

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

COMERICA BANK,

Plaintiff,

vs.

OCEAN 4660, LLC, et. al.,

Defendants.

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GENERAL JURISDICTION DIVISION

CASE NO.: CACE11028447 (03)

**DEFENDANTS' MOTION TO CONSOLIDATE CASES FOR DISCOVERY AND TRIAL**

Defendants, OCEAN 4660, LLC, HANNA KARCHO-POLSELLI and REMO POLSELLI, by and through their undersigned attorneys, hereby file their Motion to Consolidate Cases for Discovery and Trial and state:

1. Plaintiff, COMERICA BANK, filed the instant lawsuit to foreclose commercial real property and personal property, enforce loan documents, and for damages, on November 17, 2011.

2. On May 10, 2012, Plaintiff filed a "companion" commercial foreclosure case with regard to a neighboring parcel, under Case Number CACE12013597 (18), which involves the same parties in interest, and the same counsel.

3. The loans at issue in both cases are cross-collateralized.

4. The two cases have already been mediated together, upon agreement of the parties.

5. The attorneys for the main parties are the same.

6. Plaintiff, by and through its counsel, has made representations both via email and in open court that Plaintiff maintains its business records for both loans together, due to the common borrower(s).

7. The parties are currently in the process of scheduling and noticing depositions of the same persons in both cases, some of whom reside out-of-state.

8. The two cases are in very similar procedural posture, as of the date of this Motion.

9. Pursuant to Administrative Order Number 2011-32-Civ, Section (7):

If cases are filed and assigned to different civil divisions which concern the same subject matter or common issues the cases may be consolidated as follows:

- (a) The plaintiff or defendant shall file a notice in each case setting forth the parties and case number of the similar case(s).
- (b) The party seeking the consolidation shall file a motion and set a hearing in the division with the lowest/earliest case number.
- (c) If an order granting the consolidation is entered it shall indicate if it is consolidated for discovery, trial, or discovery and trial. Consolidated cases remain separate cases for the filing of pleadings and papers and only the case number for the case in which the pleading or paper is filed shall be stated with no reference to the companion case number.
- (d) The Clerk of Court shall reflect on his case maintenance system the consolidation of cases and the division hearing the consolidated cases.

10. Defendants have filed a Notice of Similar Case Pursuant to Administrative Order Number 2011-32-Civ concomitantly herewith.

11. When actions involving a common question of law or fact are pending before the court, the court is empowered to order a joint hearing or trial of any or all the matters in issue in the actions, order all the actions consolidated, and make such orders concerning

proceedings therein as will tend to avoid unnecessary costs or delay. Fla. R. Civ. P. 1.270(a).

12. The purpose of consolidating cases is to minimize expense and delay, and consolidation serves to preserve judicial economy and to prevent piecemeal litigation. CDI Contractors, LLC. v. Allbrite Elec. Contractors, Inc., 836 So. 2d 1031 (Fla. 5<sup>th</sup> DCA 2002); Yoder v. Kuvin, 785 So. 2d 679 (Fla. 3<sup>rd</sup> DCA 2001).

13. In deciding whether to consolidate cases, a trial court must consider (a) whether the trial process will be accelerated due to the consolidation, (b) whether unnecessary costs and delays can be avoided by consolidation, (c) whether there is the possibility for inconsistent verdicts, (d) whether consolidation would eliminate duplicative trials that involve substantially the same core of operative facts and questions of law, and (e) whether consolidation would deprive a party of a substantive right. State Farm Florida Ins. Co. v. Bonham, 886 So. 2d 1072 (Fla. 5<sup>th</sup> DCA 2004).

14. Where no substantial prejudice is revealed, consolidation will generally be effected when the subject matter involved and the relief demanded in the different suits make it expedient for the court, by hearing them together, to properly determine all the issues involved and adequately adjudicate the rights of the parties. Walker v. City of Miami, 337 So. 2d 1002 (Fla. 4<sup>th</sup> DCA 1976); Tommie v. LaChance, 412 So. 2d 439 (Fla. 4<sup>th</sup> DCA 1982).

15. Complete identity of parties or subject matter is not a requisite to consolidation, Brogan v. Ferguson, 133 So. 317 (Fla. 1931).

16. Where the parties are the same, the lawyers are the same, and the same witnesses will in the main be offered, a motion to consolidate and try two cases together should be granted. Porter v. Gordon, 46 So. 2d 19 (Fla. 1950).

17. With regard to the subject lawsuits, the trial process will be accelerated due to the consolidation, unnecessary costs and delays can be avoided by consolidation, consolidation would eliminate duplicative trials that involve a substantially similar core of operative facts and question of law, and consolidation would not deprive any party of a substantive right. In addition, the parties are the same, the lawyers are the same, and the same witnesses will in the main be offered. Accordingly, all of the aforesaid factors point toward consolidation, and the instant motion should be granted.

WHEREFORE, Defendants, OCEAN 4660, LLC, HANNA KARCHO-POLSELLI and REMO POLSELLI, respectfully request the entry of an Order consolidating the above-styled case with Case Number CACE12013597 (18) for discovery and trial, and awarding any other relief deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served this 21 day of January, 2013 to: SEE ATTACHED SERVICE LIST.

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