

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

CASE NO.

11-28447

**03**

Affinity Mechanical, Inc.  
2805 E. Oakland Park Blvd. #144  
Fort Lauderdale, FL 33306  
(P) 954-332-8363  
(F) 954-688-2524

In the matter of:

COMERICA BANK,  
A Texas banking association,

Plaintiff,

VS.

OCEAN 4660, LLC, a Florida Corporation,  
AFFINITY MECHANICAL, INC., a Florida  
Corporation, ET AL,

Defendants.

### **RESPONSE TO COMPLAINT FOR FORECLOSURE**

Defendant Affinity Mechanical, Inc. answers the complaint of plaintiff, Comerica Bank, as follows:

Affinity Mechanical, Inc., a Certified Mechanical and Plumbing Contractor, having provided professional services and materials, for which it remains unpaid, and having timely filed a Claim of Lien in the proper jurisdiction, asserts and retains its superior right of lien against the subject property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida.

### **RESPONSE TO GENERAL AND JURISDICTIONAL ALLEGATIONS**

Answering paragraph **1 through 10, inclusive**, defendant does not presently dispute the information contained therein.

Answering paragraph **11**, defendant denies waiver of any rights or conditions precedent to the institution of this action.

Answering paragraph 12, defendant is not a party to any loan documents by or between plaintiff and any other defendant and is therefore unencumbered by same.

#### **RESPONSE TO COMMON BACKGROUND FACTUAL ALLEGATIONS**

Answering paragraphs 13 through 39 inclusive, defendant is without sufficient information or belief to admit or deny the allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

Answering paragraph 40, defendant admits holding interest in the property that is the subject of this foreclosure action by virtue of the Claim of Lien as stated.

Answering paragraph 41, defendant is without sufficient information or belief to admit or deny the allegations in said paragraph. Based upon this lack of information or belief, defendant denies the allegations.

Answering paragraph 42, defendant denies allegation of inferior interest in the subject Real Property.

#### **RESPONSE TO FIRST CAUSE OF ACTION**

Answering paragraph 43, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 42 of this answer.

Answering subparagraph (1), Defendant admits jurisdiction of subject matter of this action of the Court.

Answering subparagraph (2), defendant denies the allegations, is not a party to any loan documents by or between plaintiff and any other defendant and is therefore unencumbered by same.

Answering subparagraph (3), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (4), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (5), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (6), defendant is without sufficient information or belief to admit or deny the allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

Answering subparagraph (7), defendant is without sufficient information or belief to admit or deny the allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

**RESPONSE TO SECOND CAUSE OF ACTION ON PERSONAL PROPERTY SECURED BY NOTES**

Answering paragraph 44, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 43 of this answer.

Answering subparagraph (1), Defendant admits jurisdiction of subject matter of this action of the Court.

Answering subparagraph (2), defendant is not a party to any loan documents by or between plaintiff and any other defendant and is therefore unencumbered by same.

Answering subparagraph (3), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (4), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (5), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (6), defendant is without sufficient information or belief to admit or deny the allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

Answering subparagraph (7), defendant is without sufficient information or belief to admit or deny the allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

**FIRST AFFIRMATIVE DEFENSE**

This action is barred by a prior action pending which involves the same property which is the subject of the complaint. The other action is a Claim of Lien timely filed by defendant, Affinity Mechanical, Inc. Defendant requests that the Court take judicial notice of the other action and affirm superior claim of defendant upon subject property. Exhibit A, attached.

Wherefore, defendant requests judgment as follows:

1. That plaintiff take nothing by the complaint, which will be dismissed with prejudice.
2. That defendant recover from plaintiff reasonable Legal costs and expenses.

Dated December 7<sup>th</sup>, 2011

Edward J. Bender,

President

Affinity Mechanical, Inc.

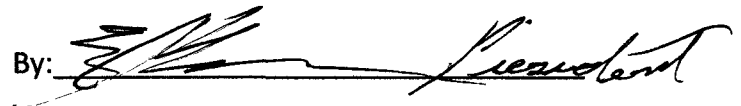
2805 E. Oakland Park Blvd. #144

Fort Lauderdale, FL 33306

(P) (954) 332-8363

(F) (954) 688-2524

By:

A handwritten signature in black ink, appearing to read 'Edward J. Bender', is written over a horizontal line.

Edward J. Bender, President

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

State of Florida

County of Broward

Before me, the undersigned notary public, personally appeared Edward J. Bender, who was duly sworn and says that she or he is (~~the lienor herein~~) the agent of the lienor herein, whose address is 2805 E. Oakland Park Blvd. #144, Fort Lauderdale, FL 33306; and that in accordance with a contract with, lienor furnished labor, services, or materials consisting of Repairs to hot water boiler, on the following described real property in Broward County, Florida: FOR AFFINITY MECHANICAL, INC.

(LIENOR)

Lauderdale Beachside Resort, 4660 N. Ocean Drive, Lauderdale by the Sea, FL 33308  
LAUDERDALE BY THE SEA 6-2 B LOTS 11 THRU 19 BLK 10

owned by OCEAN 4660 LLC, of a total value of \$1,886.36, of which there remains unpaid \$1886.36 and furnished the first of the items on 12/01/2010, and the last of the items on 12/01/2010;

Signature: [Signature]

Sworn to (or affirmed) and subscribed before me this 13<sup>th</sup> day of Jan, (year) 2011, by

Printed Name EDWARD J BENDER

(Signature of Notary Public - State of Florida)

[Signature]

(Print, Type, or Stamp Commissioned Name of Notary Public) Tess McCray

Personally Known \_\_\_\_\_ OR Produced Identification ✓

Type of Identification Produced P. L. B536236552450

Tess Latrice McCray  
COMMISSION # DD660047  
EXPIRES APR 05 2011  
WWW.AMPC.NOTARY.COM