

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 COMPLAINT FOR FORECLOSURE**

Plaintiff Comerica Bank, by and through its undersigned counsel, hereby
moves to strike the Response to Complaint for Foreclosure ("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.

2. On December 7, 2011, 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.

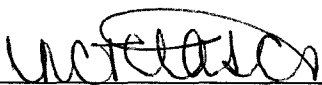
3. It is a well-established principle of law in Florida that a corporation cannot represent itself in circuit court. *Lakeview Auto Sales v. Lott*, 753 So. 2d 723, 724 (Fla. 2d DCA 2000); *Sys. One Se., Inc. v. Avery Dennison Corp.*, 704 So. 2d 665, 666 (Fla. 2d DCA 1997) ("a corporation cannot 'appear' 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: December 12, 2011

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: 

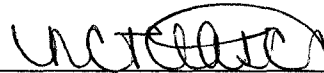
Brian K. Hole
Florida Bar No. 0019968
Nicole C. Velasco
Florida Bar No. 0028585

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 12th day of December, 2011, 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: _____



Nicole C. Velasco

Florida Bar No. 0028585

SERVICE LIST

Oceanside Lauderdale, Inc.
c/o Edward J. Bender, Registered Agent
2805 E. Oakland Park Boulevard, #144
Fort Lauderdale, FL 33306

Kenneth A. Frank
2310 East Atlantic Boulevard, Suite 206
Pompano Beach, FL 33062

Town of Lauderdale-By-The-Sea
c/o Mayor Roseann Minnet
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

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

Broward County
c/o Mayor John E. Rodstrom, Jr.
Broward County Commission Offices
115 S. Andrews Avenue
Room 421
Fort Lauderdale, FL 33301

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 COMPLAINT FOR FORECLOSURE

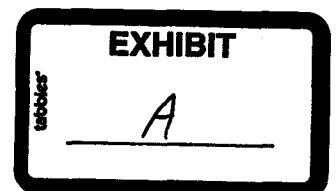
Defendant Affinity Mechanical, Inc. answers the complaint of plaintiff, Comerica Bank, as follows:

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 7th, 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: 

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: 

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) Tess McCray

Personally Known OR Produced Identification ✓

Type of Identification Produced P.C. B536236552450

