

CAUSE NO. D-1-GV-09-000007

THE STATE OF TEXAS

V.

SOUTHERN STAR TITLE
COMPANY, LLC

§ IN THE DISTRICT COURT
§
§ 53rd JUDICIAL DISTRICT
§
§
§ TRAVIS COUNTY, TEXAS

INTERVENOR INTER NATIONAL BANK'S MOTION TO LIFT OR MODIFY AUTOMATIC
STAY AS PERTAINING TO INTERVENOR

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Intervenor, INTER NATIONAL BANK, by and through its undersigned counsel, and files this Motion to Lift or Modify Automatic Stay as Pertaining to Intervenor, and would respectfully show the Court as follows:

I.
PARTIES

1. Intervenor INTER NATIONAL BANK (the "Bank") is a national banking association and may be served with any notice in this lawsuit through its undersigned attorneys.
2. Plaintiff is the State of Texas. Plaintiff may be served by and through its counsel of record.
3. Defendant is Southern Star Title Company, LLC ("Defendant"). Defendant may be served by and through his counsel of record.

II.
FACTUAL BACKGROUND

4. On or about January 8, 2009, this Court signed an Agreed Order Appointing Liquidator and Permanent Injunction, which included an automatic stay under the provisions of TEX. INS. CODE. ANN. § 443.008(c). The receiver appointed by the liquidator in this matter has taken the position that it has a potential interest in certain property upon which Intervenor has properly perfected a lien and deed of trust. The property at issue is owned by Santo Andrei, LTD, which is owned by

Rogelio Ibanez ("Ibanez"), president and owner of Defendant Southern Star Title Company, LLC.

5. Ibanez and Santo Andrei, LTD ("Santo Andrei") have pre-existing contractual obligations to the Bank in connection with a loan granted by the Bank in the original principal amount of \$4,455,000.00. As consideration for the Bank extending the loan, Santo Andrei agreed to make periodic payments of principal and interest until the debt has been paid in its entirety and pledged certain security as collateral. The Bank would not have extended the loan but for the promise to repay the loan and guaranty of Defendant and Santo Andrei, as well as the pledge of certain collateral to serve as security in the event of default.

6. On or about January 25, 2006, Santo Andrei, by and through its general partner, Matico, Inc., executed and delivered to the Bank a promissory note in the original principal amount of \$4,455,000.00 (the "Note"). **See Exhibit "A"**. Under the terms of the Note, Santo Andrei was to make semi-annual payments of accrued interest on or before July 25, 2006, January 25, 2007, July 25, 2007, and one final installment on or before January 25, 2008, on which date the entire principal balance of the Note was due and payable.

7. To secure payment of the Note, Santo Andrei by and through its general partner, Matico, Inc., executed a Deed of Trust, Security Agreement and Financing Statement (the "Lien"), wherein Santo Andrei specifically granted a security interest in the following property:

TRACT 1: All of Lot 28, KELLY PHARR SUBDIVISION, Hidalgo County, Texas, according to the map recorded in Volume 3, Page 133, Deed Records in the Office of the County Clerk of Hidalgo County, Texas, reference to which is here made for all purposes. SAVE AND EXCEPT that part conveyed to the City of Edinburg by Warranty Deed dated April 5, 200, filed August 25, 200 under Document Number 900280, Official Records, Hidalgo County, Texas.

TRACT 2: A tract of land out of Lots 88 and 93, LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION, Hidalgo County, Texas, according to map hereof recorded in Volume 24, Page 68, Deed Records in the Office of County Clerk of Hidalgo County, Texas, reference to which is here made for all purposes.

(the "Property"). **See Exhibit "B"**. Additionally, Ibanez executed and delivered to the Bank a Continuing Guaranty personally guaranteeing payment of the Note. **See Exhibit "C"**.

8. On or about May 25, 2008, the Note and the Lien were extended, with the execution of an Extension of Real Estate Note and Lien by Santo Andrei for the unpaid principal sum of \$3,160,411.19 ("Extension #1"). **See Exhibit "D"**. The terms of Extension #1 provided for three quarterly installments of accrued interest on or before August 25, 2008, and continuing quarterly thereafter and in a final installment due on or before May 25, 2009, when the entire unpaid principal balance and accrued interest became due and payable. Extension #1 provided that the Note, the Lien and all security documents remain in full force and effect except as provided in Extension #1.

9. On or about March 23, 2009, the Note and the Lien were extended again, with the execution of an Extension of Real Estate Note and Lien by Santo Andrei for the unpaid principal sum of \$3,372,808.62 ("Extension #2"). **See Exhibit "E"**. The terms of Extension #2 provided for five quarterly installments of accrued interest on or before June 25, 2009, and continuing quarterly thereafter and in a final installment due on or before September 25, 2010, when the entire unpaid principal balance and accrued interest became due and payable. Extension #2 provided that the Note, the Lien and all security documents remain in full force and effect except as provided in Extension #2.

10. On or about September 25, 2010, the Note and the Lien were extended, with the execution of an Extension of Real Estate Note and Lien by Santo Andrei for the unpaid principal sum of \$3,160,411.19 ("Extension #3"). **See Exhibit "F"**. The terms of Extension #3 provided for three quarterly installments of accrued interest on or before January 15, 2011, and continuing quarterly thereafter and in a final installment due on or before October 15, 2011, when the entire unpaid principal balance and accrued interest became due and payable. Extension #3 provided that the Note, the Lien and all security documents remain in full force and effect except as provided in Extension #3.

11. Santo Andrei defaulted under the terms of the Note by failing to pay the quarterly interest payments. The current balance owing on the Note is \$2,614,617.58 with interest continuing to

accrue at the rate of \$488.68 per day. The Bank has instituted foreclosure proceedings as to the Property securing the Note.

III.
MOTION TO LIFT OR MODIFY AUTOMATIC STAY

12. The Bank has a justiciable interest in this lawsuit. The Bank's justiciable interest is both legal and equitable. The Bank has a legal right to foreclose on all or part of the collateral securing its Note, and the Bank's right to said action is superior to that of Plaintiff's. It is irrefutable that the Bank funded a loan in the amount of \$4,455,000.00 which is in default, and of which \$2,614,617.58 remains unpaid. The Bank funded the loan at issue prior to any alleged wrong doing by Defendant. The Bank would not have extended the loan unsecured and without sufficient collateral to secure those sums being loaned.

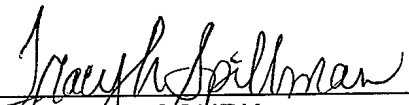
13. The Property is not the property of the insurer under the Insurer Receivership Act. Thus, the Property is not subject to the automatic stay under TEX. INS. CODE. ANN. § 443.008(c). Accordingly, the automatic stay provisions of TEX. INS. CODE. ANN. § 443.008(c) should be modified as to allow for foreclosure by the Bank on the Property.

IV.
PRAYER

WHEREFORE PREMISES CONSIDERED, Intervenor INTER NATIONAL BANK requests that the automatic stay provisions of TEX. INS. CODE. ANN. § 443.008(c) be modified as to allow for foreclosure by the Bank on the Property. Intervenor further prays for all other relief to which they may be entitled, whether at law or in equity.

Respectfully submitted,

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ATTORNEYS FOR INTER NATIONAL BANK

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure to the following parties on May 31, 2011:

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