

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.

**PLAINTIFF'S MOTION TO STRIKE AFFINITY MECHANICAL INC.'S
RESPONSE TO SECOND AMENDED COMPLAINT**

Plaintiff Comerica Bank, by and through its undersigned counsel, hereby
moves to strike the Response to Second Amended Complaint for Foreclosure and
Damages ("Response") filed by Defendant Affinity Mechanical Inc. ("Affinity"), and
in support hereof states the following:

1. Comerica Bank commenced this action on November 17, 2011 with the
filing of its Complaint for Foreclosure against the defendants, including Affinity.

On May 30, 2012, this Court granted Comerica Bank leave to file its Second Amended Complaint for Foreclosure and Damages.

2. On June 6, 2012, Affinity filed the Response *pro se*. A true and correct copy of the Response is attached hereto as **Exhibit “A.”** The Response must be stricken, however, because Affinity is not permitted under Florida law to represent itself in this action.


3. It is a well-established principle of law in Florida that a corporation cannot represent itself in circuit court. *Lakeview Auto Sales v. Lott*, 753 So. 2d 723, 724 (Fla. 2d DCA 2000); *Sys. One Se., Inc. v. Avery Dennison Corp.*, 704 So. 2d 665, 666 (Fla. 2d DCA 1997) (“a corporation cannot ‘appear’ in a lawsuit unless represented by an attorney”); *Richter v. Higdon Homes, Inc.*, 544 So. 2d 300, 300 (Fla. 1st DCA 1989) (corporation may not represent itself through non-lawyer employees, officers, or shareholders); *Hub Fin. Corp. v. Olmetti*, 465 So. 2d 618, 619 (Fla. 4th DCA 1985) (“a corporation . . . cannot represent itself”).

4. Consequently, the Response is improper and should be stricken.

WHEREFORE, Comerica Bank respectfully requests that this Court enter an Order striking Defendant Affinity Mechanical Inc.’s Response and granting such other and further relief as the Court deems just and proper.

Dated: June 8, 2012

HOLLAND & KNIGHT LLP
Attorneys for Comerica Bank
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, FL 33302-4070
Tel: (954) 525-1000
Fax: (954) 463-2030

By: 
Brian K. Hole
Florida Bar No. 0019968
Nicole C. Velasco
Florida Bar No. 0028585

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 8th day of June, 2012, a true and correct copy of the foregoing was sent by U.S. Mail to all parties on the Service List below.

HOLLAND & KNIGHT LLP
By: 
Brian K. Hole
Florida Bar No. 19968

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>	Michael Tobin, Esq. Rothman & Tobin, P.A. 11900 Biscayne Boulevard, Suite 740 Miami, Florida 33181 <i>Co- Counsel for Ocean 4660, LLC</i>
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>	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>
Oceanside Lauderdale, Inc. 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062	Kenneth A. Frank 2310 East Atlantic Boulevard Suite 206 Pompano Beach, FL 33062

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	Affinity Mechanical Inc. c/o Edward J. Bender, Registered Agent 2805 E. Oakland Park Boulevard, #144 Fort Lauderdale, FL 33306
Angela Dipilato 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062	Angela Dipilato 1323 S.E. 3rd Avenue Pompano Beach, FL 33060
Motion Elevator, Inc. c/o Registered Agent, Rose Portelli 5915 Park Drive Margate, FL 33063	Rose Portelli 5915 Park Drive Margate, FL 33063
Euro Fist Choice Enterprises, Inc. c/o Registered Agent, Michal Holovka 1261 S.E. 7 th Avenue Pompano Beach, FL 33060	Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060

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
(P) 954-332-8363
(F) 954-688-2524

In the matter of:

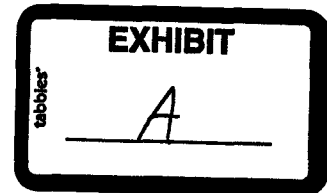
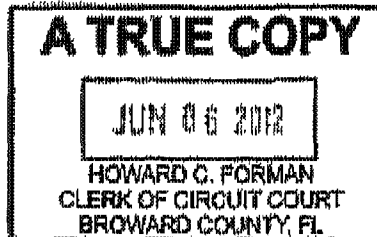
COMERICA BANK,
A Texas banking association,

Plaintiff,

VS.

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

Defendants.



RESPONSE TO 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 paragraphs **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.
2805 E. Oakland Park Blvd. #144
Fort Lauderdale, FL 33306
(P) (954) 332-8363
(F) (954) 688-2524

By: 

Edward J. Bender, President

CFN # 109814319
OR BK 47655 Pages 1644 - 1644
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BROWARD COUNTY COMMISSION
DEPUTY CLERK 2090
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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: 

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

Printed Name EDWARD J BENDER

(Signature of Notary Public - State of Florida) 

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

Personally Known OR Produced Identification ✓

Type of Identification Produced D-1 B534236552450

