

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

Case No.: 07-43672-CA-09

v.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, et al.,

Defendants.

**INTERVENOR GULF ISLAND BEACH AND TENNIS CLUB CONDOMINIUM
ASSOCIATION, INC.'S MOTION COMPELLING THE RECEIVER TO MARKET
AND SELL THE OCEANSIDE CONDOMINIUM UNITS OR TO COMPEL
RECEIVER TO PAY PAST DUE AND FUTURE CONDOMINIUM ASSESSMENTS**

Gulf Island Beach and Tennis Club Condominium Association, Inc. (the "Intervenor Association"), by and through its undersigned counsel, and hereby seeks the entry of an order compelling the Receiver to market and sell the Oceanside condominium units or to compel the Receiver to pay past due and future condominium assessments for condominium units owned by ~~Relief Defendant, Oceanside Acquisitions, LLC ("Oceanside")~~. In support thereof, Intervenor Association states as follows:

STATEMENT OF RELEVANT FACTS

1. Oceanside was the owner of the following-described condominium units in Gulf Island Beach and Tennis Club Condominium in Pasco County, Florida:

Condominium Units 104A, 105A, 111A, 202A, 210A, 301A, 302A, 311A, 401A, 406A, and 408A, of Gulf Island Beach and Tennis Club I, a Condominium, according to the Declaration of Condominium thereof filed for record in Official Records Book 1381, Page 932 of the Public Records of Pasco County, Florida, together with all dock spaces, parking spaces and other limited common elements appurtenant thereto.

(the "Oceanside Units").

2. The Oceanside Units are subject to the recorded Declaration of Condominium of Gulf Island Resort and Racquet Club, A Condominium (the "Declaration"), which provides for the payment of periodic assessments by unit owners and further provides that the Intervenor Association shall have the right to enforce the collection of said assessments by way of a lien upon the lots of said owners.

3. Intervenor Association, pursuant to an Order dated May 27, 2009, was authorized to intervene in the above-referenced action because Oceanside, a relief defendant, owed past due and future condominium assessments for at least fourteen different condominium units.

4. Intervenor Association continues to provide services and benefits which enhance and protect the Oceanside Units.

5. During the course of the Receiver litigation, this Court has authorized the sale of Oceanside condominium units.

6. The Intervenor Association agreed to permit the sale of the units and, as a result, continued to agree to abate its request for payment from the Receiver for condominium assessments.

7. The Association agreed to this believing that the condominium units would be actively marketed and sold if reasonable offers were received.

8. It has come to our attention that not only are the units not being actively and properly marketed, reasonable offers made to purchase certain units have been rejected.

9. No condominium units have been sold during the past 9 months.

10. Intervenor Association has researched the efforts to sell the units, and they have found only one Oceanside unit listed for sale on realtor.com. Moreover, the listing states that the

unit needs drywall, flooring, kitchen, bathrooms, air conditioning, heat and probably electrical work. That degree of specificity at the list stage almost certainly will dissuade a potential buyer from even making a call to inquire about the unit.

11. The Intervenor Association needs to understand what "the plan" is with respect to marketing and selling the units.

12. Regarding the lost sale, the Intervenor Association has learned that Bill Hartland (already a currently owner of a condominium unit at Gulf Island) made an offer to purchase unit 406 in the amount of \$120,000.00 (to include a covered parking space and a boat slip), on October 11, 2011.

13. Given that other units were sold at an amount between \$120,000.00 to \$130,000.00, the offer was not unreasonable. According to Mr. Hartland, almost sixty days passed before he received a response, which was a counter at \$138,000.00, but it came ten days after Mr. Hartland had already withdrawn his offer.

14. Under no circumstances can such a lapse of time between an offer and a response be considered reasonable, and the Association is concerned that there may have been other offers that suffered a similar fate.

15. The Association continues to incur approximately \$3,700 per month in unpaid condominium assessments from the remaining unsold units, and continues to place an extraordinary burden on the Association and the current owners who must necessarily make up the shortfall in order to properly maintain the property.

16. Moreover, Intervenor Association is concerned that the Receiver is not aware of the effort, or lack thereof, by the investor group and Coastal Realty to market and sell the units.

The Intervenor Association is concerned that they may be actually impeding the sale of units in the hope of getting a better return some time down the road.

17. Intervenor Association, on or about April 6, 2012, sent a letter to the Receiver requesting that the Receiver provide the Intervenor Association with a copy of the current sale and marketing plan for the unsold units and, if there is nothing in writing, that the plan be reduced in writing and explained to the Association.

18. Intervenor Association also asked why there was such a delay in responding to the offer on unit 406, and what other offers have been made on the unsold units.

19. The Receiver failed to respond to our letter, and failed to respond to our e-mail correspondence which followed the letter. See Exhibit "A".

20. The Receiver's failure to respond is intolerable and is causing substantial harm to the Intervenor Association.

21. Assessments continue to accrue against the Oceanside Units at the rate of \$335.00 per month per unit (\$3,685.00 in total per month). Interest continues to accrue on the unpaid assessments at the rate of fifteen percent (15%) per annum.

22. Moreover, even though Oceanside has failed to pay assessments since November 2006, the Intervenor Association is required by law to continue to provide, and Oceanside continues to enjoy, services to the Oceanside Units, including insurance coverage, security, maintenance of the appurtenant common elements, electrical power, water, and sewer (collectively "Services and Amenities"), all of which either directly benefit or preserves the Receiver's assets within this Condominium.

23. Intervenor Association is contractually obligated pursuant to the Declaration of Condominium and Florida law to provide the Services and Amenities to the owners of all condominium units in this condominium.

24. Currently, the Association is owed \$251,198.47 in assessments alone. This does not include the late fees, interest, administrative fees, attorneys' fees or other expenses.

25. All owners of units in the condominium are obligated pursuant to the contract (Declaration of Condominium) and the Condominium Act to pay for the Services and Amenities.

26. The Intervenor Association and its unit owners continue to suffer damages due to delay caused by the Receiver.

27. Intervenor Association has, in good faith, attempted to resolve this matter without seeking the assistance of the Court.

28. Accordingly, the Intervenor Association seeks the entry of an order compelling the Receiver to market and sell the Oceanside Units or, in the alternative, ordering the Receiver to pay the past due and future condominium assessments for the property controlled by the Receiver.

WHEREFORE, Gulf Island Beach and Tennis Club Condominium Association, Inc., respectfully requests that this Honorable Court enter an Order compelling the Receiver to market and sell the Oceanside Units, or in the alternative, ordering the Receiver to pay the past due and future condominium assessments for the property controlled by the Receiver, and granting such other and further relief as the Court deems just and proper.

DATED: June 26th, 2012.

Respectfully submitted,



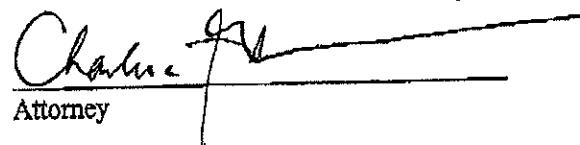
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*Attorneys for Gulf Island Beach and Tennis
Club Condominium Association, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by facsimile and U.S. Mail, on this 26th day of June, 2012, to:

Monica F. Rossbach, Esq. James D. Gassenheimer, Esq. Berger Singerman 200 S. Biscayne Blvd., Suite 1000 Miami, FL 33131	Cristina Saenz, Esq. Assistant General Counsel State of Florida, Office of Financial Reg. 401 N.W. 2 nd Avenue, Suite N-708 Miami, FL 33128
Alan M. Sandler, Esq. Sandler & Sandler 117 Aragon Avenue Coral Gables, FL 33134	Charles L. Neustein, Esq. Charles L. Neustein, P.A. 777 Arthur Godfrey Road, 2 nd Floor Miami Beach, FL 33140
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Maurice Baumgarten, Esq. Anania, Bandklayder, Blackwell, et al. Bank of America Tower, Suite 4300 100 S.E. 2 nd Street Miami, FL 33131	Paul Huck, Esq. Dean C. Colson, Esq. Colson Hicks Eidson 255 Aragon Avenue, 2 nd Floor Coral Gables, FL 33134

William Dufoe, Esq. Robert W. Lang, Esq. Holland & Knight, LLP 100 N. Tampa Street, Suite 4100 Tampa, FL 33602	Deborah Poore Fitzgerald, Esq. Walton Lantaff Schroeder & Carson, LLP Corporate Center, Suite 2000 100 E. Broward Blvd. Fort Lauderdale, FL 33301
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April 6, 2012

BY FACSIMILE ONLY (305) 714-4340

James D. Gassnerheimer, Esq.
Monica F. Rossbach, Esq.
Berger Singerman
200 S. Biscayne Blvd., Suite 1000
Miami, FL 33131

Re: *State of Florida, Office of Financial Regulation v. Berman Mortgage Corporation*
Circuit Court, Miami-Dade County, Florida, Case No. 07-43672-CA-09
Our File No. 7518.64

Dear James and Monica:

As you know, I represent the Gulf Island Beach and Tennis Club Condominium Association, Inc. (the "Association"). I am writing to you on behalf of the Association because the Association is concerned that the condominium units are not being marketed and sold in a commercially reasonable manner which, of course, is preventing the Association from collecting condominium assessments from the unsold units.

By way of background, you may recall that the Association, pursuant to an Order dated May 27, 2009, was authorized to intervene in the above-referenced action because Oceanside Acquisitions, LLC ("Oceanside"), a relief defendant, owed past due and future condominium assessments for at least fourteen different condominium units. After some legal wrangling with Alex Bistricer and his counsel, the Receiver was permitted to market and sell condominium units owned by Oceanside. The Association agreed to this and, as a result, continued to agree to abate its request for payment from the Receiver for condominium assessments. The Association agreed to this believing that the condominium units would be actively marketed and sold if reasonable offers were received. It has come to our attention that not only are the units not being actively and properly marketed, reasonable offers made to purchase certain units have been rejected.

Exhibit A

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James D. Gassenheimer, Esq.

Monica F. Rossbach, Esq.

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With respect to the marketing and sale of the units, not a single unit has been sold in at least nine months. The Association has researched the efforts to sell the units, and they have found only one Oceanside unit listed for sale on realtor.com. Moreover, the listing states that the unit needs drywall, flooring, kitchen, bathrooms, air conditioning, heat and probably electrical work. That degree of specificity at the listing stage almost certainly will dissuade a potential buyer from even making a call to inquire about the unit. The Association needs to understand what "the plan" is with respect to marketing and selling the units.

Regarding the lost sale, the Association has learned that Bill Hartland (already a current owner of a condominium unit at Gulf Island) made an offer to purchase unit 406 in the amount of \$120,000.00 (to include a covered parking space and a boat slip), on October 11, 2011. Given that the other four units were sold at an amount between \$120,000.00 to \$130,000.00, the offer was not unreasonable. According to Mr. Hartland, almost sixty days passed before he received a response, which was a counter at \$138,000.00, but it came ten days after Mr. Hartland had already withdrawn his offer. Under no circumstances can such a lapse of time between an offer and a response be considered reasonable, and the Association is concerned that there may have been other offers that suffered a similar fate.

All of this is very troubling to the Association. The Association continues to incur approximately \$4,000 per month in unpaid condominium assessments from the remaining unsold units, and continues to place an extraordinary burden on the Association and the current owners who must necessarily make up the shortfall in order to properly maintain the property. Moreover, we are not really sure whether you, as counsel for the Receiver, are aware of the effort, or lack thereof, by the investor group and Coastal Realty to market and sell the units. The Association is concerned that they may be actually impeding the sale of units in the hope of getting a better return some time down the road.

The Association is requesting that the Receiver provide the Association with a copy of the current sale and marketing plan for the unsold units and, if there is nothing in writing, that the plan be reduced to writing and explained to the Association. The Association also needs to understand why there was such a delay in responding to the offer on unit 406, and what other offers have been made on the unsold units. There is still over \$400,000 in past due, unpaid condominium assessments, and if we cannot get an adequate explanation regarding the efforts made to sell these units the Association will have little choice other than to request relief from the court.

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James D. Gaseinheimer, Esq.
Monica F. Rossbach, Esq.
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We ask that you respond to our request on or before Friday, April 13, 2012. We look forward to hearing from you.

Sincerely,



Mark A. Basurto

MAB/kd
cc: Gulf Island Beach & Tennis COA

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