

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 REPLY TO DEFENDANT KENNETH A. FRANK'S
AFFIRMATIVE DEFENSES**

Plaintiff, Comerica Bank ("Plaintiff"), pursuant to Florida Rule of Civil Procedure 1.140, hereby replies to Defendant Kenneth Frank's ("Frank") Affirmative Defenses contained in Defendant's Answer and Affirmative Defenses dated September 18, 2012. In support of this Reply, Plaintiff states as follows:

1. As detailed in Plaintiff's Second Amended Complaint for Foreclosure (the "Complaint"), Plaintiff is seeking to foreclose on its Mortgage (as defined at paragraph 22 the Complaint) with defendant Ocean 4660, LLC dated January 3, 2008. The Mortgage was

recorded on January 7, 2008 in Official Records Book 44971 at Page 797 of the Public Records of Broward County, Florida. (See Compl. ¶ 22.)

2. The only reason Frank is a party to this lawsuit is because Frank recorded, among other things, the following documents, the validity of which is specious at best and all of which are inferior to the Mortgage: a mechanics lien on November 4, 2010; a notice of pendency on January 11, 2010; a mechanics lien on January 21, 2011; a mechanic's lien on July 8, 2011; and a lis pendens on July 8, 2011. (See Compl. ¶ 42.)

3. Otherwise, Frank is not a party to any of the documents relevant to the mortgage foreclosure action. Specifically, Frank is not a party to: the First Note (Compl. Ex. A); the Second Note (Compl. Ex. B); the Swap Agreement (Compl. Ex. C); the Guaranties (Compl. Ex. D); the Mortgage (Compl. Ex. E); the Security Agreement (Compl. Ex. F); or the Forbearance Agreement (Compl. Ex. H).

4. For this simple reason, all thirty of Frank's "affirmative defenses" fail as a matter of law.

5. Indeed, all of Frank's arguments were previously included in Frank's Motion to Dismiss--now repackaged into thirty separate affirmative defenses--which this Court denied on August 28, 2012.

WHEREFORE, having replied to Frank's affirmative defense, Plaintiff prays the Court find in its favor on its Complaint, award Plaintiff the relief sought in the Complaint, and grant such other and further relief as the Court deems just and proper.


Dated: October 15, 2012.

Respectfully Submitted,

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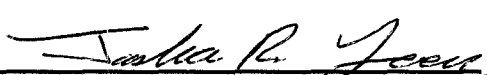
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CERTIFICATE OF SERVICE

I hereby certify that on **October 15, 2012**, a true and correct copy of the foregoing was served on all parties on the Service List below in the manner specified.

 ^{FB# 56208}
FK

Brian K. Hole

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SERVICE LIST

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