

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

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 LLC, et al.,

Relief Defendants.

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

THE ORIGINAL  
FILED ON:

MAY 19 2011

IN THE OFFICE OF  
CIRCUIT COURT DADE CO., FL.

**NOTICE OF FILING TRANSCRIPT OF HEARING**  
**HELD APRIL 28, 2011 BEFORE JUDGE BAGLEY**

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") by and through its undersigned counsel, hereby gives notice of filing the *Transcript of Hearing Held April 28, 2011 before Judge Bagley*, attached hereto as **Exhibit A**.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 19<sup>th</sup> day of May, 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,

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cc: The Honorable Jerald Bagley (*via eCourtesy Copies*)  
 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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4 CASE NO.: 07-43672 CA 09

5  
6 STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION,

7 Plaintiff,

8 vs.

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

12 Defendant,

13 and,

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

16 Relief Defendants.

17 \_\_\_\_\_/

18  
19 Dade County Courthouse  
20 73 West Flagler Street  
Miami, Florida  
21 Thursday, 3:32 p.m.  
April 28, 2011

22 The above-entitled cause came on for  
23 hearing before the Honorable Jerald Bagley, before  
24 Corinne Grassini, Shorthand Reporter, Notary Public  
25 for the State of Florida at Large.



APPEARANCES:

ON BEHALF OF FLAGSTAR BANK:

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BY: Barry D. Lapidès, Esquire

ON BEHALF OF GULF ISLAND BEACH and TENNIS CLUB  
CONDOMINIUM ASSOCIATION, INC.:

BUSH ROSS, P.A.

Post Office Box 3913

Tampa, Florida 33601

BY: Charles E. Glausier, Esquire (Via Telephone)

ON BEHALF OF THE RECEIVER, MICHAEL GOLDBERG:

BERGER SINGERMAN

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Miami, Florida 33131

BY: Monica F. Rossbach, Esquire

ON BEHALF OF INTERVENORS:

ANANIA BANDKLAYDER BLACKWELL

BAUMGARTEN TORRICELLA & STEIN

Bank of America

100 Southeast 2nd Street

Suite 4300

Miami, Florida 33131

BY: Maurice J. Baumgarten, Esquire



1 (Thereupon, the following proceedings  
2 were had:)

3 THE COURT: All right. Good  
4 afternoon, everyone.

5 MS. ROSSBACH: Good afternoon, Your  
6 Honor.

7 MR. BAUMGARTEN: Good afternoon, Your  
8 Honor.

9 THE COURT: We have someone appearing  
10 by phone.

11 Good afternoon. This is Judge Bagley.

12 Good afternoon. This is Judge Bagley.

13 Is this Mr. James Gassenheimer?

14 MR. GLAUSIER: No. This is actually  
15 Charles Glausier from Bush Ross in Tampa.

16 THE COURT: Charles Walter. I'm sorry  
17 about that.

18 MR. GLAUSIER: I'm counsel for the  
19 condominium association.

20 THE COURT: All right. Very good.

21 All right. Let's get the style of the  
22 case and then we'll get started here.

23 We're here in the matter of the State of  
24 Florida, Office of Financial Regulation,  
25 plaintiff, versus Berman Mortgage



1 Corporation, M.A.M.C., Incorporated, Dana  
2 Berman, defendants, and DB Atlanta, LLC,  
3 relief defendants, case number 0743672, and  
4 we're set today on the receiver's motion  
5 for an order approving the receiver's  
6 execution of sales contracts for the sale  
7 of additional condominium units owned by  
8 relief defendant, Oceanside Acquisitions,  
9 LLC, and we're also here on receiver's  
10 second amended motion for an order  
11 approving the receiver's execution of all  
12 future sales contracts for condominium  
13 units owned by relief defendant, Oceanside  
14 Acquisitions, LLC.

15 Let me have everyone please state your  
16 appearance if you would.

17 MS. ROSSBACH: Good afternoon, Your  
18 Honor. Monica Rossbach with Berger  
19 Singerman for the receiver, Michael  
20 Goldberg.

21 THE COURT: All right.

22 MR. BAUMGARTEN: Your Honor, Maurice  
23 Baumgarten for intervenors, Alex Bistricher,  
24 as limited partner of Gulf Island Resort,  
25 LP, and Gulf Island Resort: LP.



1 MR. LAPIDES: And, Your Honor, Barry  
2 Lapides of the firm Duane Morris on behalf  
3 of Flagstar Bank.

4 THE COURT: Okay. Thank you.

5 All right. So let's hear first from  
6 the receiver, the moving party, and then  
7 I'll hear from any others who wish to be  
8 heard.

9 MS. ROSSBACH: Your Honor, if I may  
10 before we proceed --

11 THE COURT: One second.

12 Is there something that we need to  
13 address?

14 MR. BAUMGARTEN: Yes, Your Honor. If  
15 Ms. Rossbach is going to be talking about  
16 the merits of this hearing, which I assume  
17 she is, then there's something we need to  
18 address before she gets there, if I may,  
19 Your Honor; and that is, whether or not  
20 this hearing should actually go forward now  
21 given the posture of the related cases.

22 THE COURT: All right.

23 MR. BAUMGARTEN: There's been new  
24 developments since we were here last before  
25 Your Honor.





1 THE COURT: All right. Well, let's  
2 address what the new developments may be  
3 and whether they impact on this motion.

4 Now, let me ask that you speak up so  
5 that --

6 MR. BAUMGARTEN: Sure.

7 THE COURT: -- counsel on the phone  
8 can hear you.

9 MR. BAUMGARTEN: Your Honor, as  
10 intervenors previously mentioned, there are  
11 two pending appeals that are intrinsically  
12 related to the issue of the receiver's  
13 request to sell units. One appeal is in  
14 Third District case number 3D093002, which  
15 deals with the issue of does the Oceanside,  
16 in fact, and DBK own the property that the  
17 receiver wants to sell.

18 Now, the last time we were going to  
19 have this hearing, I had to undergo an  
20 emergency appendectomy and Your Honor  
21 agreed to put off the hearing for that  
22 reason.

23 At that time, oral argument had not  
24 yet taken place in the Coastal decision  
25 about who owns the property nor had oral



1 argument taken place in our appeal from  
2 Your Honor's original order allowing the  
3 sale of the first two units to go forward.

4 Now, on March 16th, and this is  
5 referenced in the receiver's notice of  
6 request for the Court to take judicial  
7 notice. On March 16th, the Third DCA  
8 issued a ruling in the Coastal case in  
9 which they said Oceanside owns the  
10 property.

11 MS. ROSSBACH: Your Honor, if I may,  
12 just right there, just give you a courtesy  
13 of the request for judicial notice.

14 THE COURT: I've got it.

15 MS. ROSSBACH: Oh, you have it, okay.

16 MR. BAUMGARTEN: And I have no  
17 objection to that request for judicial  
18 notice.

19 THE COURT: All right. Then that will  
20 be granted.

21 MR. BAUMGARTEN: Okay. But what  
22 counsel for the receiver did not advise the  
23 Court, and maybe it doesn't matter, is that  
24 we filed a motion for rehearing of that  
25 decision --



1 May I?

2 THE COURT: You may.

3 MR. BAUMGARTEN: -- which was filed  
4 with the Third DCA, and I was waiting till  
5 the last minute to bring this up, because  
6 that was filed a month ago and I've been  
7 waiting for the Third DCA to decide yea or  
8 nay on whether or not they're going to  
9 grant the rehearing, and as of ten minutes  
10 ago, they had not done so. And here's the  
11 updated docket. She, Your Honor, can see  
12 that the petition for hearing -- and they  
13 even filed a response, was there filed.

14 Now, furthermore, the oral argument in  
15 the appeal from Your Honor's order was  
16 supposed to take place on March 30th, which  
17 was two weeks after the Third DCA had ruled  
18 in the Coastal case that the units belonged  
19 to Oceanside. At that time, I filed a  
20 motion with the Third DCA to reschedule the  
21 oral argument pending a decision by the  
22 Third DCA in the Coastal case about whether  
23 or not they were going to grant the motion  
24 for rehearing, and the Third DCA and the  
25 appeal of Your Honor's earlier order



1 granted the motion and removed the oral  
2 argument off the oral argument calendar.

3 Now, what I would suggest, Your Honor,  
4 is if the Third DCA itself believed that  
5 proceedings regarding whether or not the  
6 receiver's authorized to sell units, which,  
7 as we sit here today, and maybe in a day it  
8 won't be an issue, if the Third DCA itself  
9 decided that it would not go forward with  
10 the appeal of Your Honor's ruling pending  
11 this motion for rehearing, then I would  
12 suggest and respectfully request that Your  
13 Honor not go through with this hearing  
14 until we have a decision on the motion for  
15 rehearing, because if I lose the motion for  
16 rehearing, Your Honor, you're not going to  
17 see me again in this case, because I will  
18 have no standing. My client will have no  
19 standing. My client will have lost, and  
20 that will be it. But for this, I just  
21 don't think in the interest of judicial  
22 economy, it makes sense to have a further  
23 hearing about the receiver selling property  
24 that it has not finally been determined  
25 belongs to the receiver.



1                   Now, Your Honor, and the problem here  
2                   also is that based on the relief that the  
3                   receiver's requested in the past regarding  
4                   the sale of Oceanside units, a receiver  
5                   wants Your Honor to enter an order that,  
6                   from what I understand and nobody has told  
7                   me differently, says no matter what happens  
8                   down the road in the Coastal case, if the  
9                   Court says, "Okay. GIR, you own the  
10                  property," no matter what happens down the  
11                  road, whoever buys these units gets to keep  
12                  the units no matter what and that Gulf  
13                  Island Resort is, require to enforce its  
14                  rights, if it ever gets any back, against  
15                  the proceeds. So I would submit that it  
16                  would make no sense, just involves a lot of  
17                  extra work to do that, when if we just wait  
18                  a little bit, because I don't know why it  
19                  would take the Third DCA such a long time  
20                  to rule on a motion for a hearing. I mean,  
21                  if they're going to deny it, they could  
22                  just do that in one sentence. I can't  
23                  predict what they're going to do and I'm  
24                  not making any representations. Then we  
25                  should not go forward with this hearing, or



1 if we do, there should be a caveat that  
2 either to put it -- if Your Honor says, "Go  
3 ahead. You can sell the units," but it  
4 should be subject to a condition that if  
5 for some reason the Third DCA reverses  
6 itself and says, you know, "We're going to  
7 have a trial as to who owns these units,"  
8 then GIR will be able to go after whoever  
9 buys these units and get the property back,  
10 or we could just wait until the Third DCA  
11 rules.

12 There's also been a subsequent  
13 decision to Your Honor's ruling last time  
14 regarding the authority of a receiver to  
15 sell property where there hasn't been a  
16 final judgment.

17 MS. ROSSBACH: Your Honor, that was  
18 already argued in the Third DCA.

19 MR. BAUMGARTEN: And this is argued in  
20 the appeal, which the Third DCA's put on  
21 hold pending the motion for rehearing and  
22 this was actually brought up by the  
23 receiver, this October 2010 case, where the  
24 Court says that a receiver does not have  
25 the authority to dispose of property. In



1 other words, note, for the general rules of  
2 mere appointment of a receiver does not  
3 itself confer any of the owner's power or  
4 authority to sell such property. And, in  
5 any event, this is another change in  
6 circumstances.

7 So I would ask Your Honor to either  
8 hold off on this hearing or if Your Honor's  
9 going to go ahead and just hear the  
10 evidence, that any determination that the  
11 buyer gets to keep this property, if and  
12 when a buyer is found for some of these  
13 properties, that that would be subject to  
14 Gulf Island Resorts right in the event  
15 things turn around in the Third DCA.

16 THE COURT: All right. Let's hear  
17 from Counsel.

18 MR. BAUMGARTEN: May I sit down, Your  
19 Honor?

20 THE COURT: Oh, absolutely.

21 MS. ROSSBACH: Your Honor, in the  
22 Third DCA's opinion affirming Judge Cobb's  
23 ruling striking Mr. Bistricher and Gulf  
24 Island Resort's pleadings, the Third DCA  
25 clearly states that plaintiff's discover



1 abuses were protracted. Judge Cobb was  
2 within his discretion to reject the  
3 plaintiff's explanation for not producing  
4 these documents prior to trial, and  
5 accordingly, as remaining argument  
6 pertaining to the entering of the contempt  
7 order or partial judgment acquiring title  
8 in favor of the defendant's lack merit, we  
9 affirm these orders.

10 Your Honor, with all due respect to  
11 the Third DCA, there is no time limit for  
12 them to rule upon Mr. Baumgarten's motion  
13 for rehearing.

14 As Your Honor is well aware of with  
15 the facts of this case, title was acquired  
16 in favor of Oceanside in May of 2007. We  
17 are now in May of 2011. Counsel would like  
18 for these condominiums to continue  
19 deteriorating, for us to lose a buyer, a  
20 potential buyer of four condo units that  
21 would bring in an excess of \$400,000 into  
22 units that each need to be completely  
23 gutted, completely renovated. And, Your  
24 Honor, if I may also, I would like to ore  
25 tenus move for this Court to take judicial





1 notice of all prior testimony that was  
2 submitted in the July 2nd, 2010 evidentiary  
3 hearing wherein we were here on receiver's  
4 motion to approve two sales contracts, and  
5 Your Honor entered an order granting our  
6 motion for the order approving the  
7 receiver's execution of the sales contracts  
8 at that time.

9 In addition, Your Honor, in that order  
10 back in July of last year wherein you  
11 approved the receiver's motion, you also  
12 gave Mr. Bistricher an opportunity, another  
13 bite at the apple, wherein they had the  
14 opportunity to seek stay of your order  
15 allowing the receiver to go forward with  
16 the sale of the units. The Third DCA  
17 denied the motion for stay.

18 At this point, we've had Judge Cobb  
19 strike Mr. Bistricher pleadings. We then  
20 had Judge Wilson enter an order granting  
21 the receiver's motion to sell the property  
22 free and clear of all liens and  
23 encumbrances. We then had Your Honor  
24 affirm -- well, essentially affirm the, or  
25 I should say follow the order of Judge



1 Wilson and allow the receiver to go forward  
2 selling with the sales contracts, which has  
3 now brought in some revenue into these  
4 depreciating assets. And, now, Your Honor,  
5 we've had the Third DCA approve Judge  
6 Cobb's ruling from back in 2007. This is  
7 just another opportunity for Mr. Bistricher  
8 vis-à-vis Mr. Baumgarten to delay, and the  
9 receiver, we're just trying to bring in  
10 some money in this constantly depreciating  
11 asset. There's mold. There's pigeon  
12 droppings. There's a health hazard in  
13 general. It's an eyesore in the community.  
14 There's an abundance of the condominium  
15 association fees that have remained unpaid.  
16 Taxes on the units have remained unpaid,  
17 and this is all evidence that was presented  
18 back in the hearing in July of 2010, Your  
19 Honor.

20 THE COURT: All right. I recall the  
21 evidence.

22 Is there anyone else that wishes to be  
23 heard on this issue besides Mr. Baumgarten?

24 All right. Mr. Baumgarten, brief  
25 reply.



1 MR. BAUMGARTEN: Your Honor.

2 MS. ROSSBACH: May I sit, Your Honor?

3 THE COURT: Yes.

4 MS. ROSSBACH: Thanks.

5 MR. BAUMGARTEN: I am not here to  
6 stall anything. I understand perfectly  
7 well what's going on and I really take  
8 umbrage of Ms. Rossbach claiming that this  
9 is some kind of scam. This is simply a  
10 matter of practicality, and I'm not even  
11 arguing. This is what the Third DCA  
12 itself, on an appeal of Your Honor's  
13 ruling, didn't say, "It doesn't matter. We  
14 lost. You lost just two weeks ago. We're  
15 going to go forward with this."

16 It doesn't matter whether this is or  
17 is not a good idea. The point is, at this  
18 point, there is a serious legal issue  
19 regarding the ability of Your Honor -- I  
20 mean, let's put aside selling the units.  
21 Put selling the units in a way that Gulf  
22 Island Resort can never get them back no  
23 matter what happens. So it's not a matter  
24 of stay. It's a matter of let's just do  
25 what makes sense, and nobody's trying to



1           stall anything. I would rather not be here  
2           today. If I know that the Third DCA is  
3           going to deny the motion for rehearing, I  
4           wish they'd done it two weeks ago. I'm not  
5           the one asking them to stall. So it's just  
6           a matter of practicality. I don't see why  
7           that we would not have to go seek another  
8           stay of Your Honor's ruling and then we're  
9           going to have to file something just in  
10          case the motion for rehearing is there. It  
11          just seems like a total waste of money and  
12          time.

13                 THE COURT: All right. But we are  
14                 here today and I'm going to move forward on  
15                 the receiver's motions as they have been  
16                 filed to be heard today. I'll consider  
17                 your request as to how I wish to treat my  
18                 ruling once I conclude this hearing.

19                 As it relates to the receiver's motion  
20                 asserted by Ms. Rossbach, you've asked the  
21                 Court -- you've moved orally for the Court  
22                 to take judicial notice, I believe, of the  
23                 July 10th hearing or testimony or evidence;  
24                 is that what you've moved?

25                 MS. ROSSBACH: Your Honor, I'm sorry,



1 it's July 2nd, 2010, was the evidentiary  
2 hearing.

3 THE COURT: All right. Do you have  
4 any objections to that, Mr. Baumgarten?

5 MR. BAUMGARTEN: I don't have any  
6 objection to treating that testimony as if  
7 it was given today. Any objections I had  
8 to parts of it, I would still reserve.

9 THE COURT: I'll allow you to reserve  
10 that.

11 MR. BAUMGARTEN: Right. But I'll  
12 treat it as if it was given today.

13 THE COURT: All right. Then I will  
14 grant your ore tenus motion to accept the  
15 July 2nd, 2010 testimony allowing also Gulf  
16 Island Resort to reserve any objections  
17 they may have lodged at that time.

18 All right. Let's move forward and  
19 address the receiver's motion for an order  
20 approving the execution of the sales  
21 contracts for the sale of additional  
22 condominium units.

23 MS. ROSSBACH: Thank you, Your Honor.

24 THE COURT: And I do have a vivid  
25 recollection of the evidence as it was



1 presented back in July of 2010. I recall  
2 all the photographs and I remember the  
3 witnesses who came forward and offered  
4 photographs of the inside of the unit and  
5 the deterioration from pigeon droppings to  
6 the lack of air conditioning and how the  
7 baseboards and the drywall and the  
8 accumulated mold and the buckling, things  
9 of that sort. Just so you know, I have a  
10 clear vivid recollection.

11 MS. ROSSBACH: Thank you, Your Honor.

12 The additional -- let me back up. The  
13 receiver has obtained four sales contracts  
14 from the same purchaser, Anthony Linville.  
15 Anthony Linville has offered, and, Your  
16 Honor, I believe on March 2nd, 2011, the  
17 receiver prepared and filed a notice of  
18 filing the sales contracts for units 406,  
19 510, 803 and 804, and, Your Honor, these  
20 sales contracts are each for \$114,000 per  
21 unit.

22 In the July 2nd, 2010 hearing, Gayle  
23 Kornblum, who represents the committee for,  
24 and works closely with the receiver,  
25 testified, and if I may, Your Honor, I



1 would read that into the record, if Your  
2 Honor so chooses, would like, or I can just  
3 sum it up.

4 THE COURT: Whatever's your pleasure.

5 MR. BAUMGARTEN: Just tell me where  
6 you are.

7 MS. ROSSBACH: Oh, I'm sorry. Okay.  
8 So we're on the July 2nd, 2010 hearing  
9 transcript, which was filed with the court  
10 also on March 2nd, 2011, and I'm on page 70  
11 and I am about halfway down at line 17.

12 Question by Mr. Gassenheimer, "Ms.  
13 Kornblum, on behalf of the committee, have  
14 you been involved with, for instance,  
15 market research or analysis in order to put  
16 you in a position to make a recommendation  
17 with respect to the sales price of these  
18 units?

19 Answer, "Yes."

20 Question, "Can you describe for the  
21 Court the type of documents and the things  
22 that you did to educate yourself on the  
23 market?"

24 Answer, "I looked online at the  
25 computer at recent sales and properties



1 that were listed for sale. I spoke with  
2 more than one Realtor up there. I believe  
3 I spoke with three Realtors. I have an  
4 aunt who lives probably a half of mile from  
5 the property."

6 And then I'm going to pause there and  
7 I'm going to go to the next page, page 72,  
8 beginning at line 3. Question by  
9 Mr. Gassenheimer, "Perhaps I wasn't clear.  
10 I just want you to focus on the type of  
11 things you looked at so that as a  
12 chairperson of the committee, you felt like  
13 you could be in a position to make a  
14 recommendation to the receiver about the  
15 appropriate pricing."

16 Answer, "I looked at sales in that  
17 building and listings in that building."

18 Continuing on, at that point, Ms.  
19 Kornblum showed a copy of an MLS document,  
20 which was marked as Exhibit No. 8 and  
21 admitted into evidence. And then I'm going  
22 to continue on to page 74 at line 20.

23 "So, Ms. Kornblum, based on your  
24 discussion with the president of the  
25 association, your observation of the units,





1 your observation of the conditions of the  
2 units, the market research that you've  
3 done, did you make a recommendation as to  
4 the receiver in regard to the  
5 appropriateness of the \$120,000 offer on  
6 each of the units?"

7 Answer, "Yes, I did."

8 Question, "And was it your  
9 recommendation to the receiver that the  
10 receivership assets," I'm sorry, "accepts  
11 these contracts at the Court's approval in  
12 light of your research and the work that  
13 you've done?"

14 Answer, "Yes."

15 Your Honor, the receiver, we submit  
16 that the four units that we are seeking  
17 sales contracts on are similarly-situated  
18 to the units that were sold back in July of  
19 2010, and we submit Ms. Kornblum's  
20 testimony as testimony today as to the  
21 reasonableness of the offer in the four  
22 sales contracts.

23 THE COURT: Okay.

24 MS. ROSSBACH: And, Your Honor, as  
25 you've already stated, these units have



1 continued to deteriorate. There's been no  
2 change. There's still no insurance.  
3 There's still no taxes paid. And, Your  
4 Honor, if I may make a comment, Mr.  
5 Baumgarten suggested that Mr. Bistricher  
6 would have no opportunity to get back these  
7 particular units if they are sold. We have  
8 offered to transfer Mr. Bistricher's claims  
9 to the proceeds of the sales of the unit.  
10 We have offered Mr. Bistricher an  
11 opportunity to post a bond to these --  
12 equal to the amount that we are seeking to  
13 sell these condominium units, and he has  
14 refused both, and, Your Honor, at no time  
15 has Mr. Bistricher showed any type of unique  
16 interest in these particular units, and  
17 Florida law is clear that in order to  
18 prevent a transfer of property, you need to  
19 show that you have a unique interest in  
20 this particular parcel, this piece of the  
21 land, and Mr. Bistricher has presented no  
22 evidence to that affect.

23 So, Your Honor, the receiver  
24 respectfully requests an order allowing the  
25 receiver to go forward with these four



1 sales contracts on the units. And then I  
2 don't know, Your Honor, if you should  
3 comment on the next motion, or if we're  
4 handling one motion in a vacuum --

5 THE COURT: Why don't you address the  
6 next one as well.

7 MS. ROSSBACH: Thank you, Your Honor.

8 Pursuant to the order appointing  
9 receiver and subsequent orders thereafter,  
10 the receiver is to come before Your Honor  
11 and request approval on all sales contracts  
12 on an individual basis. The receiver  
13 respectfully requests that we be permitted  
14 instead to enter into sales contracts once  
15 they are approved by the committee and the  
16 receiver, so that we could get this  
17 property sold in an expeditiously and an --  
18 and raise enough capital so that it would  
19 be worth our while, if that makes sense.  
20 Thank you, Your Honor.

21 THE COURT: Thank you.

22 Mr. Baumgarten?

23 MR. BAUMGARTEN: Your Honor, this is  
24 why I opted to not go forward, because I'm  
25 going to sound like a jerk.



1 THE COURT: No. I won't perceive it  
2 that way.

3 MR. BAUMGARTEN: But there is no  
4 evidence. What Mrs. Kornblum testified in  
5 July of 2010, ten months ago, about sales  
6 of two other units that are not at issue  
7 here today and she did not testify about  
8 any of the issues of the units that are at  
9 issue today, and that's units 406, 510,  
10 803, and 804, and that's based on the  
11 notice of filing sales contracts of March  
12 2nd, 2011, that the receiver asked Your  
13 Honor -- that the receiver filed, that  
14 evidence is meaningless. Not only that,  
15 Ms. Rossbach is not a witness. She can't  
16 testify about whether there's been  
17 continuing deterioration of the units. She  
18 can't testify about whether in the ten  
19 months since the last units were sold, and  
20 they were sold for more than these units,  
21 by the way. I think it was 120,000. She  
22 can't testify that things haven't changed.  
23 She can't testify that the units have  
24 deteriorated. She can't even testify about  
25 whether Mr. Bistricher has a unique



1 interest, and by the way, that's one of the  
2 issues that they've argued before the Third  
3 DCA.

4 So, I mean, this is an evidentiary  
5 hearing and there's no evidence. It's all  
6 based on an inference from testimony of a  
7 witness who didn't purport to testify about  
8 any of these units. She was asked merely  
9 about the units that were the subject of  
10 the sale back in July 2010.

11 So the receiver has not presented any  
12 evidence about why, whether these prices  
13 are good, whether the units require that  
14 they be sold today, and, again, if I didn't  
15 have any interest in these units, I  
16 wouldn't care, but since my client may have  
17 an interest in the units, we do not want  
18 the units sold. We would say again there's  
19 no reason why these units can't be fixed up  
20 and rented, just like -- what did you say  
21 his name was again? Anthony Linville.  
22 Anthony Linville is the purchaser. That's  
23 what he's doing with the units. We don't  
24 have any testimony about why that's not  
25 done, and so there is no evidence.



1                   And in terms of the other motion, Your  
2                   Honor, I mean, I just say it's -- again,  
3                   I'm not trying to be a pain, but Ms.  
4                   Rossbach has repeated over and again, and I  
5                   would too, if I were her, that "Hey, Judge  
6                   Wilson ruled on how these units are going  
7                   to be sold." They're going to be sold by  
8                   the receiver having authority to go out and  
9                   market them and then come back to the Court  
10                  with a sales contract for the Court's  
11                  approval.

12                 Now, I don't even know how many more  
13                 units are there out there, like nine or  
14                 ten? Now, she's asking Your Honor to just  
15                 leave it up to the lenders committee, that  
16                 if they approve it, we don't need court  
17                 approval. That's not what Judge Wilson  
18                 ordered. Judge Wilson ordered that the  
19                 sales contracts have to be approved by the  
20                 Court, and we don't know who these buyers  
21                 are on these other units. We don't know  
22                 what the prices -- I mean, what if the  
23                 lenders committee said, "All right. \$100,  
24                 fine. Good for us." I mean, Judge Wilson  
25                 said bring the specific contract to the



1 Court. Now they're trying to change the  
2 game. Thank you.

3 THE COURT: Okay. Is there anyone  
4 else who wishes to be heard besides Counsel  
5 -- that the Court has already heard from?

6 MR. GLAUSIER: Your Honor, on behalf  
7 of the condominium association, we are  
8 appearing in support of the receiver's  
9 first motion for the order approving the  
10 contracts with the understanding that the  
11 liens held by the condominium association  
12 will be satisfied at the sales.

13 MR. BAUMGARTEN: May I comment on  
14 that, Your Honor?

15 THE COURT: All right.

16 MR. BAUMGARTEN: On behalf of  
17 Bistricher, we object to the association's  
18 fees being paid from the sales -- from the  
19 proceeds of the sale to the extent that  
20 there are sales, because, again, to the  
21 extent Gulf Island Resort turns out to be  
22 the owner, Gulf Island Resort has claims  
23 against the association. If we don't have  
24 any standing, then we don't have any  
25 standing.



1 THE COURT: Thank you. Anything  
2 further, Ms. Rossbach?

3 MS. ROSSBACH: I mean, Your Honor --

4 THE COURT: What's your response to  
5 the lack of evidence regarding what  
6 condition these four units, 406, 510, 803,  
7 and 804 -- because I do recall hearing  
8 specific evidence on the units that I  
9 previously approved for sale and what  
10 conditions they were in, the photographs,  
11 and so forth, but I have not heard any  
12 evidence regarding the current condition  
13 and what, as it was, Mr. Linville I think  
14 his name, who was prepared to purchase and  
15 then renovate, or fix up, if you will, and  
16 I know he's a handyman or someone who has  
17 the ability to fix up units, but there's  
18 been no evidence presented regarding these  
19 particular units as to the current  
20 condition that they're in. I mean, I have  
21 not heard anything that would show that may  
22 have been in a better condition, but  
23 there's nothing to show what condition they  
24 were in similarly to what I received on the  
25 other units back on July 2nd of 2010.





1 MS. ROSSBACH: Well, Your Honor, I can  
2 see that clearly there is no evidence to  
3 these particular units. However, Your  
4 Honor, there is testimony as to the  
5 condition of the condominium as a whole as  
6 to the condominium association fees that  
7 are outstanding. That applies to  
8 everybody, that everyone gets assessed  
9 those fees, that the taxes are unpaid.  
10 Your Honor, it's public record, and I would  
11 file a request for judicial notice of the  
12 unpaid taxes on those units. And, Your  
13 Honor, there is also testimony that the  
14 property, that the common areas of the  
15 property are also in disrepair.

16 So I would submit to Your Honor that,  
17 although we don't have any evidence as to  
18 these specific units, I don't think anyone  
19 can contest that sale of these specific  
20 units will go to better the overall  
21 condominium project. So I would submit to  
22 the Court that so let's say then there is  
23 no evidence of continuing deterioration,  
24 number one, there is no evidence that there  
25 has been any improvements to the property



1           either, and also then we are satisfied then  
2           to say that the properties in the same  
3           state of disrepair, although common sense  
4           would tell us that it's almost been a year  
5           later. Chances are things have gotten  
6           slightly worse, but let's just say that  
7           they're in the same exact--

8           THE COURT: You're saying the same  
9           state of repair, I don't even know what  
10          state of repair they were in other than --  
11          I mean, no one bothered to offer any  
12          evidence as to what conditions they were in  
13          in relation to the other units that I  
14          previously gave approval for the sale back  
15          on July 2nd.

16          MS. ROSSBACH: I understand.

17          THE COURT: I mean, so I have no idea  
18          what the state of condition is. I mean,  
19          I've heard of the conditions of the units  
20          that I approved for sale. I know what they  
21          were, what condition they were in. I don't  
22          even know if these units at issue today  
23          were ever previously occupied. I've heard  
24          nothing from anyone about that.

25          MS. ROSSBACH: And, Your Honor, I



1 clearly can't testify to that. I mean, I  
2 know what my client has told me. That  
3 doesn't help anybody here. The only thing  
4 that I can suggest, as I've said, is,  
5 number one, that the testimony that was  
6 given at the July 2nd, 2010 hearing talking  
7 about the overall state of disrepair of the  
8 entire condominium common areas and the  
9 fact that mold was pervasive throughout the  
10 units as well as the fact that there are  
11 pigeon droppings and they had to come  
12 through -- there was buckling throughout  
13 all of the units, I would offer to the  
14 Court that I can submit affidavits as to  
15 the actual units if the testimony that was  
16 given on July 2nd does not give Your Honor  
17 comfort in permitting us to go forward with  
18 these four sales contracts. However, going  
19 forward, bringing in over \$400,000 into  
20 this property would help overall all of the  
21 unit owners.

22 MR. BAUMGARTEN: Your Honor, just so  
23 Your Honor can recall, this condominium  
24 consists of, I don't know how many, 180. I  
25 don't know how many units there are. The



1 ones that are at issue are a small minority  
2 of the units. There was no testimony about  
3 the common areas of the entire building  
4 being affected in any way by the units, and  
5 there's plenty of other people living in  
6 the building. It's not like the entire  
7 building is vacant, and, therefore, it's  
8 affecting the common area. There are  
9 certain specific units. As far as I know,  
10 there is no problem with the common area.  
11 We don't have any evidence about whether  
12 the condominium association has done  
13 anything to fix the unit. From what I  
14 recall, they actually had taken steps, and  
15 it's in the transcript of the hearing, and  
16 also, I'm not even sure that it's true that  
17 the taxes are unpaid. I thought I saw  
18 people who pay the taxes buying tax  
19 certificates. But in any event, there is  
20 no problems with the common areas and that  
21 has nothing to do with these units.  
22 There's a whole building filled with people  
23 paying their rent and their fees.

24 THE COURT: As I recall, it wasn't  
25 necessarily the common areas. It may have



1           been, for example, there was damage done to  
2           the side of a building as it relates to the  
3           droppings, that they would go to another  
4           unit or balcony.

5           MR. BAUMGARTEN: I think it was just a  
6           balcony.

7           THE COURT: Well, when I say other  
8           units, their balconies are being affected.  
9           If you've got --

10          MR. BAUMGARTEN: I don't recall.

11          THE COURT: If you're on the fourth  
12          floor and there's a balcony below you, then  
13          that may be affected by the droppings.

14          MR. BAUMGARTEN: I don't think the way  
15          -- because droppings fall on top of a  
16          balcony. It doesn't go through the floor,  
17          but Your Honor can read the testimony about  
18          it, but I don't recall it affecting other  
19          units.

20          MS. ROSSBACH: And, Your Honor --

21          THE COURT: Well, when I say "units,"  
22          I'm not saying the interior, but I'm  
23          talking about the outside of the building.

24          MR. BAUMGARTEN: I understand. I'm  
25          also referring to that, Your Honor.



1 THE COURT: Right.

2 MS. ROSSBACH: And, Your Honor,  
3 regardless, there's still excess, as of a  
4 year ago, there was an excess of \$300,000  
5 in outstanding condominium association  
6 fees. That clearly affects everyone who  
7 lives in these condominiums.

8 MR. BAUMGARTEN: Your Honor, Ms.  
9 Rossbach represents the lenders, not the  
10 condominium owners, so --

11 THE COURT: All right. Thank you.

12 MS. ROSSBACH: Thank you, Your Honor.

13 THE COURT: At this time, the Court is  
14 compelled to deny the motion for an order  
15 approving a receiver in execution for the  
16 sale of additional condominium units due to  
17 the lack of evidence. I'm just not  
18 satisfied. I mean, if the evidence was  
19 sufficient, surely I would grant the  
20 motion, but there's just isn't sufficient  
21 evidence.

22 As it relates to the second motion,  
23 which is styled as the second amended  
24 motion for an order approving a receiver's  
25 execution of all future sale contracts,



1           that would be denied. This Court is not in  
2           a position to abandon its responsibility of  
3           overseeing what it initially charged  
4           receiver to, and that is to, yes, fulfill  
5           certain responsibilities, but bring it back  
6           to this Court for oversight or review and I  
7           won't abandon that responsibility.

8           MS. ROSSBACH: Your Honor?

9           THE COURT: Yes.

10          MS. ROSSBACH: If I may, is it  
11          possible to continue this motion, I'm  
12          sorry, to continue this hearing on the  
13          motion to sell additional condominium  
14          units?

15          THE COURT: I'll permit you to do  
16          that, if you wish to come forward with, so  
17          that you don't have to reopen it, but right  
18          now, as we sit here today or stand, there's  
19          not sufficient evidence for this Court to  
20          make a ruling granting the relief requested  
21          on the first part of your motion, the sale  
22          of these four units.

23          MS. ROSSBACH: I understand.

24          THE COURT: I've ruled definitively on  
25          the second amended motion. So if you would



1           like for the Court to allow you to reopen  
2           your case on the motion approving the  
3           receiver's execution of sale contracts of  
4           these four units in question, I will permit  
5           that.

6           MS. ROSSBACH: Thank you, Your Honor.

7           MR. BAUMGARTEN: Your Honor, without  
8           -- sorry.

9           MS. ROSSBACH: Well, while I've got  
10          Mr. Baumgarten here, may I go next door to  
11          Iliana and get a new date within the next  
12          30 days?

13          THE COURT: Well, she's gone for the  
14          day. She comes in at 7:30, so I let her  
15          leave at 4:00.

16          MS. ROSSBACH: Okay.

17          THE COURT: So I've already looked at  
18          the clock. You can tell it's past 4:00,  
19          but she brought three kids with her and she  
20          wanted them out of here, not me. I'm  
21          friendly with kids, but she wanted them  
22          out, so --

23          MR. BAUMGARTEN: Can we horse trade,  
24          Your Honor? I won't object if this hearing  
25          does not take place until after we've got a





1 definitive decision on the motion for  
2 rehearing?

3 THE COURT: Well, what's going to  
4 happen is, I don't think you're going to  
5 get a date earlier than 30 days, so let's  
6 just go ahead and get the date and  
7 hopefully the Third will have made its  
8 ruling before you-all come back before me  
9 and/or if the Third DCA comes back sooner  
10 and it appears to be favorable to your  
11 side, meaning the receiver representing the  
12 interest at hand, then I will allow you to  
13 accelerate or get an expedited hearing on  
14 this matter.

15 MS. ROSSBACH: On your motion  
16 calendar, or would you still like a special  
17 set?

18 THE COURT: No. I could probably  
19 stick it at the end of my five-minute  
20 motion calendar or something like that. I  
21 mean, I have a bunch of trials coming up,  
22 but I will make room one more time for you  
23 to have the matter addressed.

24 MS. ROSSBACH: Wonderful. Thank you,  
25 Your Honor.



1 MR. BAUMGARTEN: If I get --

2 THE COURT: If you get --

3 MR. BAUMGARTEN: -- slammed by the  
4 Third DCA.

5 THE COURT: No. I won't say slammed,  
6 but if you get an unfavorable ruling,  
7 certainly you won't have much to --

8 MR. BAUMGARTEN: Right. I won't be --

9 THE COURT: -- come in and shout  
10 about.

11 MR. BAUMGARTEN: What if I get an  
12 unfavorable ruling, but they say nice try?

13 THE COURT: Well, that's good too.  
14 Call that a split decision.

15 MS. ROSSBACH: Well, Your Honor, just  
16 to clarify, regardless of whether or not  
17 the Third DCA rules on the motion for  
18 rehearing, I can still reset this, bring in  
19 evidence --

20 THE COURT: Yes.

21 MS. ROSSBACH: Thank you.

22 THE COURT: Absolutely, because what  
23 I'm granting you is the motion to reopen  
24 your case --

25 MS. ROSSBACH: Thank you.



1 THE COURT: -- to present additional  
2 evidence.

3 MS. ROSSBACH: Thank you.

4 THE COURT: All right.

5 MS. ROSSBACH: Thank you.

6 THE COURT: Anything else from anyone?

7 Thank you, folks. You-all should know  
8 that there's street closures going on due  
9 to the Mercedes Corporate Run and also  
10 they're closing certain streets because I  
11 understand Obama is coming into town  
12 tomorrow, so don't try to go the Biscayne  
13 Boulevard route into the heart of downtown  
14 or you won't get out.

15 MS. ROSSBACH: Thank you.

16 (Thereupon, the hearing was concluded  
17 at 4:10 p.m.)

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## 1 CERTIFICATE OF SHORTHAND REPORTER

2  
3 STATE OF FLORIDA )

4 ) SS.

5 COUNTY OF DADE )  
6

7 I, CORINNE GRASSINI, Shorthand  
8 Reporter, Notary Public, do hereby certify that I  
9 was authorized to and did stenographically report  
10 the foregoing proceedings and that the transcript  
11 is a true and correct transcription of my stenotype  
12 notes of the proceedings  
13

14 Dated this 4th day of May , 2011.  
15  
16  
17  
18  
19  
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21 \_\_\_\_\_  
22 CORINNE GRASSINI

23 Shorthand Reporter  
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