

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

CASE NO. 11-028447 (03)

COMERICA BANK, a Texas banking
association,

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 SECOND REQUEST FOR PRODUCTION
TO DEFENDANT KENNETH A. FRANK**

Pursuant to Florida Rule of Civil Procedure 1.350, Comerica Bank ("Plaintiff") requests Defendant Kenneth A. Frank ("Defendant") to examine and/or copy the following designated items within thirty (30) days from the date of service hereof, or at such other time as may be agreed upon by the office of the undersigned. Attention is directed to the "DEFINITIONS" and "INSTRUCTIONS," which are to be complied with in producing documents pursuant to Florida Rule of Civil Procedure 1.350.

DEFINITIONS

1. “You” and “yours” shall mean Defendant and all of its past or present employees, agents, or representatives, as well as all other persons acting or purporting to act on its behalf.
2. “Complaint” shall mean the Second Amended Complaint for Foreclosure and Damages that Plaintiff filed in this action.
3. “Karcho-Polselli” shall mean Hanna Karcho-Polselli.
4. “Frank” shall mean and Kenneth A. Frank.
5. “Ocean 4660” shall means Ocean 4660, LLC.
6. “First Loan” shall mean the principal sum of Ten Million Eight Hundred Fifty Thousand and No/Dollars (\$10,850,000.00) that Plaintiff lent to you on January 3, 2008.
7. “Second Loan” shall mean the principal sum of principal sum of One Million and No/Dollars (\$1,000,000.00) that Plaintiff lent to you on January 3, 2008.
8. “Loan Documents” shall mean the First Loan and Second Loan, collectively.
9. “Property” shall mean the real property located in Broward County, Florida that is more particularly described in paragraph 39 of the Complaint.
10. “Parking Lot” shall mean the real property adjacent to the Property that you use for parking, and that has the following legal description:

Lots 9, 10, 22, 23, and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of the Public Records of Broward County, Florida
11. “Ground Lease” shall mean the Lease dated September 5, 1957 pursuant to which you sublease the Parking Lot.

12. "Swap Agreement" shall mean the ISDA Master Agreement dated January 25, 2008, as confirmed by a written Confirmation Letter dated January 25, 2008, between you and Plaintiff.

13. The term "person" shall mean and include natural persons, corporations, partnerships, governmental entities, and any and all other forms of organization and agreement, in addition to any officer, director, consultant, advisor (legal or otherwise), stockholder, employee, agent or partner thereof.

14. The term "document" shall mean any kind of written, electronic, or graphic matter, however produced or reproduced, including all electronically stored or generated material, of any kind or description, whether or not sent or received by Estate, including originals, copies or drafts and both sides thereof, and including but not limited to: papers, books, letters, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, work papers, inter-office or internal memoranda, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or other meetings, affidavits, subpoenas, notices, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer print-outs, data processing input and output, microfilms, and other records kept by electronic, photographic, or other mechanical means, minutes of meetings of board of directors, executive committees, or any other writings or recordings similar to any of the foregoing, however denominated by Borrower, or his present or former partners, attorneys, counsel, accountants, auditors, agents, employees and all persons acting or previously acting on his behalf. The term "document" includes all of the above materials, whether asserted privileged or not.

15. The use of a verb in any tense shall be construed as the use of a verb in all other tenses, whenever necessary to bring within the scope of the specification all responses which might otherwise be construed to be outside its scope.

16. Terms in the singular include the plural and terms in the plural include the singular.

17. The term “relating to” as used herein is defined to mean referring to, evidencing, pertaining to, consisting of, reflecting, concerning or in any way logically or factually connected with the matter discussed.

18. “And” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the specification all responses which might otherwise be construed to be outside its scope. “Each” and “every” shall be construed synonymously, as shall the words “any” and “all.”

19. As used in this request for production, the term “correspondence” means all letters, faxes, e-mails, writings or memorandums, authored or received by any of the persons whose names appear in this request for production or authored or received by their employees, agents or independent contractors. This term also includes every attachment to such correspondence or any documents that accompany such correspondence.

INSTRUCTIONS

1. **Manner of Production.** Documents produced pursuant to this request shall be separately produced for each paragraph of this request, or, in the alternative, shall be identified as complying with the particular paragraph or paragraphs of the request to which they are responsive, if the documents produced for inspection are produced as they are kept in the usual course of business.

2. **Privileged Documents.** In the event that you wish to assert attorney/client privilege, work product exclusion, or any other privilege as to any document requested, then as to each such document subject to such assertion, you shall provide an identification of the document, including (a) the nature of the document, (b) the date of the document, and (c) the author, sender and recipient, together with a summary statement of the subject matter of such document in sufficient detail to permit the court to reach a ruling in the event of a motion to compel and an indication of the factual and legal basis for the assertion of the privilege.

3. **Documents Not in Possession, Custody, or Control.** If you are unable to produce any document requested, state the reasons why you are unable to produce such document. A negative response to any request without further explanation will be deemed to be your response that the requested document is not in your possession, custody or control, as interpreted by controlling case law.

4. **Documents No Longer in Possession, Custody, or Control.** With respect to documents of which you once had possession, custody or control, but no longer have possession, custody or control, please identify the document and state why the document is no longer in your possession, custody or control and identify the person who currently has possession, custody or control of the documents.

5. In the event that documents are not in your possession, you are hereby requested to deliver original consent forms directing the appropriate agency or entity to supply the information that you are unable to request.

6. All requests are limited to the twenty-four months preceding the date of this request.

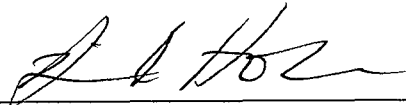
DOCUMENTS REQUESTED

1. All correspondence relating to the Property between Ocean 4660 and either: (a) Frank or (b) Oceanside Lauderdale, Inc.
2. All correspondence relating to the Property between Karcho-Polselli and either: (a) Frank or (b) Oceanside Lauderdale, Inc.
3. All correspondence relating to the Property between Remo Polselli and either: (a) Frank or (b) Oceanside Lauderdale, Inc.
4. All correspondence relating to the Loan Documents between Ocean 4660 and either: (a) Frank or (b) Oceanside Lauderdale, Inc.
5. All correspondence relating to the Loan Documents between Karcho-Polselli and either: (a) Frank or (b) Oceanside Lauderdale, Inc.
6. All correspondence relating to the Loan Documents between Remo Polselli and either: (a) Frank or (b) Oceanside Lauderdale, Inc.
7. All correspondence relating to any leases, contracts, or agreements for use or operation of the Property.
8. All correspondence relating to any leases, contracts, or agreements for the operation of a restaurant, lounge, bar, tavern, café, or the like on the Property.

Dated: January 7, 2013

HOLLAND & KNIGHT LLP

Counsel for Comerica Bank
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, FL 33301
954-525-1000 (telephone)
954-463-2030 (fax)

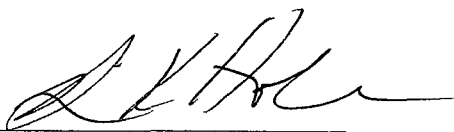
By: 

Brian K. Hole
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Joshua R. Levenson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 7, 2013, a true and correct copy of the foregoing was provided to all parties on the Service List below.

By: _____


Brian K. Hole
Fla. Bar No. 0019968

SERVICE LIST

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]	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]
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]	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]
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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]	Angela Dipilato 1323 S.E. 3 rd Avenue Pompano Beach, FL 33060 [Via U.S. Mail]
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]	