

NO. D-1-GV-09-000007

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	53 RD JUDICIAL DISTRICT
	§	
SOUTHERN STAR TITLE COMPANY, LLC	§	TRAVIS COUNTY, TEXAS

**INTERVENOR COMPASS BANK'S PETITION IN INTERVENTION
AND MOTION TO LIFT OR MODIFY STAY AGAINST PROPERTY**

Pursuant to Rule 60 of the Texas Rules of Civil Procedure, Compass Bank ("Compass"), a party in interest, files its Petition in Intervention and Motion to Lift or Modify Stay Against Property, and would show the Court as follows:

PARTIES

1. Intervenor Compass Bank is a national banking association and may be served by and through its undersigned attorneys.
2. Plaintiff, the State of Texas, may be served by and through its counsel of record.
3. Defendant, Southern Star Title Company, LLC ("Southern Star"), may be served by and through its counsel of record.

BACKGROUND FACTS

4. This action was commenced on or about January 7, 2009. On or about January 8, 2009, this Court signed an order placing an injunction over the Defendant, Southern Star Title Company, LLC ("Southern Star") and its affiliates and owners, including Mr. Rogelio Ibanez ("Ibanez").

5. On or about January 8, 2009, the Court entered an order appointing Jennifer Ramsey, PC as Special Deputy Receiver (the "Receiver") of Southern Star (the "Order Appointing Receiver"). The Order Appointing Receiver required the Receiver marshal real and personal property of Southern Star.

6. Compass, as successor-in-interest to Laredo National Bank, had a valid lien and security interest on certain real property located in Hidalgo County, Texas (the "Property") pursuant to a promissory note in the original principal sum of \$500,000.00 executed by Investments by D.D.R., LLC, a Texas limited liability company ("DDR"), by and through its Members, Ibanez and Domingo Flores, and payable to Compass, as successor-in-interest to Laredo National Bank (the "Note"). The Note was secured by a deed of trust on Lots Ten (10) and Eleven (11), Remington Square Subdivision, an addition to the City of Edinburg, Hidalgo County, Texas, according to the map or plat thereof recorded in Volume 28, Page 12B, Map Records, Hidalgo County, Texas (the "Property").

7. The record title holder to the Property is Santo Andrei, Ltd. ("Santo"), which is partially owned by Ibanez, president and owner of Southern Star. Ibanez transferred the Property from DDR to Santo and dissolved DDR.

8. DDR defaulted in payment on the Note, and the Note was matured by acceleration on June 26, 2009, when all outstanding principal and accrued interest was due. DDR defaulted in the payment of the matured Note.

9. The Property was posted for foreclosure pursuant to the terms of the Deed of Trust and the laws of the State of Texas, and on or about September 1, 2009, a

nonjudicial foreclosure sale of the Property was held (the "Foreclosure Sale"). Compass purchased the Property at the Foreclosure Sale.

10. The Substitute Trustee's Deed, showing Compass as purchaser of the Property, and dated September 1, 2009, is recorded as Document No. 2030573 in the real property records of Hidalgo County, Texas (the "Trustee's Deed").

11. Compass, at the time the Order Appointing Receiver was entered, was beneficiary of the Deed of Trust and the owner and holder of a valid lien on the Property in the control of the Receiver. However, Compass did not receive notice of the Order Appointing Receiver.

ARGUMENT AND AUTHORITIES

12. As a result of the above-described default, Compass had the clear legal right to foreclose on the Property in the control of the Receiver. Compass, having no notice of appointment of the Receiver, exercised its right to foreclose the Deed of Trust under the laws of the State of Texas and terms of the Deed of Trust.

13. Under Texas law, a receivership does not alter or supersede any deed of trust or liens on the property in a receivership, and the holder of such deeds of trust or liens is entitled to enforcement of its rights to the collateral, despite the receivership. See *Chase Manhattan Bank v. Bowles*, 52 S.W.3d 871, 880 (Tex. App. – Waco 2001). However, enforcement of the holder's rights may require the permission of the court that appointed the receiver. See *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339 (Tex. 1976). Compass did not seek permission from this Court because, again, it did not receive notice of the appointment of the Receiver.

14. An order issued for the benefit of the receiver under Texas Insurance Code Sec. 443.008 places a stay on all delinquency proceedings. However, the stay automatically terminates 90 days from the appointment of the receiver, unless the court extends the stay after notice.

15. Even if the stay were in effect, there is no equity in the Property. Compass purchased the Property at the Foreclosure Sale for \$395,500.00, the amount of its debt on the Note. The Property was appraised as of October 14, 2010 at \$380,000.00. Further, the Property is not necessary to an effective rehabilitation plan because the Property is not property of Southern Star. Southern Star never owned the Property. Instead, the Property was originally owned by a wholly separate entity, of which Ibanez was a Member. Therefore, the stay, if any, must lift under § 443.008(h)(2).

WHEREFORE, PREMISES CONSIDERED, Compass requests that the Court grant Compass orders and a judgment necessary to enforce the rights of Compass with respect to the Property, and for such other and further relief to which Compass may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR COMPASS BANK

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Compass Bank's Petition in Intervention and Motion to Lift or Modify Stay Against Property has been forwarded by first class mail to the following counsel of record on the 2nd day of July, 2011:

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