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IN THE CIRCUIT COURT OF THE SEVENTEENTH (17th) JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

BANK OF AMERICA, N.A.,

CASE NO.: 07-30825 CACE 11

Plaintiff,

v.

HEIDEN HANNELORE, et al.,

Defendants.

MOTION TO INTERVENE AND
MOTION TO STRIKE CODE ENFORCEMENT LIENS

James Ober (“Ober”), Intervenor, by and through his undersigned counsel, and pursuant to Rule 1.230 of the Florida Rules of Civil Procedure, hereby moves this Court for an Order permitting him to intervene in this matter and, pursuant to §48.23(1)(d), Florida Statutes, to strike code enforcement liens filed by the Town of Lauderdale-By-The-Sea (“Town”), and in support thereof states as follows:

Factual Background

1. This action began as a foreclosure of residential real property located in the Town and more particularly described as:

Lot 17 of Block 2, in TERRA MAR ISLAND ESTATES,
according to the Plat thereof, recorded in Plat Book 29, Page 12, of
the Public Records of Broward County, Florida

(hereinafter, the “Property”).

2. As part of its mortgage foreclosure action filed in this action, Bank of America, N.A., filed and recorded a Notice of *LisPendens*. The notice was recorded on November 26, 2007, and can be found at Official Records Book 44837, Page 1043, Public Records of Broward County, Florida. A copy of this Notice of *LisPendens* is attached hereto as Exhibit “A”.

3. Beginning in August, 2008, the Town began imposing and recording a series of municipal and code enforcement liens against the Property. These liens and their dates of recording are as follows:

- a. Order Imposing Fine/Certificate of Lien, imposed April 17, 2008 and recorded August 1, 2008, at Official Records Book 45579, Page 1001;supplemented by Order Imposing Fine/Certificate of Lien recorded April 2, 2013, in Official Records Book 49657, Page 745;
- b. Final Order, imposed September 16, 2009, and recorded December 9, 2009, in Official Records Book 46717, Page 1014;
- c. Order Imposing Fine/Certificate of Lien, imposed February 17, 2010, and recorded July 13, 2010, in Official Records Book 47217, Page 676;
- d. Order Imposing Fine/Certificate of Lien, imposed February 17, 2010, and recorded July 13, 2010, in Official Records Book 47217, Page 684;
- e. Order Imposing Fine/Certificate of Lien, imposed October 20, 2010, and recorded December 2, 2010, in Official Records Book 47553, Page 417; and
- f. Special Magistrate Order Imposing Fine and Certification of Lien, imposed February 16, 2011, and recorded August 10, 2011, in Official Records Book 48104, Page 1788.

Copies of these liens are attached hereto as Exhibits “B” through “H”.

4. The foreclosure action was not concluded until a Certificate of Title to Bank of America was issued by the Clerk of the Circuit Court on October 9, 2012, after a foreclosure sale (the Certificate of Title is found at O.R. Book 49159, Page 1889, a copy of which is attached hereto as Exhibit “I”).

5. Subsequent to the issuance of the Certificate of Title, two additional liens were imposed and recorded against the property by the Town:

- a. Order of Imposition of Fine and Claim of Lien, imposed March 18, 2013, and recorded July 29, 2013, in Official Records Book 50027, Page 645; and
- b. Order of Imposition of Fine and Claim of Lien, imposed July 15, 2013, and recorded September 24, 2013, in Official Records Book 50197, Page 1864.

Copies of these liens are attached hereto as Exhibits "J" and "K".

6. In July, 2013, after imposition of all of the fines described above, Ober applied to the Town for mitigation of the various liens recorded against the property. At a hearing held before the Town Commission on September 10, 2013, the Town agreed to reduce the amounts due on each of the lien amounts by seventy-five (75%) percent, in accordance with its usual and customary policy on lien mitigation (which also allows a party who has contracted with an owner to purchase a property subject to Town liens to apply for mitigation of those liens). A copy of this Order is attached hereto as Exhibit "L".

7. Upon subsequently realizing that the liens recorded against the property prior to the issuance of the Certificate of Title were unenforceable against the property, Oberthrough counsel asked for a rehearing of those specific offending liens. A copy of the letter asking for rehearing is attached hereto as Exhibit "M".

8. At the rehearing held before the Town Commission on September 24, 2013, the Town agreed that the first lien (Exhibits "B" and "C") was unenforceable and agreed to remove it as an encumbrance on the Property; however, the Town refused to remove anyof the remaining offending liens. The Town did reiterate its decision to reduce the amounts due on each of the

remaining lien amounts to twenty-five (25%) percent. A copy of the Town's revised Order is attached hereto as Exhibit "N".

9. On September 30, 2013, Ober purchased the Property from Bank of America.

Motion to Intervene

10. Pursuant to Fla.R.Civ.P. 1.230, "[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention."

11. Intervention is appropriate in a foreclosure case such as the one at hand. *Miller v. Stavros*, 174 So.2d 48 (Fla. 3d DCA 1965) (the standing of a non-party who has purchased a property at a foreclosure sale has long been recognized).

12. The issues Ober seeks to raise are encompassed by the present controversy. Section 48.23, Fla.Stat., the *LisPendens* statute, gives this Court jurisdiction over the *lispendens* that was recorded prior to and remained pending during the foreclosure action and any violations of the *LisPendens* statute.

13. Additionally, in the Final Judgment of Foreclosure entered by this Court on September 22, 2008, this Court retained jurisdiction to "enter further orders as are proper."

14. Leave to intervene shall be given freely when justice so requires and is greatly favored in Florida. *See*, Fla. R. Civ. P. 1.230; *See also*, *National Wildlife Fed'n Inc. v. J.T. Glisson*, 531 So. 2d 996, 997 (Fla. 1st DCA 1988) (holding that "[i]ntervention should be liberally allowed").

WHEREFORE, James Ober respectfully requests that this Court permit him to intervene in this matter and for such other and further relief this Court deems appropriate.

Motion to Strike Code Enforcement Liens

15. Pursuant to Florida Statute Section 48.23(1)(d), the recording of a notice of *lispendens* by Bank of America “constitutes a bar to the enforcement against the property described in the notice of all interests and liens” recorded thereafter. This statutory provision was recently enforced by the Fourth District Court of Appeal in *U.S. Bank Nat’l Ass’n v. Quadomain Condo. Ass’n, Inc.*, 103 So. 3d 977 (Fla. 4th DCA 2012) and further confirmed to be enforceable against all municipal liens by the Florida Supreme Court in *City of Palm Bay v. Wells Fargo Bank*, 114 So. 3d 924 (Fla. 2013).

16. Contrary to the *LisPendens* statute, the Town never intervened in this action after the notice of *lispendens* was filed and recorded by Bank of America.

17. As all of the liens described in Exhibits “D” through “H” were recorded after the notice of *lispendens* was recorded, they are unenforceable and should be stricken.

18. Ober has made demand on the Town to remove the offending liens but the Town has refused to do so (except for Exhibits “B” and “C”).

WHEREFORE, Ober respectfully requests that this Court enforce the provisions of Section 48.23, Florida Statutes, and strike the liens listed in paragraph 3, above, and for such other and further relief as this Court deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by personal service on the Town of Lauderdale-By-The-Sea pursuant to statute.

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