

TO: CENLAR FSB on behalf of Federal National Mortgage Association.
13150 WORLDGATE Drive, Herndon VA 20178

RECEIVED

FEB 04 2013

PAUL HINES, J.S.C.

RE: My Request for a copy of Promissory Note
Name: Angela Ortiz/Jesus Ortiz Jr.
Property Address: 642 South Street, Elizabeth, New Jersey 07202
Loan Number: 0026231852

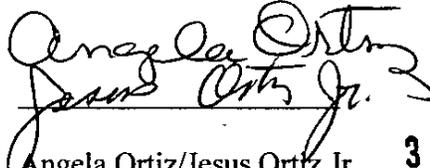
To Whom It May Concern:

I am the owner of certain real property located 642 South Street, Elizabeth, New Jersey 07202, which is security for a loan made by Federal National Mortgage Association, to me on October 25, 2004. Please produce for inspection within ten (10) days the Promissory Note which I signed on January 28, 2013. If you have any questions regarding my request, please call me at (908) 906-0854.

Sworn to and subscribed before me
this 30 day of JAN 2013.

I. B. & M. AGENCY
1000 Elizabeth Ave. Elizabeth, NJ, 07201
908-352-3551

Very truly yours,


Angela Ortiz/Jesus Ortiz Jr.

30 JAN 2013


IGNAZIO BRUSCIANNELLI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES AUG. 29, 2013

IN THE CIRCUIT COURT OF SUPERIOR JUDICIAL COURT
IN AND FOR MERCER COUNTY, STATE OF NEW JERSEY
CIVIL DIVISION

CENLAR FSB on behalf of
FEDERAL NATIONAL MORTGAGE ASSN.

CASE: 025842-12

Plaintiff,

VS.

Angela Ortiz,

Defendant,

Jesus Ortiz Jr

RECEIVED

FEB 04 2013

PAUL W. HARRIS, J.E.C.

REQUEST FOR PRODUCTION OF DOCUMENT

Defendant, *Angela Ortiz/Jesus Ortiz Jr.* requests Plaintiff, *CENLAR FSB* on behalf of *Federal National Mortgage Association* produce, within thirty (30) days of the service hereof, at 642 South Street, Elizabeth, New Jersey 07202, the original Promissory Note signed by Defendant on October 25, 2004.

*Angela Ortiz
Jesus Ortiz Jr.*
Angela Ortiz/Jesus Ortiz Jr.

30 JAN 2013

642 South Street, Elizabeth

New Jersey 07202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. Mail to: CENLAR FSB on behalf of FEDERAL NATIONAL MORTGAGE ASSOCIATION, 13150 WORLDGATE DRIVE, HERNDON VA 20170, this 28 day of January, 2013

Sworn to and subscribed before me
this 30 day of JAN 2013.

*Angela Ortiz
Jesus Ortiz Jr.*
Angela Ortiz/Jesus Ortiz Jr

30 JAN 2013

I. B. & M. AGENCY
1000 Elizabeth Ave Elizabeth, NJ, 07201
908-352-3551

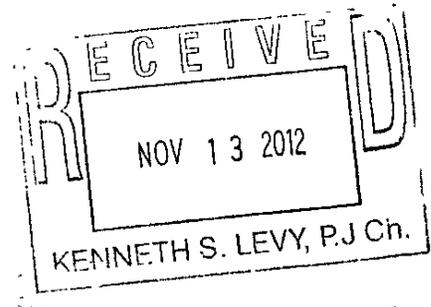
[Signature]
IGNAZIO BRUSCIANELLI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES AUG. 29, 2013.

HERRICK

NEW YORK
NEWARK
PRINCETON

STEFANIE LAMPF
Direct Tel 609-452-3832
Direct Fax 609-488-4803
Email slampf@herrick.com

November 12, 2012



VIA JEFIS

Superior Court of New Jersey
Essex County - Chancery Division
Wilentz Justice Complex
212 Washington Street, 8th Floor
Newark, New Jersey 07102

Re: Society Hill at University Heights III Condominium Association, Inc. v.
Rodrique Deuboue and Landry Deuboue
Docket No. F-32076-10

Dear Sir/Madam:

Herrick, Feinstein LLP, is counsel to Society Hill at University Heights III Condominium Association, Inc. (the "Association"). Enclosed is an electronic copy of the Association's reply to the opposition filed by Bank of America, N.A. to the Association motion for an order appointing a rent receiver. Oral argument is scheduled for Friday, November 16, 2012, at 11:00 A.M.

Thank you for your courtesies.

Very truly yours,


Stefanie Lampf

SL:jak

Enclosures

cc: Eliza Jacobs, Property Manager (w/o enc.)(via e-mail only)
David J. Byrne, Esquire (w/o enc.)
Rodrique Deuboue, Pro Se (w/enc.)(via FedEx)
Landry Deuboue, Pro Se (w/enc.)(via FedEx)
Honorable Kenneth S. Levy, P.J.Ch. (w/enc.)(via Fed Ex)
Louis Greenfield, Esquire (w/enc.) (via email and FedEx)

**This correspondence may be an attempt to collect a debt.
Any information obtained shall be used for this purpose.**

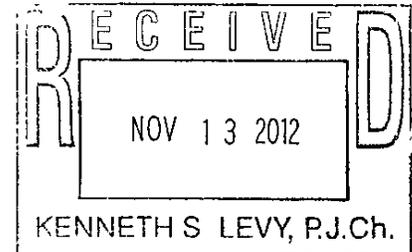
HERRICK, FEINSTEIN LLP

A New York limited liability partnership including New York professional corporations

210 CARNEGIE CENTER, PRINCETON, NJ 08540-6232 • TEL 609 452 3800 • FAX 609 520 9095 • www herrick.com

HF 7837549v1 #15919/0004

November 12, 2012



Honorable Kenneth S. Levy, P.J.Ch.
Superior Court of New Jersey
Essex County - Chancery Division
Wilentz Justice Complex
212 Washington St., 8th Floor
Newark, New Jersey 07102

**Re: Society Hill at University Heights III Condominium Association, Inc. v.
Rodrique Deuboue and Landry Deuboue
Docket No. F-032076-10**

Your Honor:

Herrick, Feinstein represents the Society Hill at University Heights III Condominium Association, Inc. (the "Association"). Please accept this letter brief, in lieu of a more formal brief, in opposition to the motion to intervene filed by Bank of America, N.A. ("BANA") and in reply to BANA's opposition to the Association's motion for an order appointing a rent receiver (the "Motion").

I. BANA has Not Met the Threshold Procedural Requirements for Intervention

A party seeking leave to intervene must show the following:

(1) claim an interest relating to the property or transaction which is the subject of the transaction, (2) show that the movant is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, (3) demonstrate that the movant's interest is not adequately represented by existing parties, and (4) make a timely application to intervene.

American Civil Liberties Union of New Jersey, Inc. v. County of Hudson, 352 N.J. Super. 44, 67

(App.Div. 2002). BANA has not shown any.

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First, BANA does not have an interest in the Association's foreclosure. In an assessment lien foreclosure, an association's liens are subordinate to (1) liens recorded prior to the Association's lien, and (2) any mortgages. 30 Weinstein, New Jersey Practice Law on Mortgages § 26.6. An association's liens will never be entitled to priority over any mortgage on the property. 30 Weinstein, New Jersey Practice Law on Mortgages § 26.6. As such, only interests and liens subordinate to the association lien being foreclosed should be pled in an association's foreclosure complaint. 30 Weinstein, New Jersey Practice Law on Mortgages § 26.7. The sole consequence of not naming a party with an interest in the title of the property is that the unnamed entity cannot be foreclosed. 2 Klock, New Jersey Practice Court Rules Annotated R. 4:64-1.

BANA does not have an interest in this foreclosure simply because it is a mortgagee with respect to 75 Callahan Court, Newark, New Jersey (the "Unit"). BANA's priority will never be foreclosed, extinguished, or affected in any way, by the Association's foreclosure as the mortgage will always be superior to the Association's liens. Thus, because BANA's mortgage has priority over the Association's lien, BANA does not have an interest in the Association's foreclosure. There is no reason why BANA should have been named initially, or now named, as a party to the Association's foreclosure. BANA can proceed with its foreclosure, exactly as it normally would, irrespective of whether the Association forecloses. The Association's foreclosure has absolutely no impact on BANA's foreclosure.

Second, as BANA does not have an interest in the Association's foreclosure, there is no alleged to be not impaired or impeded. BANA fails to acknowledge that its ability to re-sell the

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Unit after it finishes the foreclosure (5-10 years from now, probably) is more greatly impaired absent the appointment of a rent receiver because the Unit will have been vacant, abandoned, and deteriorating for many years. By appointing a rent receiver, Unit will be maintained, and thereby increasing its value.

Furthermore, the New Jersey Condominium Act (the "Act") permits the Association to lease a unit as part of a lien foreclosure. N.J.S.A. 46:8B-21(f). The Association will either rent the Unit now, or after it purchases it for \$100.00 at its sheriff's sale. There is absolutely nothing BANA can do to stop it. The Association is simply asking to start that rental sooner, rather than later, in an effort to protect the Unit's value and the safety and income of the low and moderate income people living at the Association.

BANA cannot articulate the status of its own foreclosure. When asked the status, of the BANA's foreclosure, BANA stated that the last action was filing default judgment. Lampf Certification Accompanying the Reply ¶ 2. When asked when the default judgment was filed (since ACMS indicated default judgment was not filed), BANA's attorney responded with the date default (not default judgment) had been filed. Lampf Certification Accompanying the Reply ¶ 2. In BANA's foreclosure, the prior mortgagee sent the Association three different motions for final judgment, one in October 2008, January 2009, and September 2010. Lampf Certification Accompanying the Reply ¶ 3. For a reason it would either prefer to keep secret or that itself cannot figure out, BANA has been unable to provide an explanation as to the status of these motions, and why it has been unsuccessful on three occasions at filing for, and receiving, a final judgment of foreclosure and writ. Lampf Certification Accompanying the Reply ¶ 4. It is clear

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that BANA has no clue as to what is going on in its own foreclosure and is incapable of moving forward with it.

Third, even if BANA had an interest, and even if that interest was being impaired, it is no different from the interest of the defendants, Rodrique Deuboue and Landry Deuboue (the “Debtors”). BANA has stated that its interest is impaired for one reason: because it does not want to be an unwilling landlord. Presumably, the Debtors do not want to be an unwilling landlord either. As such, if this argument actually had merit, it would have been argued by the Debtors. It has not been.

Finally, in addition to the fact that BANA’s arguments supporting intervention are without merit, BANA’s motion to intervene is not timely. Per the court’s directive, the Association sent the Motion to BANA on August 29, 2012, and BANA received same on August 30, 2012. Lampf Certification Accompanying the Reply ¶ 5. BANA asserts no reason why it took two months to file the motion to intervene. A bank with a real interest in the Association’s foreclosure, and/or the Unit (or even a bank that just cared about the Unit), would have acted with diligence in protecting that interest and/or the Unit.

II. The Motion for an Order Appointing a Rent Receiver Should Be Granted As BANA has Not Provided a Meritorious Reason for Denying the Rent Receiver Motion

A. The Association has Demonstrated Irreparable Harm

“Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Crowe v. De Gioia, 90 N.J. 126, 132-133 (1982). Here, the harm is

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irreparable because no matter how much is awarded via a money judgment, or foreclosure judgment, the Association will be unable to collect same.

The Debtors are the only parties to this foreclosure and were the only parties to the Association's money judgment. There is no question that the Unit has no equity and that the Association's many attempts to collect the existing money judgment have been fruitless. Therefore, no matter how many money, or foreclosure, judgments the Association has, or gets, regardless of the amounts of them, the Association will never, ever be able to recover any money from the Debtors.

Further, an increase in all unit owners' assessments does not provide for monetary compensation with respect to the claim the Association has against the Debtors. The unit owners are not responsible for satisfying the existing judgment that was entered against the Debtors. In order for the Association's damages to be compensable by money, those damages must be recovered from the Debtors. It is equally perplexing that BANA would suggest raising assessments as a way to cover the Debtors' debts because this means that it too will be paying those high assessments when it finally figures out how to finish its foreclosure.

It is illogical to suggest that a rent receiver should never be appointed for a condominium association because a condominium association can raise assessments in order to recover the amounts owed by a delinquent unit owner. This is akin to saying that a bank's loss is never irreparable via a defaulted mortgage without equity because that bank can raise revenue sufficient to cover the loss through increased ATM fees for other customers, or loan fees, or lay off workers, to make up the amount lost via the lack of equity. Even though the bank can offset a

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mortgage-related loss, by making more money from other sources, a bank still contends a defaulted is compensable by an in rem action.

In addition, the Association is financially troubled and cannot raise assessments. Jacobs Certification ¶ 51-54. The other units literally cannot afford to pay the deficit caused by non-payment of assessments. Jacobs Certification Accompanying the Reply ¶ 2. They do not have the money in their bank accounts. Jacobs Certification Accompanying the Reply ¶ 2. They do not make enough money each month to pay any more in assessments than they are already forced to pay. Jacobs Certification Accompanying the Reply ¶ 2.

Quite frankly, it is not surprising (yet it is still sad) that BANA, a multi-billion dollar company, thinks that middle to low income citizens of Newark living in the Association can just pay more money than they already do, to cover the Debtor's default because that multi-billion dollar company does not want a tenant living in the Unit five years from now when it finally finishes its foreclosure. That BANA logic is just sad.

If owners are forced to pay more, more and more owners will default each month, raising the deficit which will then be covered by even larger assessments, which in the end will kill off the hope of anyone ever paying assessments. The Association will be forced to file bankruptcy, like those bankruptcies filed by Arborwood Condominium Association, Inc. (case 10-38327-JHW), Arborwood II Condominium Association, Inc. (case 10-38328-JHW), and Arborwood III Condominium Association, Inc. (case 10-38329-JHW)¹. Jacobs Certification Accompanying the Reply ¶ 3.

¹ Along with other similarly situated New Jersey associations contemplating bankruptcy

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Furthermore, BANA's suggestion that the Association "redouble" its efforts to collect the judgment from the Debtors is equally as appalling. The Association cannot collect the judgment from the Debtors because the Debtors have no money. The Debtors likely abandoned the Unit because they could not afford to service the Unit's costs when the economy, and/or the real estate market, collapsed. The notion that the Association should pay additional legal fees to chase the Debtors when it is clear that they are unemployed, and have no assets, is outlandish².

Evidence of deterioration exists. The best indicator for the future is the past. Other vacant units within the Association (and within other associations) with respect to which rent receivers were appointed, or where the units are owned and rented by the associations, have almost all been damaged and will take thousands and thousands of dollars to repair and remediate. Jacobs Certification ¶ 64-65, 70. Furthermore, as addressed in the Association's moving papers, there have been significant studies (in addition to government declarations in New Jersey and investigations by California) that abandoned and foreclosed units are targets for destruction and deterioration. If BANA's real concern is the ability to re-sell the Unit after its sheriff's sale (if that ever occurs), that would be frustrated by a rent receiver tenant, then it would be logical for repairs to be made now, rather than years from now (with rental money funding it all).

Further, Judge Suter's decision is inapposite and unpersuasive. The decision was rendered in a general equity case, not in a foreclosure. It involved nine different condominium units owing \$100,000, most of which were vacant. There is no indication from the opinion

² These BANA arguments demonstrate just how disconnected it is from realty, and from what actually goes on in, and at, condominiums in Newark, like the Association

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provided whether the units had equity, whether any money judgments were useful, whether funds were recoverable without a receiver or are unrecoverable, and whether these units, or other units, had damage and/or were deteriorating. There are at least 18 judges in 15 counties that have created receiverships at my clients' pleas where the facts are nearly identical to those here: units with a history of deterioration, units without equity, uncollectable money judgments, and over \$500,000 owed by delinquent owners³.

What is instructive though, is a recent decision by the Honorable William J. McGovern, III, J.S.C. Lampf Certification Accompanying the Reply ¶ 6. In Mountainside Section Condominium Council v. Laura Jean Caravella, Docket No. F-3887-12, Judge McGovern thoroughly addressed the issue of irreparable harm where: (i) the unit is vacant and is susceptible to harms and other hazards; (ii) an owner habitually does not pay assessments; (iii) the economic damage to the association is ongoing (and burdening all owners); and (iv) and the unit reaps the benefit of the services provided by the association. Judge McGovern even found that despite the mortgagee's argument to the contrary, the rent receiver was only required to pay property taxes following payment of assessments, repairs, rent receiver fee, and the past due balance.

B. No Hardship Will Come to BANA if the Rent Receiver is Appointed

BANA is not a party to the Association's foreclosure. Thus, BANA should not be considered when the "relative hardship to the parties" is determined.

Even if BANA were a party, as already set forth in great detail, and had an interest in the Unit's condition, it would happily allow the Association, via a rent receiver, to maintain the Unit,

³ Judge Suter created at least on receivership, granting a rent receiver motion filed by another one of my clients. A copy of the order in Woodlake Condominium Association, Inc v Diana S. Gutierrez, Docket No F-1666-11 was included with the Lampf Certification ¶ 2, Exhibit A

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as so doing so will increase the Unit's value and avoid larger repair costs that will burden BANA when (maybe five years from now) it becomes the Unit's owner. For now, until BANA finishes its foreclosure, the Association seeks to maintain and preserve the Unit, and the common elements and the exterior surrounding the Unit. As a trade-off, if the Motion is granted, BANA will receive the Unit in excellent condition, and in an undoubtedly better state than it is now. The Unit will be income generating, enabling BANA to collect money each month when it becomes the owner or to use as a marketing device when re-selling the Unit.

BANA will always be able to recover some, if not all, of the amounts owed when it finishes its foreclosure as there is some value in the Unit (albeit diminishing every day because of how BANA has handled its foreclosure, and the preservation, or lack thereof, of the Unit). However, absent the receivership, the Association will recover nothing and will go into even more debt and physical decay. The Unit has no equity, and the Association has been unable to identify any other means to collect the amounts due and owing by the Debtors. This scenario is analogous as to that which occurred at 15 Howard Court in which that association had to write off nearly \$40,000 as bad debt. Jacobs Certification ¶ 71-75.

C. The Association can Request the Appointment of Rent Receiver in the same Manner as a Mortgagee

Pursuant to the Act, N.J.S.A. 46:8B-21(f): "liens for unpaid assessments may be foreclosed by suite brought in the name of the association in the same manner as a foreclosure of a mortgage on real property." Thus, the Association is entitled to the appointment of a rent receiver just like BANA is.

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Furthermore, the fact that the Association's lien only has limited priority is totally irrelevant. BANA, as do many lenders, misconstrues the Act. See Woodview Condominium Ass'n, Inc. v. Shanahan, 391 N.J. Super. 170, 180 (App. Div. 2007). The Act does not stand for the proposition that the Association is only empowered to recover six months' worth of assessments. In Woodview, the Appellate Division determined that

Lastly, defendant argues that in contrast to the Association's remedies against the legal owner, plaintiff's only recourse against a mortgagee in possession is that afforded by N.J.S.A. 46:8B-21, which gives plaintiff's assessment lien a super priority over defendant's mortgage limited to the amount of six months of unpaid usual and customary common charges. We disagree. The statutory provision addresses the issue of lien priority upon the foreclosure sale rather than liability for goods and services received either before or during the pendency of foreclosure proceedings. Nothing in N.J.S.A. 46:8B-21 suggests that the limited super priority is the Association's exclusive remedy for unpaid assessments accrued during the tenure of a mortgagee in possession, or restricts the Association's ability to further seek a money judgment against that defaulting party. Accordingly, N.J.S.A. 46:8B-21 is not a statutory bar to payment of common charges during the pendency of foreclosure proceedings.

Thus, the Association is not barred from recovering amounts owed during the pendency of the foreclosure. Rather, the Association is encouraged to effectuate collection efforts prior to the foreclosure sale in order to recover all amounts owed. See, id.

III. The Rent Receivership Should Not Be Used Solely to Reimburse BANA

First, if BANA wants to reap the monthly monetary benefits of a rent receiver, then BANA could have, and should have, sought a receivership in its own foreclosure. That foreclosure was filed on February 15, 2008. It could have housed a tenant, kept the Unit from decaying, and covered some of its losses. As noted previously, BANA does not even know what it has done, and when it did it, in its own foreclosure. BANA does not even claim that it will

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actually ever finish its foreclosure, or when we can expect that to happen. The Association does not need to argue that BANA - a multi-billion dollar corporation - should not receive money from a tenant before the low to middle income people, living in Newark, forced to insure and protect the common elements that enable this corporation to recover its debt, receive even the tiniest bit of help.

IV. Conclusion

The Association respectfully requests that the Motion be granted and BANA's motion to intervene be denied.

Respectfully submitted,


Stefanie Lampf