

 17th Judicial Circuit	
Case Schedule Receipt:	
Sequence Number:	11
Judge Name:	Rodriguez-Powell, Mily
Case Number:	CACE11028447
Schedule Date:	02/28/2013
Scheduling Attorney Name:	Michael, S, Tobin
Motion Title:	Defendants' Motion to Consolidate Cases for Discovery and Trial
Case Entry Date:	Thu Jan 31 14:56:33 EST 2013
<input type="button" value="Print"/>	

COMERICA BANK, a Texas
Banking Corporation,

Plaintiff,

vs.

OCEAN 4660, LLC, et al,

Defendants.
_____ /

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

CASE NO.: CACE11028447 (03)

**NOTICE OF HEARING ON
DEFENDANTS' MOTION TO
CONSOLIDATE CASES FOR
DISCOVERY AND TRIAL**

NOTICE IS HEREBY GIVEN that the undersigned will call up for hearing on the following:

MATTER: Defendants' Motion to Consolidate Cases for Discovery and Trial

JUDGE: The Honorable Mily Rodriguez-Powell

DATE/TIME: Thursday, February 28, 2013 at 8:45 a.m.

LOCATION: Broward County Courthouse
201 Southeast Sixth Street, Courtroom 770
Fort Lauderdale, Florida 33301

PLEASE BE GOVERNED ACCORDINGLY.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Phone Line at (954) 831-6364; 201 SE 6th Street, Fort Lauderdale, FL 33301 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served this 4 day of February, 2013 to: SEE ATTACHED SERVICE LIST.

ROTHMAN & TOBIN, P.A.
11900 Biscayne Blvd., Suite 740
North Miami, Florida 33181
Telephone: (305) 895-3225
Facsimile: (305) 895-7175
Service Email: service@rothmanandtobin.com

By: 

Michael S. Tobin, Esq., Florida Bar No. 958931
mtobin@rothmanandtobin.com
Paula Levy, Esq., Florida Bar No. 0117031
plevy@rothmanandtobin.com

SERVICE LIST

<p>Brian Hole, Esq. Holland & Knight 515 East Las Olas Blvd., Suite 1200 Ft. Lauderdale, FL 33301 Telephone: (954) 468-7910 Fax: (954) 463-2030 (Via Email) brian.hole@hklaw.com Counsel for Comerica Bank</p>	<p>Eduardo M. Soto, Esq. Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Coral Gables, FL 33134 Telephone: (305) 854-0800 Fax: (305) 854-2323 (Via Email) esoto@wsh-law.com Counsel for Town of Lauderdale-By-The Sea</p>
<p>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 Ft. Lauderdale, FL 33301 Telephone: (954) 357-7600 Fax: (954) 357-7641 (Via Email) mmoore@broward.org Counsel for Broward County</p>	<p>Oceanside Lauderdale, Inc. 2310 East Atlantic Blvd., Suite 206 Pompano Beach, FL 33062 (Via U.S. Mail)</p>
<p>Kenneth A. Frank, <i>Pro Se</i> 2310 East Atlantic Blvd., Suite 206 Pompano Beach, FL 33062 (Via Email) kenknaassociates@gmail.com</p>	<p>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)</p>
<p>Angela Dipilato 2310 East Atlantic Blvd., Suite 206 Pompano Beach, FL 33062 (Via U.S. Mail)</p>	<p>Angela Dipilato 1323 S.E. 3rd Avenue Pompano Beach, FL 33060 (Via U.S. Mail)</p>
<p>Affinity Mechanical Inc. c/o Edward J. Bender, Registered Agent 2805 E. Oakland Park Blvd., #144 Ft. Lauderdale, FL 33306 (Via U.S. Mail)</p>	<p>Motion Elevator, Inc. c/o Registered Agent, Rose Portelli 5915 Park Drive Margate, FL 33063 (Via U.S. Mail)</p>
<p>Rose Portelli 5915 Park Drive Margate, FL 33063 (Via U.S. Mail)</p>	<p>Euro First Choice Enterprises, Inc. c/o Registered Agent, Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 (Via U.S. Mail)</p>
<p>Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 (Via U.S. Mail)</p>	

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

COMERICA BANK,

Plaintiff,

vs.

OCEAN 4660, LLC, et. al.,

Defendants.

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. 5th DCA 2002); Yoder v. Kuvin, 785 So. 2d 679 (Fla. 3rd 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. 5th 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. 4th DCA 1976); Tommie v. LaChance, 412 So. 2d 439 (Fla. 4th 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 31 day of January, 2013 to: SEE ATTACHED SERVICE LIST.

ROTHMAN & TOBIN, P.A.
11900 Biscayne Blvd., Suite 740
North Miami, Florida 33181
Telephone: (305) 895-3225
Facsimile: (305) 895-7175

By: 

Michael S. Tobin, Esq. / FBN 958931
mtobin@rothmanandtobin.com
Paula Levy, Esq. / FBN 0117031
plevy@rothmanandtobin.com

SERVICE LIST

<p>Brian Hole, Esq. Holland & Knight 515 East Las Olas Blvd., Suite 1200 Ft. Lauderdale, FL 33301 Telephone: (954) 468-7910 Fax: (954) 463-2030 (Via Email) brian.hole@hklaw.com Counsel for Comerica Bank</p>	<p>Eduardo M. Soto, Esq. Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Coral Gables, FL 33134 Telephone: (305) 854-0800 Fax: (305) 854-2323 (Via Email) esoto@wsh-law.com Counsel for Town of Lauderdale-By-The Sea</p>
<p>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 Ft. Lauderdale, FL 33301 Telephone: (954) 357-7600 Fax: (954) 357-7641 (Via Email) mmoore@broward.org Counsel for Broward County</p>	<p>Oceanside Lauderdale, Inc. 2310 East Atlantic Blvd., Suite 206 Pompano Beach, FL 33062 (Via U.S. Mail)</p>
<p>Kenneth A. Frank, <i>Pro Se</i> 2310 East Atlantic Blvd., Suite 206 Pompano Beach, FL 33062 (Via Email) kenknaassociates@gmail.com</p>	<p>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)</p>
<p>Angela Dipilato 2310 East Atlantic Blvd., Suite 206 Pompano Beach, FL 33062 (Via U.S. Mail)</p>	<p>Angela Dipilato 1323 S.E. 3rd Avenue Pompano Beach, FL 33060 (Via U.S. Mail)</p>
<p>Affinity Mechanical Inc. c/o Edward J. Bender, Registered Agent 2805 E. Oakland Park Blvd., #144 Ft. Lauderdale, FL 33306 (Via U.S. Mail)</p>	<p>Motion Elevator, Inc. c/o Registered Agent, Rose Portelli 5915 Park Drive Margate, FL 33063 (Via U.S. Mail)</p>
<p>Rose Portelli 5915 Park Drive Margate, FL 33063 (Via U.S. Mail)</p>	<p>Euro First Choice Enterprises, Inc. c/o Registered Agent, Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 (Via U.S. Mail)</p>
<p>Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 (Via U.S. Mail)</p>	