR COST: DELETED

XII. HOME WARRANTY: Seller and Buyer shall pay for a home warranty plan issued by _____ at a cost not to exceed \$ _____.

XIII. INSPECTION PERIOD AND RIGHT TO CANCEL: (a) Buyer shall have _____ days from Effective Date ("Inspection Period") within which to have a professional inspection of the Property performed as Buyer shall desire and utilities services shall be made available by the Seller during the Inspection Period; (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage to the restoration of the Property resulting from such inspections and this provision (b) shall survive termination of this Contract; and (c) if Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may cancel this Contract by delivering written or written notice of such election to Seller prior to the expiration of the Inspection Period. If Buyer timely cancels this Contract, the deposit held shall be immediately returned to Buyer thereupon. Buyer and Seller shall be released of all further obligations under this Contract, except as provided in this Paragraph XIV. Unless Buyer exercises the right to demand a written report, Buyer accepts the Property in its present physical condition, subject to any violation of governmental, building, environmental, and safety codes, restrictions or requirements and shall be responsible for any and all repairs and improvements required by the local authority.

XIV. SPECIAL CLAUSES: CHECK those items which are applicable AND are attached to and made part of this Contract:

☒ CONDOMINIUM ☒ COASTAL CONSTRUCTION CONTROL LINE ☒ LEAD-BASED PAINT ☒ INSULATION ☒ EVIDENCE OF TITLE (BOTH FLORIDA CONTRACTS) ☒ OTHER Comprehensive Rider Provisions as Addenda

Legal Description of Property - Gulf Island Beach & Tennis Club I a Condominium Per OH 1381 Pg 932 & OH 3100 Pg 202 & Common Elements Building 1 Unit 401 OR 477 & Pg 1442 - 23-24-16-0250-00000-5010,

XV. "AS IS" STANDARD FOR REAL ESTATE TRANSACTIONS: "AS IS" Standard: Buyer and Seller acknowledge receipt of a copy of "AS IS" Standard A through Z of the reverse side of attached, which are incorporated as part of this Contract.

128
129

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,
SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

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THIS "AS IS" FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR.
Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a
particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining
positions of all interested persons.
AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED

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Buyer Investments, LLC 2-16-10 DATE SELLER Goodman's Acquisitions LLC DATE
BUYER DATE SELLER DATE
Buyer's address for purposes of notice Seller's address for purposes of notice
Phone Phone
COOPERATING BROKERS: The brokers (including cooperating brokers, if any) named below are the only brokers entitled to compensation in connection with
this Contract
Cooperating Broker, if any Goodman Real Estate Associates, Inc. Listing Broker

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Addendum to Contract **FLORIDA ASSOCIATION OF REALTORS®**

Addendum No. 2 to the Contract dated February 11th 2010 between
Oceanside Acquisitions, LLC (Seller)
and Sunwest Investments LLC (Buyer)
concerning the property described as:

6818 Sea Ranch Drive, Unit #21 Reddym 75 31667-1911

(the "Contract"). Buyer and Seller make the following terms and conditions part of the Contract:

The Property is owned by Oceanside Acquisitions, LLC, a company that is in Receivership. Michael Goldberg is the Court Appointed Receiver. The Property is subject to a quiet title action styled Alex Bistricker, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al., Fifth Judicial Circuit Case No. 01-1001-CA-34280. The case was subsequently moved to the Eleventh Judicial Circuit for Miami-Dade County Case No. 04-13173-CA-09. The Court entered a judgment granting title to the Property to Oceanside Acquisitions, LLC, the Seller. The Court also granted Receiver Michael Goldberg's motion to sell the Property free and clear of liens, claims, and encumbrances Case No. 07-43672-CA-09. Alex Bistricker has filed a lis pendens stating his intention to appeal these orders and judgments. Consequently, the availability of title insurance on the Property is not certain, and Alex Bistricker motions subsequent to a sale are unknown as is the outcome of the appeal. The Receiver recommends that Buyer or his counsel review the pleadings in these cases and make an independent evaluation of the issues and potential outcome of any appeal.

Seller has not inhabited the Property and makes no claims or warranties regarding the condition of the property. The Property has been uninhabited for several years and may have issues with mold and animal droppings. The electrical, plumbing, heating and air conditioning systems have not been operated recently, and Seller makes no warranties or claims regarding such systems. The Property may have fire rated windows with cracks. Such windows must be replaced or repaired at Buyer's expense. Seller and Coastal Real Estate Associates, Inc. recommend that Buyer employ licensed inspectors to inspect the Property.

Gulf Island Condominium Owners Association II (representing buildings 2 and 3) has made claims regarding the ability of owners in Gulf Island Association I to own boat slips even though several owners in building 1 presently own boat slips and the developers sold boat slips to condominium owners in building 1.

Buyer agrees to hold Coastal Real Estate Associates, Inc., its agents and employees, and Oceanside Acquisitions, LLC, its agents and employees and Michael Goldberg and his counsel harmless from any claims made due to the condition of the Property, from any claims made by Alex Bistricker or Gulf Island Resort, L.P., from any claims made by Association II, and contractors from any and all claims made with respect of the Property and agrees that Buyer is taking the Property as is where it is and subject to the disclosures made herein.

The Contract for Sale and its addenda are subject to court approval by the Receivership Court, and the terms of any court approval are incorporated herein by reference.

Date: 2-16-10 Buyer: [Signature]
Date: _____ Buyer: _____
Date: _____ Seller: _____
Date: _____ Seller: _____

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Instant Forms  

Independent to Contract
FLORIDA ASSOCIATION OF REALTORS®

Addendum No. 2 to the Contract dated _____ between
Changelia Acquisitions LLC (Seller)
 and _____ (Buyer)

concerning the property described as:

5935 Sea Ranch Dr. Unit

Hudson FL 34607

(the "Contract"). Buyer and Seller make the following terms and conditions part of the Contract:
 Buyer shall deposit \$1,000.00 as a refundable earnest money deposit upon submitting the offer. Buyer shall deposit an additional refundable deposit amount equal to 10% of the purchase price less the \$1,000.00 previously deposited within 3 days of receipt in writing that the following conditions have been met:

1. Seller, Receiver, and the Receivership Court have approved and agreed to this Contract, and
2. Buyer has obtained a title commitment from a reputable, nationally recognized title insurance company,

Upon occurrence of items 1 and 2 above, the Contract shall become binding, and the above referenced deposits shall become non-refundable. Buyer and Seller agree to close this transaction within 14 days of the occurrence of items 1 and 2 above.

If the above conditions can not be resolved within 120 days of the date of this Contract, this Contract shall be null and void, and any and all deposits made under this Contract shall be returned to Buyer. Notwithstanding any of the above conditions, the Contract and closing date may be extended with written approval signed by both Buyer and Seller; however, each extension shall expire after thirty (30) days unless another time period is specified in the extension agreement.

Date: 2-16-10

Buyer: [Signature]

Date: _____

Buyer: _____

Date: _____

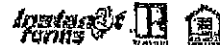
Seller: _____

Date: _____

Seller: _____

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Ariadna Hernandez

From: Gail and Stuart Corenblum [gallstu@bellsouth.net]

Sent: Wednesday, March 10, 2010 8:16 PM

To: Ariadna Hernandez; 'Hal Gassenheimer'

Subject: Oceanside offer

Ari,

If you can write the motion as one sales contract – same buyer, price \$120,000 per unit – unit 601 and unit 706.

Thanks very much,

Gail

Gail Corenblum

(305) 891-1066 Home

(305) 799-1956 Cell

3/11/2010

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

GENERAL JURISDICTION DIVISION
CASE NO.: 07-43672 CA 09

Plaintiff,

vs.

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.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF RECEIVER MICHAEL I.
GOLDBERG'S MOTION TO SELL THE PROPERTY OF OCEANSIDE
ACQUISITIONS LLC FREE AND CLEAR OF LIENS,
CLAIMS AND ENCUMBRANCES

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., by and through its undersigned counsel, hereby files this Supplemental Memorandum which sets forth the applicable case-law and statute in support of this Court's jurisdiction and authority to

we deliver creative and effective business solutions and counsel
BERGER SINGERMAN
attorneys at law



File Miami Tallahassee

enforce the Order Granting Receiver Michael I. Goldberg's Motion to Sell the Property of Oceanside Acquisitions LLC Free and Clear of Liens, Claims and Encumbrances (the "Order") despite the pendency of an appeal.

ANALYSIS OF THE LAW

This Court has jurisdiction to enforce the Order during the pendency of an appeal regarding the Order because there has been no motion to stay filed and no bond that has been posted. As Fla. R. App. P. 9.310, in pertinent part, states:

(a) Application. Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

(b) Exceptions. (1) *Money Judgments*. If the order is a judgment solely for the payment of money,¹ a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest.

(emphasis supplied). Thus, by the terms of Fla. R. App. P. 9.310(a), a lower court has discretion to set the conditions under which an order may, or may not, be stayed pending appellate review. See *Cerrito v. Kovitch*, 406 So.2d 125 (Fla. 4th DCA 1981); *Mariner Health Care of Nashville*,

¹ The Order is not "solely" for the payment of money. For example, a judgment for recovery of money otherwise secured, as by a mortgage on real property, calls into play the general rule set out in Fla. R. App. P. 9.310 (a) rather than the exception contained in (b) for money judgments. See *Cerrito v. Kovitch*, 406 So. 2d 125, 126 (Fla. 4th DCA, 1981) (finding that a final judgment in foreclosure is not an order "solely for the payment of money").

Inc. v. Baker, 739 So. 2d 608, 609 (Fla. 1st DCA 1999). The rationale for this broad discretion is that based on its knowledge of the facts and circumstances regarding a judgment or order, the trial court is in the superior position to determine whether a bond or other conditions should be required before a judgment or order is stayed and, if so, the amount of the bond or the nature of the conditions. See *MSQ Properties v. Florida Dept. of Health & Rehabilitative Services*, 626 So. 2d 292, 293 (Fla. 1st DCA 1993).

A party seeking to stay enforcement of a non-monetary order must file a motion for stay in the lower tribunal. See Fla. R. App. P. 9.310(a); *FMS Mgmt. Sys., Inc. v. IDS Morig. Corp.*, 402 So. 2d 474, 475 (Fla. 4th DCA 1981). The filing of a notice of appeal alone does not divest the trial court of jurisdiction to enforce a final order. See *Parsons v. Whitaker Plumbing of Boca Raton*, 730 So. 2d 839 (Fla. 4th DCA 1999) (explaining "the well settled principle that absent a stay or bond, the filing of a notice of appeal does not divest the trial court of jurisdiction to enforce a final order").

Therefore, in the absence of a stay pending appeal, this Court retains the power to enforce the Order that has been appealed. See e.g. *Mann-Stack v. Homestead Lending, Inc.*, 982 So. 2d 72, 74 (Fla. 2d DCA 2008) (finding that because appellant had posted no bond and there was no stay pending appeal at the time the order of disbursement was entered, the trial court was within its authority to enter appropriate orders enforcing the previous judgment despite the fact that the foreclosure judgment was on appeal); *FMS Mgmt. Sys., Inc.*, 402 So. 2d at 475 (holding that, in the absence of a bond or stay, the lower tribunal may proceed in the cause, even as to the subject matter of the appeal). In fact, absent a motion to stay a non-monetary judgment, this Court lacks any authority to institute a stay or even to require the posting of a bond. See *Starkey v. Linn*, 727 So. 2d 386, 388 (Fla. 5th DCA 1999) (court had jurisdiction to enforce the order being appealed,

absent a motion to stay or the posting of a bond, but the trial court did not have the authority to order party appealing the order to post the bond as a condition of the court not enforcing its final judgment because that party never sought to stay the order).

Even if a motion to stay was, or will be, filed pending the appeal, this Court nonetheless has broad discretion to deny such a motion to stay. *See* Fla. R.App. P. 9.310(a); *Open MRI of Okeechobee, LLC v. Aldana*, 969 So. 2d 589, 590 (Fla. 4th DCA 2007); *Elcoff v. Denson*, 896 So. 2d 795, 799 (Fla. 5th DCA 2005) (finding that trial court did not abuse its discretion in denying motion for stay pending appeal because trial court has broad discretion to grant or deny a motion to stay); *Cerrito*, 406 So. 2d at 126 ("The trial court is ...given considerable latitude in controlling the circumstances under which the proceedings may be stayed pending review"). Furthermore, this Court's enforcement of the Order during the pendency of an appeal is appropriate because such enforcement would not moot issues of the appeal. *See Rafel Indus. Group Ltd. v. Gough*, 556 So. 2d 1174, 1175 (Fla. 4th DCA 1990) (appellant's rights are not abolished merely because the underlying property on which an appeal is based has been disbursed before the reviewing court renders its judgment regarding entitlement to the res).

CONCLUSION

For all of the foregoing reasons, this Court has the jurisdiction and authority to enforce the Order during the pendency of an appeal. No motion to stay has been filed. Additionally, this Court has broad discretion to deny any request for a stay or, alternatively, to fashion conditions upon which any stay, if requested, may be granted.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 19th day of March, 2010, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN
Attorneys for Recetver, Michael Goldberg
1000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Phone: (305) 755-9500 / Fax: (305) 714-4340

By: _____

~~JAMES D. GASSENHEIMER~~
Florida Bar No. 959987
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ARIADNA HERNANDEZ
Florida Bar No. 020953
E-Mail: ~~ahernandez@bergersingerman.com~~

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Peter Valori, Esquire DAMIAN & VALORI, LLP 1000 Brickell Avenue, Suite 1020 Miami, FL 33131	

cc: The Honorable Jerald Bagley *(via Hand Delivery)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*
Posted to the Berman Mortgage Website

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