

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

Case No.: 11-28447(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, *et. al.*

Defendants.

_____/

**DEFENDANT OCEANSIDE LAUDERDALE, INC AND KENNETH FRANK'S
MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL, STAY PROCEEDINGS AND
FOR SANCTIONS WITH INCORPORATED MEMORANDUM OF LAW**

Defendant, OCEANSIDE LAUDERDALE, INC., (hereinafter " OCEANSIDE ") *Pro Se*, and
KENNETH A. FRANK, (hereinafter "FRANK") *Pro Se*, hereby files this Motion to Disqualify
Counsel for Plaintiff COMERICA BANK (hereinafter " COMERICA"), to Stay Proceedings and
for Sanctions upon Plaintiff's Counsel HOLLAND & KNIGHT, LLP and BRIAN K. HOLE,
ESQ. and as grounds therefore states the following:

Facts and Background

1. The Plaintiff(s) instituted this action against Defendant(s) Ocean 4660, LLC, Oceanside Lauderdale, Inc., Kenneth A. Frank, *et. al.* on or about November 17, 2011. This is a *complex* foreclosure action in which the Plaintiff Comerica Bank seeks to foreclose upon the real property of Defendant Ocean 4660, LLC., and which Defendant(s) Oceanside Lauderdale, Inc. and Kenneth A. Frank claim a lien upon said property. In this action, the Defendant Frank has called into question whether the Plaintiff has “standing to bring the lawsuit”.

2. The Defendant(s) Oceanside and Frank initially retained William Watson Trick, Esq. to represent them. On or about May 23, 2012, while at the Courthouse, on a separate matter, Plaintiff's counsel, specifically Brian K. Hole, Esq., threatened Defendant Oceanside and Frank's counsel with sanctions under Chapter 57 of Florida Statutes and, to attack him personally, if he continued to represent the Defendants. Faced with such a threat, Defendants counsel William Trick withdrew his representation because: (i) Brian K. Hole, Esq. suggested that Defendants counsel would be faced personally with sanctions, (ii) the potential for a conflict of interests, and (iii) he thought he would not be able to sustain his own defense against such unscrupulous adversaries as Comerica Bank and Holland & Knight, LLP and still be able to effectively represent the defendants. *See*, William Trick, Esq., Motion to Withdraw, Consent and Order annexed hereto as Exhibit “A”, and incorporated herein by reference.

3. Thereafter, the Defendants retained Charmaine Comprosky, Esq. Within one week of being retained Defendants counsel received a telephone call from Brian K. Hole, Esq. (Plaintiffs

counsel), whereas, Defendants new counsel was threatened with sanctions if she continued to represent the Defendants within this action. As a result, the Defendants counsel withdrew.

4. William Trick, Esq. felt that he could not afford to defend himself if personally attacked by the law firm of Holland & Knight and their client Comerica Bank, who will stop at nothing to foreclose upon the afore-mentioned real property and strip Defendants Oceanside and Frank of their day in court. Charmaine Comprosky, Esq. immediately withdrew without explanation.

5. Since Plaintiff's counsel's unconscionable tortious interference with Defendants counsel, the Defendant Oceanside Lauderdale, Inc. has not been able to retain new counsel because it cannot afford the retainers being requested after the preceding events in this case. Defendant Frank has had to represent himself.

6. Plaintiff and plaintiff's counsel knew that they were resorting to unscrupulous litigation tactics and unfair competition in tortiously interfering with Oceanside and Frank's attorney-client relationship in an effort to prevent the defendants' from imposing their defenses and having their day in court. Said tortious interference was intentional and improper.

7. As a result, representation by plaintiff's current counsel Brian K. Hole, Esq. would deprive the defendants of the ability to get a fair trial. Undoubtably, Brian Hole, Esq. has shown that he intends to " threaten " any attorney the defendants retain in the future.

MEMORANDUM OF LAW

I. Standard for Disqualification

In determining whether or not to grant Defendant's Motion to Disqualify, the Court must look to the standards imposed by the Florida Bar Rules of Professional Conduct. "An order involving the disqualification of counsel must be tested against the standards imposed by the Florida Bar Rules of Professional Conduct." *Estright v. Bay Point Improvement Ass'n, Inc.*, 921 So. 2d 810 (Fla. 1st DCA 2006), *citing*, *Morse v. Clark*, 890 So. 2d 496, 497 (Fla. 5th DCA 2004).

"A trial court does have the authority to disqualify an attorney from representing a party if the court determines that the continued representation would deprive the litigants of an 'impartial forum in which their complaints and defenses may be presented, heard and decided with fairness.' *Arthur v. Gibson*, 654 So. 2d 1357, 1359 (Fla. 5th DCA 1995), *citing*, *Pantori, Inc. v. Stephenson*, 384 So. 2d 1357, 1359 (Fla. 5th DCA 1980).

II. Law Firm Disqualification

If any of the firm of Holland & Knight, LLP.'s lawyers are disqualified all must be disqualified. *Akrey v. Kindered Nursing Centers East, LLC.*, 837 So. 2d 1142, 1144 (Fla. 2nd DCA 2003), *citing*, *Matluck v. Matluck*, 825 So. 2d 1071 (Fla. 4th DCA 2002).

Rule 4-1.10 of the Florida Bar Rules of Professional Conduct is the Imputation of Conflicts of Interest; General Rule which sets forth in pertinent part:

- (a) *Imputed Disqualification of All Lawyers in Firm* - - While lawyers associated in a firm, none of them shall knowingly represent a client

when any 1 of them practicing alone would be prohibited from doing so by Rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

Accordingly, because of the unconscionable and unethical actions of Brian K. Hole ,Esq. (in violation of the Rules of Professional Conduct of the Florida Bar) the entire law firm of Holland & Knight, LLP must be disqualified.

III. Plaintiff's Counsel's Threats Tortiously Interfered With Defendants' Counsel, caused the Defendants to be deprived of their counsel of choice, and violated the Florida Bar's Rules of Professional Conduct

Plaintiff's Attorney Brian K. Hole, Esq. contacted two former attorneys' retained by Defendants Oceanside and Frank and stated that " his client Comerica Bank has authorized him to " move for sanctions if they desire to represent Defendants Oceanside and Frank " and to do whatever it takes to expedite the foreclosure of the real property ". William Trick, Esq. felt that that he could not afford to defend himself against such a personal attack and withdrew his representation of the defendants. Plaintiff's counsel did so intentionally, with full knowledge that he was depriving the defendants of their counsel of choice, interfering with Oceanside and Frank's attorney-client relationship and substantially violating the Rules of Professional Conduct of the Florida Bar.

Generally, the defendants have a right to a fair trial, access to the court, and to be represented by the counsel of their choice. Plaintiff and Plaintiffs' counsel have infringed on these rights.

Under Rule 4-4.4 of the Rules of Professional Conduct of the Florida Bar, plaintiff's counsel was prohibited from violating any legal rights of the defendants.

Rule 4-4.4 states in pertinent part:

“ In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person..... “

Here, the threats issued to defendants' counsel have violated Rule 4-4.4 and caused the defendants embarrassment, delay, a substantial burden, damages, and will continue to do so.

As this Court knows, in a foreclosure action the Plaintiff must establish its “ standing to bring and maintain a lawsuit “. Plaintiff is aware that both Defendants intended to challenge plaintiffs standing. Not surprisingly, the plaintiff wishes to avoid the complex litigation in this area, and possibly have the fact exposed that they “ do not have standing “. As a result, they have resorted to this “ *rambo style litigation* “ and improper, unlawful, and unethical litigation practices.

The rule for disqualification is well established; it is a two-prong test based on Model Code of Professional Responsibility Canon 9 which prohibited the appearance of impropriety under the former Florida Rules of Professional Responsibility. The first prong does not require proof of actual wrongdoing but rather states that “ there must exist a *reasonable possibility* that some specifically identifiable impropriety in fact occurred. “ *Rentclub, Inc. v. Transamerica Rental Fin. Corp.*, 811 F. Supp. 651, 654. The second prong focuses on the public and states that “the likelihood of public suspicion must outweigh the social interest that will be served by counsel's continued participation.” *See id.* The test in Florida is interesting in that unlike the American Bar

Associations' Model Rules, Florida law clearly prohibits the *appearance* of impropriety. *See, State Farm Mutual Auto Co. v. K.A.W., et al.*, 575 So. 2d 630, 633 (Fla. 1991)(*holding* that “ the Florida Supreme Court ruled that attorneys must still avoid even the appearance of professional impropriety). In fact, it has been held that “even the appearance of impropriety may, under the appropriate circumstances, require prompt remedial action from the court.....” Consequently, any doubt is to be resolved in favor of disqualification.

Relevant, hereto is the matter of *The Florida Bar v McKenzie*, 557 So. 2d 31 (Fla. Supreme Court 1990). In *McKenzie*, the Florida Supreme Court held that threatening opposing counsel resulted in violation(s) of the following disciplinary rules of the former code of professional responsibility: 1-102(A)(1)(a lawyer shall not violate a disciplinary rule), 1-102(A)(5)(a lawyer shall not engage in conduct prejudicial to the administration of justice), 1-102(A)(6)(a lawyer shall not engage in conduct reflecting adversely on fitness to practice law), 7-102(A)(2)(a lawyer shall not knowingly advance an unwarranted claim or defense), and 7-106(C)(1)(a lawyer shall not state or allude to matters which are irrelevant or are not supported by admissible evidence). The same holds true herein, these and numerous other violation(s) of the Florida Bar's Rules of Professional Conduct have occurred herein. In the instant action, Plaintiff's counsel has also violated Rule 4-4.1 of the Florida Bar's Rules of Professional Conduct, as it relates to making statements to third persons.

The attached Exhibits and Affidavit of Charmaine Comprosky, Esq. clearly illustrates that Brian Hole, Esq.'s overall conduct causes disrespect of the legal profession and makes suspect his ability to practice law competently and ethically.

In the instant action, the continued representation of Plaintiff Comerica Bank by Holland & Knight, LLP and Brian K. Hole, Esq. will put the defendants at an unfair disadvantage.

This Court should heed the words of bankruptcy Judge A. Jay Cristol in *In Re Servicio, Inc.*, 149 B.R.1009 (S.D. Fla. Bank. 1993), and step in to reject these attempts to affront the basic principles of fairness:

“ But when a shame that the need for law business is so desire
that attorneys do not care if they give the appearance of evil
or impropriety.....”

The Defendants Oceanside and Frank have legal rights and this Court should afford them an impartial and fair tribunal in order to air these rights in an arena free from stench. It would be a complete affront to the system of justice for Holland & Knight and Brian K. Hole, Esq. to continue to represent Comerica Bank in this matter.

Based on the foregoing, it is respectfully requested that Plaintiffs’ counsel be disqualified, and sanctioned for his multiple violations of the Florida Bar’s Rules of Professional Conduct, depriving the defendants of a fair trial and their day in court, and his inability to practice law competently and ethically.

IV. Evidentiary Hearing

The Defendant(s) Oceanside and Frank request that the Court conduct an evidentiary hearing on this matter as required by law. The trial judge must conduct a hearing on a motion to disqualify counsel for an opposing party. *Arthur v. Gibson*, 654 So. 2d 983 (Fla. 5th DCA 1995); *Simon DeBartolo Group v. Bratley*, 741 So. 2d 1254 (Fla 1st DCA 1999)(holding that an

evidentiary hearing was necessary to determine whether law firm has a conflict of interest); Akrey v. Kindered Nursing Centers East, L.L.C., 837 So. 2d 1142 (Fla. 2d DCA 2003).

V. Stay of Proceedings

The Plaintiff also requests that all matters in this case, including all discovery, be stayed until an Order is rendered on Defendant's Motion to Disqualify. To allow this matter to continue on its current course without the matters raised in this Motion being addressed will cause significant prejudice to the Plaintiff.

VI. Sanctions

In the case at bar, given the nature of the conduct being inflicted upon defendants there exists the need for Plaintiff and Plaintiff's counsel to be sanctioned.


- CONCLUSION -

The unscrupulous conduct of Brian K. Hole, Esq. causes disrespect of the entire legal profession. He has tortiously interfered with Defendant(s) Oceanside and Frank's attorney-client relationship placing the Defendants at an unfair advantage to the extent that Defendant Oceanside may never get its day in Court. Accordingly, Defendants respectfully request that this Court disqualify Plaintiff's counsel and consider the devastating effect that allowing Plaintiff to be represented by Holland & Knight and Brian K. Hole, Esq. will have on the Defendants, this litigation, the legal community and the general public.

The undersigned has forwarded a copy of this motion to counsel for Plaintiff and conferred with counsel regarding this motion and they do not agree to this motion.

WHEREFORE, Defendant(s) Oceanside and Frank respectfully request that Holland & Knight, LLP and Brian K. Hole, Esq. be disqualified in this matter, an evidentiary hearing be set on this matter, that Plaintiff and Plaintiff's counsel be sanctioned, and all proceedings, including discovery, in this matter be stayed until an order is rendered on these matters, and for such other and further relief as to this Court may deem just and proper.

Dated this 5th day of ~~August~~ ^{September}, 2012.

By: 
Oceanside Lauderdale Inc., Pro Se
Kenneth A. Frank, Corporate Representative

By: 
Kenneth A. Frank, *Pro Se*

2310 East Atlantic Boulevard, Suite 206
Pompano Beach, Florida 33062
Tel: (914) 563-4510
Fax: (954) 786-2785

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing motion has been mailed first-class U.S. Mail to HOLLAND & KNIGHT, LLP, c/o BRIAN K. HOLE, ESQ., Florida Bar No.: 0019968, 515

East Las Olas Boulevard, 12th Floor, Fort Lauderdale, Florida 33302-4070, Attorney's for

Plaintiff Comerica Bank on this 6th day of September, 2012

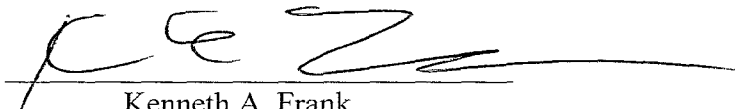
By: 

Kenneth A. Frank, *Pro Se*

VERIFICATION

STATE OF FLORIDA)
)ss.:
COUNTY OF BROWARD)

KENNETH A. FRANK, being duly sworn, states that he is a natural person, a corporate representative of Oceanside Lauderdale, Inc., and one of the Defendants in this action and that the foregoing Motion to Disqualify opposing counsel, for sanctions and stay of proceedings is true to his own knowledge, except as to those matters therein stated upon information and belief and as to those matters he believes it to be true.




Kenneth A. Frank
- Defendant -

2310 East Atlantic Boulevard, Suite 206
Pompano Beach, Florida 33062

Sworn to before me this

16th day of August, 2012.



Notary Public



EXHIBIT A

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

COMERICA BANK,
a Texas banking association,

Plaintiff

vs.

CASE NO.: CACE 11-028447 (03)

OCEAN 4660, LLC., a Florida limited
liability company, et.al.

Defendants

MOTION TO WITHDRAW

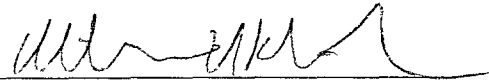
COMES NOW, the undersigned counsel and files this motion to withdraw from the representation of Defendants, KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., a Florida corporation, and in support of same states:

1. The undersigned counsel represents KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., a Florida corporation in the above captioned matter.
2. Irreconcilable differences have arisen which prevents the undersigned counsel from effectively representing the interests of his clients.

WHEREFORE, the undersigned counsel requests that this Court enter an order allowing the undersigned counsel to withdraw as attorney of record for Defendants KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., a Florida corporation in this cause, providing for a period of not less than 30 days or such other period of time as this Court finds to be reasonable for KENNETH A.


FRANK and OCEANSIDE LAUDERDALE, INC., a Florida corporation to obtain new counsel, that all deadlines in this case with respect to KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., a Florida corporation be abated during such period of time, and directing all future notices, pleadings, and correspondence be sent directly to the Defendants KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., a Florida corporation at 2310 E. Atlantic Blvd., Suite 206, Pompano Beach, FL 33062.

WILLIAM WATSON TRICK, JR., P.A.
Attorneys for Defendants
OCEANSIDE LAUDERDALE, INC.,
and KENNETH A. FRANK
1216 E. Atlantic Boulevard, Suite 7
Pompano Beach, Florida 33060
Telephone: (954) 942-9774
Facsimile: (954) 942-9223

By: 
William Watson Trick, Jr., Esq
FBN: 267104

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished all parties on the attached service list, by U.S. Mail this April 5, 2012.

WILLIAM WATSON TRICK, JR., P.A.
Attorneys for Defendants
OCEANSIDE LAUDERDALE, INC.,
and KENNETH A. FRANK
1216 E. Atlantic Boulevard, Suite 7
Pompano Beach, Florida 33060
Telephone: (954) 942-9774
Facsimile: (954) 942-9223

By: 
William Watson Trick, Jr., Esq
FBN: 267104

SERVICE LIST

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Counsel for Town of Lauderdale-By-The-Sea

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County Attorney for Broward County
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Fort Lauderdale, FL 33301
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Counsel for Broward County

Waste Management of Florida d/b/a Southern Sanitation Service
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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 E. Atlantic Blvd., Suite 206
Pompano Beach, FL 33062

Angela DiPilato
1323 S.E. 3rd Avenue
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KENNETH A. FRANK
2310 E. Atlantic Blvd., Suite 206
Pompano Beach, FL 33062

OCEANSIDE LAUDERDALE, INC.
2310 E. Atlantic Blvd., Suite 206
Pompano Beach, FL 33062

IN THE CIRCUIT COURT OF THE
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COMERICA BANK,
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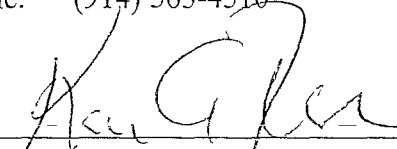
CONSENT TO MOTION TO WITHDRAW

OCEANSIDE LAUDERDALE, INC., a Florida corporation, hereby consents to the withdrawal
by WILLIAM WATSON TRICK, JR., ESQ. and WILLIAM WATSON TRICK, JR., P.A. as its
counsel in this action, and acknowledges receipt of a copy of the Motion to withdraw filed herein by
WILLIAM WATSON TRICK, JR., ESQ. and WILLIAM WATSON TRICK, JR., P.A.

Dated this 9 day of April, 2012.

OCEANSIDE LAUDERDALE, INC.,
2310 E. Atlantic Blvd., Suite 206
Pompano Beach, Florida 33062
Telephone: (914) 563-4510

By:—


KENNETH A. FRANK, President

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

COMERICA BANK,
a Texas banking association,

Plaintiff

vs.

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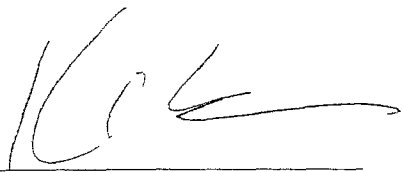
OCEAN 4660, LLC., a Florida limited
liability company, et.al.

Defendants

CONSENT TO MOTION TO WITHDRAW

KENNETH A. FRANK hereby consents to the withdrawal by WILLIAM WATSON TRICK,
JR., ESQ. and WILLIAM WATSON TRICK, JR., P.A. as his counsel in this action, and acknowledges
receipt of a copy of the Motion to Withdraw filed herein by WILLIAM WATSON TRICK, JR., ESQ
and WILLIAM WATSON TRICK, JR., P A

Dated this 9 day of April, 2012.



KENNETH A. FRANK
2310 E. Atlantic Blvd., Suite 206
Pompano Beach, Florida 33062
Telephone: (914) 563-4510

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

COMERICA BANK,
a Texas banking association,
Plaintiff

vs.

CASE NO.: CACE 11-028447 (03)

OCEAN 4660, LLC., a Florida limited
liability company, et.al.
Defendants

ORDER ON MOTION TO WITHDRAW

THIS CAUSE having come on to be heard on the Motion to Withdraw of WILLIAM WATSON TRICK, JR., and WILLIAM WATSON TRICK, JR., P.A., counsel for the defendants, KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., and the Court having heard argument of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby GRANTED. Defendants KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., shall have 30 days from the date of entry of this order to obtain new counsel. All deadlines in this case with respect to KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., a Florida corporation are abated during such period of time. All future pleadings and correspondence to Defendants KENNETH A. FRANK and OCEANSIDE LAUDERDALE, INC., shall be directed to them at 2310 E. Atlantic Blvd., Suite 206, Pompano Beach, FL 33062

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this 19 day of

April, 2012.

MILY RODRIGUEZ-POWELL
A TRUE COPY
Circuit Court Judge

copies furnished:
all parties on attached service list