

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

COMERICA BANK,
a Texas banking association,

CASE NO. 11-028447 (03)

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.

_____ /

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 Second Amended Complaint for Foreclosure and Damages (the “Complaint”), including, without limitation, the allegations that Ocean 4660, LLC (“Defendant”) executed and delivered the Mortgage as security for the

payment of the Loans¹; that the Loans are in default for Defendant's 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, Defendant's:

a) failure to pay Comerica the sum of \$78,229.44 for reimbursement of the protective advance Comerica made for 2009 and 2010 real property taxes, which payment was due by July 31, 2011;

b) failure to provide Comerica by May 31, 2011 evidence that the conditions of Section 13 of the Forbearance Agreement (regarding discharge of certain liens) had been met;

c) failure to deliver to Comerica by May 31, 2011 an executed Non-Disturbance and Attornment Agreement and Landlord's Consent, as required by Section 19 of the Forbearance Agreement;

d) failure to pledge to Comerica a first priority security interest in the Bank of America Accounts (as defined in the Forbearance Agreement) by May 16, 2011;

e) failure to deliver to Comerica by May 16, 2011 a fully executed personal financial statement for guarantor Remo Polselli, as required by Section 30 of the Forbearance Agreement;

f) failure to cause all liens, notices of pendency, notices of lis pendens and any other documents recorded in the real property records against the Subject Real Property by Oceanside Lauderdale, Frank, Dipilato, or any other party related to them to

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

be discharged by July 31, 2011 as required by Section 13 of the Forbearance Agreement;
and

g) failure to pay the amounts owed under the Swap Agreement when it matured on February 1, 2011.

4. Additionally, Defendant defaulted under the Mortgage by failing to maintain property insurance coverage on the mortgaged property and failed to pay the real estate taxes for 2011.

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

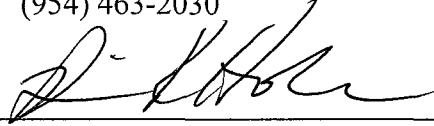
7. Defendant is currently operating the mortgaged property and is thereby deriving income, revenue and profits.

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 4, 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: January 7, 2013


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

By: 

Brian K. Hole
Florida Bar No. 0019968
Joshua R. Levenson
Florida Bar No. 0056208

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 7th day of January, 2012, a true and correct copy of the foregoing was sent by U.S. Mail to all parties on the Service List below.

By: 

Brian K. Hole
Florida Bar No. 0019968

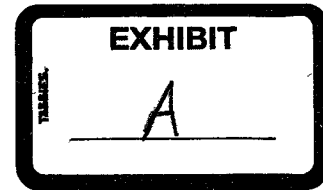
SERVICE LIST

| | |
|--|---|
| <p>Krystol L. Rappuhn, Esq. 55 E. Long Lake Road, Suite 204 Troy, Michigan 48085-4738 (248) 645-5400 - Office (313) 319-0743 - Cellular (248) 879-3124 - Facsimile <i>Co-Counsel for Ocean 4660, LLC</i> [Via U.S. Mail only]</p> | <p>Michael Tobin, Esq. Rothman & Tobin, P.A. 11900 Biscayne Boulevard, Suite 740 Miami, Florida 33181 Phone: (305) 895-3225 Fax: (305) 895-7175 E-mail: mtobin@rothmanandtobin.com <i>Counsel for Ocean 4660, LLC, Hanna Karcho-Polselli and Remo Polselli</i> [Via E-mail]</p> |
| <p>Eduardo M. Soto, Esq. Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Coral Gables, FL 33134 Phone: (305) 854-0800 Fax: (305) 854-2323 E-mail: esoto@wsh-law.com <i>Counsel for Town of Lauderdale-By-The-Sea</i> [Via E-mail]</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 Phone: (954) 357-7600 Fax: (954) 357-7641 E-mail: mmoore@broward.org <i>Counsel for Broward County</i> [Via E-mail]</p> |
| <p>Charmaine J. Comprosky, Esq. Law Office of Charmaine J. Comprosky, P.A. 2310 East Atlantic Boulevard, Suite 204 Pompano Beach, Florida 33062 E-mail: law@comprosky.com <i>Counsel for Oceanside Lauderdale, Inc.</i> [Via E-mail]</p> | <p>Kenneth A. Frank, <i>Pro Se</i> 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 E-mail: kenknaassociates@gmail.com [Via U.S. Mail, facsimile and E-mail]</p> |
| <p>Oceanside Lauderdale, Inc. 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 [Via U.S. Mail]</p> | <p>Angela Dipilato 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 [Via U.S. Mail]</p> |
| <p>Waste Management Inc. of Florida d/b/a Southern Sanitation Service c/o Registered Agent, CT Corporation System 1200 South Pine Island Road Plantation, FL 33324 [Via U.S. Mail]</p> | <p>Angela Dipilato 1323 S.E. 3rd Avenue Pompano Beach, FL 33060 [Via U.S. Mail]</p> |

| | |
|---|---|
| Affinity Mechanical Inc. c/o Edward J. Bender, Registered Agent 2805 E. Oakland Park Boulevard, #144 Fort Lauderdale, FL 33306 Phone: (954) 332-8363 Fax: (954) 688-2524 [Via U.S. Mail] | Rose Portelli 5915 Park Drive Margate, FL 33063 [Via U.S. Mail] |
| Motion Elevator, Inc. c/o Registered Agent, Rose Portelli 5915 Park Drive Margate, FL 33063 [Via U.S. Mail] | Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 [Via U.S. Mail] |
| Euro Fist Choice Enterprises, Inc. c/o Registered Agent, Michal Holovka 1261 S.E. 7 th Avenue Pompano Beach, FL 33060 [Via U.S. Mail] | |

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 4, 2012

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

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

Ocean 4660, LLC
c/o Michael Tobin, Esq.
Rothman & Tobin, P.A.
11900 Biscayne Boulevard, Suite 740
Miami, Florida 33181

Re: Installment Loan in original principal sum of 10,850,000.00 and Draw-To loan in original principal sum of \$1,000,000.00 (collectively, "Loans") from Comerica Bank ("Comerica") to Ocean 4660, LLC ("Borrower")

Dear Borrower:

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

- a) failure to pay Comerica the sum of \$78,229.44 for reimbursement of the protective advance Comerica made for 2009 and 2010 real property taxes, which payment was due by July 31, 2011;
- b) failure to provide Comerica by May 31, 2011 evidence that the conditions of Section 13 of the Forbearance Agreement dated June 9, 2010 (as amended on September 3, 2010 and May 5, 2011) (the "Forbearance Agreement") (regarding discharge of certain liens) had been met;
- c) failure to deliver to Comerica by May 31, 2011 an executed Non-Disturbance and Attornment Agreement and Landlord's Consent, as required by Section 19 of the Forbearance Agreement;
- d) failure to pledge to Comerica a first priority security interest in the Bank of America Accounts (as defined in the Forbearance Agreement) by May 16, 2011;
- e) failure to deliver to Comerica by May 16, 2011 a fully executed personal financial statement for guarantor Remo Polselli, as required by Section 30 of the Forbearance Agreement;
- f) failure to cause all liens, notices of pendency, notices of lis pendens and any other documents recorded in the real property records against the Subject Real Property by Oceanside Lauderdale, Kenneth Frank, Angela Dipilato, or any other party related to them to be discharged by July 31, 2011 as required by Section 13 of the Forbearance Agreement; and
- g) failure to pay the amounts owed under the Swap Agreement when it matured on February 1, 2011.

May 4, 2012

Page 2

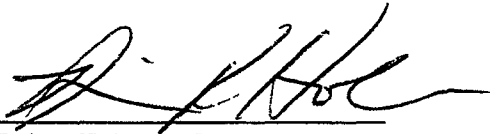
Because of your failure to cure these defaults, your right to collect and retain the rents, income, revenues, issues, and profits of the Property (collectively, "Rents") has been terminated pursuant to the terms of the January 3, 2008 Continuing Collateral Mortgage, and other documents evidencing the 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.

Cc: Krystol L. Rappuhn, Esq.
55 E. Long Lake Road, Suite 204
Troy, Michigan 48085-4738

#11187405_v1