

Affinity Mechanical, Inc.

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To: Holland & Knight, LLP

From: Edward Bender

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Pages: 7

Re: Comerica v. Ocean 4660 LLC

Date: June 08, 2012

IN THE CIRCUIT COURT OF THE
17TH 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
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In the matter of:

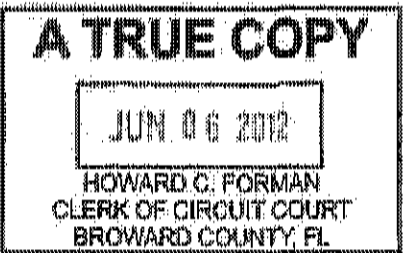
COMERICA BANK,
A Texas banking association,

Plaintiff,

VS.

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

Defendants.



RESPONSE TO SECOND AMENDED COMPLAINT FOR FORECLOSURE AND DAMAGES

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 15, inclusive, defendant does not presently dispute the information contained therein.

Answering paragraph 16, defendant denies waiver of any rights or conditions precedent to the institution of this action.

Answering paragraph 17, 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 **18 through 44 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 **45**, 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 **46 through 50 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 **51**, defendant denies allegation of inferior interest in the subject Real Property.

COUNT I

RESPONSE TO FIRST CAUSE OF ACTION

Answering paragraph **52**, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 51 of this answer.

Answering paragraph **53**, 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.

COUNT II

RESPONSE TO SECOND CAUSE OF ACTION

Answering paragraph **54**, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 53 of this answer.

Answering paragraph **55**, 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.

COUNT III

RESPONSE TO THIRD CAUSE OF ACTION

Answering paragraph **56**, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 55 of this answer.

Answering paragraph 57, defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

COUNT IV

RESPONSE TO ACTION TO FORECLOSE MORTGAGE ON REAL PROPERTY SECURING NOTES

Answering paragraph 58, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 57 of this answer.

Answering subparagraph (1), defendant admits jurisdiction of the Court in this matter.

Answering subparagraph (2), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

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 denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (7), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (8), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph **1 through 8 inclusive**, above, defendant is without sufficient information or belief to admit or deny any other allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

COUNT V

**RESPONSE TO ACTION TO FORECLOSE MORTGAGE ON PERSONAL PROPERTY SECURED BY
NOTES**

Answering paragraph **59**, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 58 of this answer.

Answering subparagraph (1), defendant admits jurisdiction of the Court in this matter.

Answering subparagraph (2), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

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 denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (7), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph (8), defendant denies superiority of any claim by Comerica over the interest of Affinity Mechanical, Inc. in the subject property.

Answering subparagraph **1 through 8 inclusive**, above, defendant is without sufficient information or belief to admit or deny any other allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

COUNT VI

RESPONSE TO ACTION ON GUARANTY

Answering paragraph **60**, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 59 of this answer.

Answering paragraph **61 through 63 inclusive**, defendant is without sufficient information or belief to admit or deny any other allegations in said paragraphs. Based upon this lack of information or belief, defendant denies the allegations.

COUNT VII

RESPONSE TO ACTION ON GUARANTY

Answering paragraph **64**, defendant re-alleges and incorporates by reference the admissions, allegations, and denials in paragraphs 1 through 63 of this answer.

Answering paragraph **65 through 67 inclusive**, defendant is without sufficient information or belief to admit or deny any other 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., and Small Claim Suit pending Final Judgment. Defendant requests that the Court take judicial notice of the other action and affirm superior claim of defendant upon subject property. Per Florida Statutes, Chapter 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 June 5th, 2012

Edward J. Bender,

President
Affinity Mechanical, Inc.
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By: 

Edward J. Bender, President

