

MAY 10 2012

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

COMERICA BANK,
a Texas banking corporation,

Plaintiff,

CASE NO.

18

FLORIDA BAR NOS. 19968 & 28585

vs.

TROPIC RANCH, INC. a Florida
corporation, H.K. HOTEL
MANAGEMENT, LLC, a Michigan
limited liability company, HANNA
KARCHO-POLSELLI, individually,
BROWARD COUNTY, FLORIDA, a
political subdivision of the State of
Florida, and KENNETH A. FRANK,
individually,

12 01 35 97

Defendants.

MOTION FOR AN ORDER SEQUESTERING RENTS

Plaintiff Comerica Bank ("Comerica") files this Motion for an Order Sequestering Rents, and alleges:

1. This motion is ancillary to the main action, which is a suit on separate promissory notes ("Notes") and the foreclosure of a Continuing Collateral Mortgage ("Mortgage").

2. Comerica realleges the allegations contained in the Complaint for Foreclosure and Damages (the "Complaint"), including, without limitation, the allegations that Tropic Ranch, Inc. ("Defendant"), executed and delivered the Mortgage as security for the payment of the Loans¹; that the Loans are in default

¹ Undefined capitalized terms in this motion are defined in the Complaint.

for failure to make payment when due; that Defendant is the current record title holder of the mortgaged property; and that Comerica owns and holds the Notes and Mortgage and has accelerated payment of the indebtedness pursuant to the default.

3. Specifically, the Loans are in default for, among other things:

- a) Failure to pay Comerica the sum of \$21,690.84 to reimburse Comerica for a portion of the protective advance for 2009 and 2010 real property taxes, which payment was due by July 31, 2011 under Section 6 of the May 5, 2011 amendment to the Forbearance Agreement;
- b) Failure to provide to Comerica by May 31, 2011 evidence that the conditions of Section 13 of the Forbearance Agreement (regarding discharge of certain liens) have been met;
- c) Failure to provide Comerica with evidence of a broker listing as set forth in Section 18 of the Forbearance Agreement;
- d) Failure to pledge to Comerica a first priority security interest in certain bank accounts by April 15, 2011 as required under Section 26 of the Forbearance Agreement; and
- e) Failure to deliver to Comerica by May 16, 2011 a fully executed personal financial statement for Remo Polselli, as described in Section 27 of the Forbearance Agreement.

4. Additionally, Defendant defaulted under the Mortgage by failing to pay the personal property taxes due for 2010 in the amount of \$385.04 and by failing to pay the personal property taxes due for 2011 in the amount of \$391.60. Defendant also failed to pay the real property taxes due for 2011 in the amount of \$42,177.25.

5. Pursuant to the Mortgage and as security for payment of Notes, respectively, in addition to the mortgaged property Defendant has pledged, transferred, and assigned to Comerica all rents, issues, profits and revenues in any manner arising from the mortgaged property.

6. Pursuant to the Mortgage, a default on the Notes entitles Comerica to collect the rents, issues, income, products, and profits which form part of its security for the repayment of the Notes.

7. Defendant is currently operating the mortgaged property and is thereby deriving income, revenue and profits.


8. In accordance with Florida Statutes section 697.07(3), the parties have agreed under the terms of the Mortgage to waive notice or a demand for rents. Nevertheless, Comerica sent Defendant, by certified and regular mail, a demand letter for rents on May 10, 2012. A true and correct copy of the demand letter is attached hereto as **Exhibit "A."**

9. Pursuant to Florida Statutes section 697.07, Comerica requests this Court to order that the rents be deposited in the registry of the court pending adjudication of Comerica's rights to these rents.

Dated: May 10, 2012

HOLLAND & KNIGHT LLP
Attorneys for Comerica Bank
515 East Las Olas Boulevard, 12th Floor
P.O. Box 14070
Fort Lauderdale, FL 33302-4070
Tel: (954) 525-1000
Fax: (954) 463-2030


By: _____


Brian K. Hole
Florida Bar No. 0019968
Nicole C. Velasco
Florida Bar No. 0028585

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to the process server to be served along with the Complaint for Foreclosure and Damages, Summonses, and Lis Pendens in this action

By: _____


Brian K. Hole
Florida Bar No. 0019968
Nicole C. Velasco
Florida Bar No. 0028585

Holland & Knight

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Holland & Knight LLP | www.hklaw.com

May 10, 2012

Brian K. Hole
954- 468 -7910
brian.hole@hklaw.com

**VIA FIRST CLASS U.S. MAIL AND
CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Tropic Ranch, Inc.
55 E. Long Lake Road, Suite 204
Troy, MI 48085

H.K. Hotel Management, LLC
55 E. Long Lake Road, Suite 204
Troy, Michigan 48085-4738

Hanna Karcho-Polselli
55 E. Long Lake Road, Suite 204
Troy, Michigan 48085-4738

Re: Installment Loan in original principal sum of 3,185,000.00 from Comerica Bank ("Comerica") to H.K. Hotel Management, LLC and Installment Loan in original principal sum of \$1,000,000.00 from Comerica to Hanna Karcho-Polselli (collectively, "Loans"), secured by a December 6, 2006 Continuing Collateral Mortgage ("Mortgage") executed and delivered to Comerica by Tropic Ranch, Inc.

Dear Sir or Madam:

The law firm of Holland & Knight LLP represents Comerica. The Loans are in default due, among other things, to your:

- a) Failure to pay Comerica the sum of \$21,690.84 to reimburse Comerica for a portion of the protective advance for 2009 and 2010 real property taxes, which payment was due by July 31, 2011 under Section 6 of the May 5, 2011 amendment to the Forbearance Agreement dated June 9, 2010 (as amended on September 3, 2010 and May 5, 2011, the "Forbearance Agreement");
- b) Failure to provide to Comerica by May 31, 2011 evidence that the conditions of Section 13 of the Forbearance Agreement (regarding discharge of certain liens) have been met;
- c) Failure to provide Comerica with evidence of a broker listing as set forth in Section 18 of the Forbearance Agreement;



- d) Failure to pledge to Comerica a first priority security interest in certain bank accounts by April 15, 2011 as required under Section 26 of the Forbearance Agreement; and
- e) Failure to deliver to Comerica by May 16, 2011 a fully executed personal financial statement for Remo Polselli, as described in Section 27 of the Forbearance Agreement.

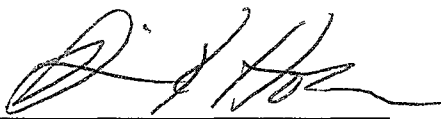
Because of your failure to cure these defaults, your right to collect and retain the rents, revenues, issues, and profits of the subject real property (collectively, "Rents") has been terminated pursuant to the terms of the Mortgage, and other documents evidencing the Loans.

Comerica hereby demands that you immediately contact the undersigned to coordinate the establishment of an account with the Court Registry of the Seventeenth Judicial Circuit in and for Broward County, Florida with respect to the foreclosure action that has been filed against you, wherein you shall deposit the Rents.

This letter is being sent to you without prejudice to any other rights or remedies that Comerica may have, all of which rights and remedies Comerica expressly reserves.

Sincerely yours,

HOLLAND & KNIGHT LLP

By: 

Brian K. Hole, Esq.