

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

CASE NO. 12-013597(18)

COMERICA BANK,
a Texas banking corporation,

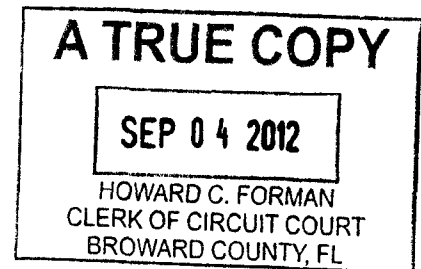
Plaintiff,

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,

Defendants.



**AMENDED MOTION FOR THE APPOINTMENT
OF A RECEIVER FOR A LIMITED PURPOSE AND
FOR AN ORDER SEQUESTERING RENTS**

Plaintiff Comerica Bank ("Comerica") files this Amended Motion for the Appointment of a Receiver for a Limited Purpose or, alternatively, 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 Complaint¹ for Foreclosure and Damages (the "Complaint"), including, without limitation, the

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

allegations that Tropic Ranch, Inc. ("Defendant"), executed and delivered the Mortgage as security for the payment of the Loans; that the Loans are in default 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. Recently, several life-safety concerns have arisen at the Subject Real Property.

4. As background, the Subject Real Property includes a hotel known as "A Little Inn Too." Immediately south and adjacent to the Subject Real Property is another hotel known as "A Little Inn By the Sea." Both hotels allow their guests to use a swimming pool located at A Little Inn Too.

5. On August 29, 2012, undersigned counsel for Comerica was notified by the Fire Chief for the City of Lauderdale by the Sea that A Little Inn By the Sea was being shutdown due to unsafe balconies.

6. Comerica has also learned that A Little Inn Too is now closed.

7. Because both properties are non-operational and in light of what Comerica has learned from the Fire Chief for the City of Lauderdale by the Sea, Comerica believes it is necessary for this Court to appoint a receiver for the limited purpose of securing the Subject Real Property so as to prevent harm to anyone who may try to enter the property while it remains closed for business. Moreover, securing the property will also help to prevent further deterioration due to mold and the elements.

8. Aside from these life-safety issues, 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.²

9. 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.

².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.

10. Accordingly, under the terms of 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.

11. The Mortgage further provides that upon the default of the Mortgage, Comerica is entitled to have a Receiver appointed by a court to enter upon, take possession of, and manage the mortgaged property and to collect the rents of the property, including those past due.

12. For any of the aforementioned reasons, Comerica is entitled to the appointment of a receiver as a matter of law. *See Carolina Portland Cement Co. v. Baumgartner*, 128 So. 241, 249–50 (Fla.1930); *KeyBank Nat’l Ass’n v. Knuth, Ltd.*, 15 So. 3d 939, 940–41 (3d DCA 2009); *Fla. Reinvestment Corp. v. Cypress Savings Ass’n*, 509 So. 2d 1352, 1354 (4th DCA 1987).

Sequestration of Rents

13. To the extent Defendant is still operating the Subject Real Property, Comerica is entitled to all income, revenue and profits.

14. The Mortgage subject to this action provides for an assignment of rents. A copy of the Mortgage is attached to the Complaint and incorporated by reference herein. The Mortgage is in default.

15. 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.”**

16. 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.³

WHEREFORE, Comerica Bank respectfully requests that this Court enter an Order:

- (i) appointing a receiver for the sole and limited purpose set forth herein;
- (ii) requiring that the rents be deposited in the registry of the court pending adjudication of Comerica's rights to these rents; and
- (iii) granting any and all further relief that this Court deems necessary and proper.

Dated: August 31, 2012

HOLLAND & KNIGHT LLP

Attorneys for Plaintiff
515 E. Las Olas Blvd., Suite 1200
Fort Lauderdale FL 33301
Tel: (954) 525-1000
Fax: (954) 463-2030

By: 

Brian K. Hole
Florida Bar No. 019968
Nicole C. Velasco
Florida Bar No. 0028585
Joshua R. Levenson
Florida Bar No. 0056208

³ The undersigned acknowledges that asking for the sequestering of rents appears at odds with the previous representation that Little Inn Too is no longer operational. The undersigned, however, has made repeated requests to Defendant's counsel for a written statement and certified operating and financial statements what would establish no revenues are being collected for Little Inn Too. To date, Defendant has failed to provide anything more than its counsel's representation that Little Inn Too is no longer operational.

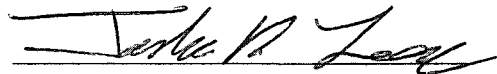
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **August 31, 2012**, a true and correct copy
of the foregoing was served via U.S. mail upon:

Michael S. Tobin, Esq.
Rothman & Tobin, P.A.
11900 Biscayne Boulevard, Suite 740
Miami, FL 33181
PH (305) 895-3225
FX (305) 895-7175
<http://www.rothmanandtobin.com>
***Counsel for Tropic Ranches, Inc., H.K. Hotel Management, LLC, and Hanna
Karcho-Polselli***

Maya A. Moore, Esq.
Joni Armstrong Coffey, Esq.
County Attorney for Broward County
Office of the County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, FL 33301
Phone: (954) 357-7600
Fax: (954) 357-7641
Counsel for Broward County

Kenneth A. Frank
1323 S.E. 3rd Avenue
Pompano Beach, FL 33062


Joshua R. Levenson
Florida Bar No. 0056208

Holland & Knight

515 East Las Olas Boulevard, Suite 1200 | Fort Lauderdale, FL 33301 | T 954.525.1000 | F 954.463.2030
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

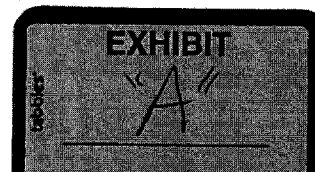
Hanna Karcho-Polselli
55 E. Long Lake Road, Suite 204
Troy, Michigan 48085-4738

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;



May 10, 2012

Page 2

- 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 Polsell, as described in Section 27 of the Forbearance Agreement.

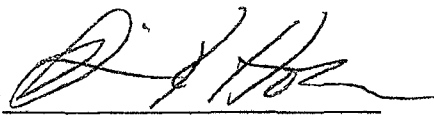
Because of your failure to cure these defaults, your right to collect and retain the rents, revenues, issues, and profits of the subject real property (collectively, "Rents") has been terminated pursuant to the terms of the Mortgage, and other documents evidencing the Loans.

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.