

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

CASE NO. 11-028447 (03)

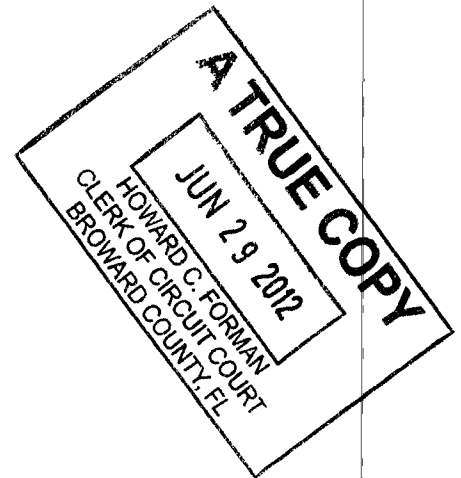
COMERICA BANK, a Texas banking
association,

Plaintiff,

vs.

OCEAN 4660, LLC a Florida limited
liability company, OCEANSIDE
LAUDERDALE, INC., a Florida
corporation, KENNETH A. FRANK,
individually, ANGELA DIPILATO,
individually, TOWN OF
LAUDERDALE-BY-THE-SEA, a
political subdivision of the State of
Florida, WASTE MANAGEMENT
INC. OF FLORIDA d/b/a SOUTHERN
SANITATION SERVICE, a Florida
corporation, AFFINITY
MECHANICAL INC., a Florida
corporation, and BROWARD
COUNTY, a political subdivision of
the State of Florida,

Defendants.



**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
TO DEFENDANT OCEAN 4660, LLC**

Pursuant to Florida Rule of Civil Procedure 1.350, Comerica Bank
("Plaintiff") requests Defendant Ocean 4660, LLC ("Borrower") to examine and/or
copy the following designated items within thirty (30) days from the date of service
hereof, or at such other time as may be agreed upon by the office of the undersigned.
Attention is directed to the "DEFINITIONS" and "INSTRUCTIONS," which are to

be complied with in producing documents pursuant to Florida Rule of Civil Procedure 1.350.

DEFINITIONS

1. "You" and "yours" shall mean Borrower and all of its past or present employees, agents, or representatives, as well as all other persons acting or purporting to act on its behalf.

2. "Complaint" shall mean the Second Amended Complaint for Foreclosure and Damages that Plaintiff filed in this action.

3. "First Loan" shall mean the principal sum of Ten Million Eight Hundred Fifty Thousand and No/Dollars (\$10,850,000.00) that Plaintiff lent to you on January 3, 2008.

4. "Second Loan" shall mean the principal sum of principal sum of One Million and No/Dollars (\$1,000,000.00) that Plaintiff lent to you on January 3, 2008.

5. "Loans" shall mean the First Loan and Second Loan, collectively.

6. "Property" shall mean the real property located in Broward County, Florida that is more particularly described in paragraph 39 of the Complaint.

7. "Parking Lot" shall mean the real property adjacent to the Property that you use for parking, and that has the following legal description:

Lots 9, 10, 22, 23, and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of the Public Records of Broward County, Florida

8. "Ground Lease" shall mean the Lease dated September 5, 1957 pursuant to which you sublease the Parking Lot.

9. "Swap Agreement" shall mean the ISDA Master Agreement dated January 25, 2008, as confirmed by a written Confirmation Letter dated January 25, 2008, between you and Plaintiff.

10. The term "person" shall mean and include natural persons, corporations, partnerships, governmental entities, and any and all other forms of organization and agreement, in addition to any officer, director, consultant, advisor (legal or otherwise), stockholder, employee, agent or partner thereof.

11. The term "document" shall mean any kind of written, electronic, or graphic matter, however produced or reproduced, including all electronically stored or generated material, of any kind or description, whether or not sent or received by Estate, including originals, copies or drafts and both sides thereof, and including but not limited to: papers, books, letters, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, work papers, inter-office or internal memoranda, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or other meetings, affidavits, subpoenas, notices, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer print-outs, data processing input and output, microfilms, and other records kept by electronic, photographic, or other mechanical means, minutes of meetings of board of directors, executive committees, or any other writings or recordings similar to any of the foregoing, however denominated by Borrower, or his present or former

partners, attorneys, counsel, accountants, auditors, agents, employees and all persons acting or previously acting on his behalf. The term "document" includes all of the above materials, whether asserted privileged or not.

12. The use of a verb in any tense shall be construed as the use of a verb in all other tenses, whenever necessary to bring within the scope of the specification all responses which might otherwise be construed to be outside its scope.

13. Terms in the singular include the plural and terms in the plural include the singular.

14. The term "relating to" as used herein is defined to mean referring to, evidencing, pertaining to, consisting of, reflecting, concerning or in any way logically or factually connected with the matter discussed.

15. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the specification all responses which might otherwise be construed to be outside its scope. "Each" and "every" shall be construed synonymously, as shall the words "any" and "all."

16. As used in this request for production, the term "correspondence" means all letters, faxes, e-mails, writings or memorandums, authored or received by any of the persons whose names appear in this request for production or authored or received by their employees, agents or independent contractors. This term also includes every attachment to such correspondence or any documents that accompany such correspondence.

INSTRUCTIONS

1. **Manner of Production.** Documents produced pursuant to this request shall be separately produced for each paragraph of this request, or, in the alternative, shall be identified as complying with the particular paragraph or paragraphs of the request to which they are responsive, if the documents produced for inspection are produced as they are kept in the usual course of business.

2. **Privileged Documents.** In the event that you wish to assert attorney/client privilege, work product exclusion, or any other privilege as to any document requested, then as to each such document subject to such assertion, you shall provide an identification of the document, including (a) the nature of the document, (b) the date of the document, and (c) the author, sender and recipient, together with a summary statement of the subject matter of such document in sufficient detail to permit the court to reach a ruling in the event of a motion to compel and an indication of the factual and legal basis for the assertion of the privilege.

3. **Documents Not in Possession, Custody, or Control.** If you are unable to produce any document requested, state the reasons why you are unable to produce such document. A negative response to any request without further explanation will be deemed to be your response that the requested document is not in your possession, custody or control, as interpreted by controlling case law.

4. **Documents No Longer in Possession, Custody, or Control.** With respect to documents of which you once had possession, custody or control, but no

longer have possession, custody or control, please identify the document and state why the document is no longer in your possession, custody or control and identify the person who currently has possession, custody or control of the documents.

5. In the event that documents are not in your possession, you are hereby requested to deliver original consent forms directing the appropriate agency or entity to supply the information that you are unable to request.

DOCUMENTS REQUESTED

1. Any and all documents you have received since January 1, 2011 from the Lauderdale-By-the-Sea Fire Department in connection with the Property.
2. Any and all documents you have received since January 1, 2011 from any state or municipal court in connection with code violations on the Property.
3. All records relating to payments you made in 2010 in connection with the Ground Lease.
4. All records relating to payments you made in 2011 in connection with the Ground Lease.
5. All records relating to payments you have made in connection with the real estate taxes that are due on the Parking Lot for 2011.
6. All records relating to payments you have made in connection with the real estate taxes that are due on the Property for 2011.
7. All records relating to payments you have made in connection with the real estate taxes that were due on the Property for 2010.
8. All records relating to payments you have made in connection with the real estate taxes that were due on the Property for 2009.
9. All records relating to payments you have made in connection with the real estate taxes that were due on the Property for 2008.
10. Any and all documents demonstrating that you have engaged in loss mitigation efforts with Plaintiff in connection with the Loans.

11. Any and all documents supporting your contention that Plaintiff has thwarted your loss mitigation efforts in connection with the Loans.

12. Any and all documents supporting your contention that Plaintiff has refused to negotiate with you in good faith in connection with the Loans.

13. Any and all documents evidencing that Plaintiff represented to you that it would negotiate reinstatement of the Loans and forbear legal action.

14. All records relating to your efforts to sell the Property.

15. All offers you have received for the purchase of the Property.

16. All contracts you have entered into for the sale of the Property.

17. Any and all documents supporting your contention that Plaintiff coerced you into entering into the Swap Agreement.

18. Any and all documents supporting your belief that Plaintiff received funds for allocation to the Loans.

19. Any and all documents evidencing that Plaintiff has wrongfully refused to apply funds or payments to the Loans.

20. All records demonstrating that you currently have insurance coverage for the Property.

21. All records relating to payments you have made on the Loans.

22. All records relating to payments you have made under the Swap Agreement.

Dated: June 28, 2012

Respectfully Submitted,

HOLLAND & KNIGHT LLP

Counsel for Comerica Bank
515 East Las Olas Boulevard
Suite 1200
Fort Lauderdale, Florida 33301
Telephone No: (954) 525-1000
Fax No: (954) 463-2030

By: 

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 28, 2012, a true and correct copy of the foregoing was provided to all parties on the Service List below.

By: 

Brian K. Hole
Fla. Bar No. 0019968

SERVICE LIST

Krystol L. Rappuhn, Esq. 55 E. Long Lake Road, Suite 204 Troy, Michigan 48085-4738 <i>Co-Counsel for Ocean 4660, LLC</i> By regular U.S. Mail and facsimile	Michael Tobin, Esq. Rothman & Tobin, P.A. 11900 Biscayne Boulevard, Suite 740 Miami, Florida 33181 <i>Co- Counsel for Ocean 4660, LLC</i> By regular U.S. Mail and facsimile
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<p>Eduardo M. Soto, Esq. Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Coral Gables, FL 33134 <i>Counsel for Town of Lauderdale-By-The-Sea</i> By regular U.S. Mail and facsimile</p>	<p>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 <i>Counsel for Broward County</i> By regular U.S. Mail and facsimile</p>
<p>Oceanside Lauderdale, Inc. 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 By regular U.S. Mail</p>	<p>Kenneth A. Frank 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 By regular U.S. Mail</p>
<p>Waste Management of Florida d/b/a Southern Sanitation Service c/o Registered Agent, CT Corporation System 1200 South Pine Island Road Plantation, FL 33324 By regular U.S. Mail</p>	<p>Affinity Mechanical Inc. c/o Edward J. Bender, Registered Agent 2805 E. Oakland Park Boulevard, #144 Fort Lauderdale, FL 33306 By regular U.S. Mail</p>
<p>Angela Dipilato 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 By regular U.S. Mail</p>	<p>Angela Dipilato 1323 S.E. 3rd Avenue Pompano Beach, FL 33060 By regular U.S. Mail</p>
<p>Motion Elevator, Inc. c/o Registered Agent, Rose Portelli 5915 Park Drive Margate, FL 33063 By regular U.S. Mail</p>	<p>Rose Portelli 5915 Park Drive Margate, FL 33063 By regular U.S. Mail</p>
<p>Euro Fist Choice Enterprises, Inc. c/o Registered Agent, Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 By regular U.S. Mail</p>	<p>Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 By regular U.S. Mail</p>