

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

BANKUNITED, N.A.,

Plaintiff,

v.

PERLA MACHAEN; ROBERT F. THORNE; CITY OF CORAL GABLES, FLORIDA; CONCRETE HOLDINGS & SERVICES, LLC D/B/A C & C CONCRETE PUMPING; ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, OR AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEEES, OR OTHER CLAIMANTS; and UNKNOWN TENANT, whose name is fictitious to account for parties in possession,

Defendants,

and

CITY OF CORAL GABLES,

Counterclaimant/Crossclaim
Plaintiff/Third-Party Plaintiff,

v.

BANKUNITED, N.A.,

Counterclaim Defendant,

and

PERLA MACHAEN and ROBERT F. THORNE;

Crossclaim Defendants.

and

CENLAR FSB, a foreign corporation, and SAFEGUARD PROPERTIES MANAGEMENT, LLC d/b/a SAFEGUARD PROPERTIES, LLC, a foreign limited liability company,

Third-Party Defendants.

_____/

CASE NO.: 19-17740 CA 01 (04)

GENERAL JURISDICTION DIVISION

**ORDER GRANTING CITY OF CORAL GABLES'S
EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

THIS CAUSE came before the Court upon Plaintiff, CITY OF CORAL GABLES'S ("CITY"), Emergency Motion for Temporary Injunction ("Motion"). The Court, having held a hearing and considered any evidence presented, having reviewed the Court file, and being otherwise duly advised in the premises, enters this order granting the Motion:

IT IS HEREBY, ORDERED AND ADJUDGED that:

1. The CITY's Motion is hereby **GRANTED**.
2. Counterclaim Defendant, BankUnited, N.A., the mortgagee of the Property described below ("MORTGAGEE"); Defendant/Crossclaim Defendants, Perla Machaen and Robert F. Throne, the Property owners (jointly referred to as "OWNERS"); and Third-Party Defendant, CENLAR FSB, a foreign corporation ("SERVICER"), the mortgage servicer for the mortgage on the Property (the foregoing Counterclaim Defendants, Crossclaim Defendants, and Third-Party Defendants are collectively referred to as "RESPONSIBLE PARTIES"); shall immediately cease and desist from violating the CITY code.
3. The RESPONSIBLE PARTIES are specifically ordered to correct any remaining violations of Article VII of Chapter 34 of the CITY code (the "Abandoned Real Property Ordinance") as well as the following sections of the CITY Code on the property located at 8020 Los Pinos Blvd, Coral Gables, FL 33143-6455 ("Property") and to avoid repeat violations of:
 - a) Section 34-55 of the CITY Code, to wit: failure to consistently maintain the Property, including but not limited to, by allowing overgrown and dead vegetation and debris;
 - b) Sections 34-202 and 203 of the City Code, to wit: failure to register (the abandoned property registration, which incorrectly showed the Property as occupied, expired on September 24, 2019); and maintain the Property (which is abandoned property in default of the mortgage) as set forth herein; and
 - c) Section 105-26 of the CITY Code and Section 105.4.1.1 of the Florida Building Code, to wit: allowing the building permit for renovation of the single-family home and accessory structures on the Property ("Structures")(permit BL-15-08-5451 and all subpermits, which were issued on 1-5-16, had their last approved inspection (for setbacks) on 5-20-16, and which expired on 4-30-18)("Permits");
 - d) Section 3-207 (D) of the City Zoning Code, to wit: Failure to fully complete building in substantial compliance with plans and specifications upon which a building permit was within one (1) year after the commencement of erection of any building, addition, or renovation; including, but not limited to, by failing to make active progress on the Permits [fines running against OWNERS in case # CE276224-030718](the foregoing four violations are collectively referred to the "Violations").

4. The CITY acknowledges that the CITY code violation in paragraphs 3(a) has been corrected (at times by the CITY's vendors), but may recur.

5. The Court specifies as its reasons for entry of this Order that: (a) the CITY provided the RESPONSIBLE PARTIES notice and opportunity to cure the Violations and that the RESPONSIBLE PARTIES have not taken sufficient action to correct them; (b) because the CITY is seeking an injunction to enforce its police power, irreparable harm is presumed; (c) nevertheless, the Complaint sets forth the irreparable harm to the CITY and its residents caused by the continuing violations of the CITY Code on the Property, which is abandoned; and (d) Section 34-205(b) of the CITY's Code provides that the CITY shall be entitled to an injunction on an expedited basis.

6. The RESPONSIBLE PARTIES shall:

- a) re-open the Permits within ^{10 days} ~~72 hours~~ of the date of this Order; (MM)
- b) make substantial progress on the work authorized by the Permits to the satisfaction of the Building Official within ³⁰ ~~72~~ days of the date of this Order; (MM)
- c) continue to make substantial progress on the Permits, to the satisfaction of the Building Official, every 30 days thereafter; and
- d) pass final inspection on all Permits within 120 days of the date of this Order; (MM)
- e) alternatively, any of the RESPONSIBLE PARTIES may, within ^{10 days} ~~72 hours~~ of the date of this Order, provide written notice to the CITY and the other RESPONSIBLE PARTIES of their election to apply for all necessary permits to completely demolish all Structures on the Property ("Demolition Permits") and shall apply for the Demolition Permits, within 15 days of the date of this Order; (MM)
- f) obtain the Demolition Permits, within ³⁰ ~~45~~ days of the date of the application, and in any event, no later than 30 days from the date of this Order; and
- g) pass final inspection on the Demolition Permits, which includes, but is not limited to, laying down sod and removing the temporary construction fence, within 15 days of the date of the CITY notifies the RESPONSIBLE PARTIES that the Demolition Permits are ready to be picked up and, in any event, no later than 45 days from the date of this Order; and
- h) In addition, to the foregoing, the MORTGAGEE shall register the property as unoccupied and in foreclosure within ^{10 days} ~~48 hours~~ of the date of this Order. (MM)

7. The RESPONSIBLE PARTIES shall consistently maintain the Property to avoid any new violations of the CITY Code. The CITY shall, nevertheless, provide the RESPONSIBLE PARTIES with written notice of any new violations that arise.

8. The CITY shall expedite its review of the applications for the Demolition Permits, the building plans, and its inspections, as applicable.

9. The Court, upon motion, notice, and hearing; or the CITY may extend any of the above deadlines if either finds good cause beyond the control of the RESPONSIBLE PARTIES and that the RESPONSIBLE PARTIES acted in good faith and exercised due diligence in its efforts to obtain all required Permits, to correct all code violations, and to request an extension of any deadlines, as applicable. Good cause to obtain an extension shall include the time required for the CITY to review the application for Permits, the plans, and any revisions (collectively referred to as "Plans"), but only for the number of days the Plans have been submitted for review. Any additional time granted due to the CITY's review shall be computed from the date the Plans are submitted until the date the CITY notifies the RESPONSIBLE PARTIES that the Plans are ready to be picked up for any required revisions or that the Permits are ready to be picked up.

10. The OWNER is specifically ordered to cooperate with any mortgagee who holds a mortgage on the Property, if said mortgagee should undertake correcting any CITY Code violations on the Property, including but not limited to, by granting their consent for the mortgagee to enter upon the Property as needed to perform any work required to correct the Violations and by signing off, as required by the CITY, on any required permits for correction of the Violations.

11. The RESPONSIBLE PARTIES are enjoined from permitting any additional or new violations of the CITY code on the Property. If the RESPONSIBLE PARTIES do not correct any new violations of the CITY code, upon notice and a reasonable opportunity to cure, the CITY may move this Court for an injunction regarding the new violations.

12. The RESPONSIBLE PARTIES may transfer the permit applications/permits to a subsequent owner of the Property or may refinance with a new mortgagee or lender, however any such transferee or new lender must, prior to any transfer, (a) pay any applicable permit fee; (b) agree in writing to be bound by this Order and correct all of the Violations; and (c) file the documents necessary to submit to the jurisdiction of this Court prior to any transfer, including, but not limited to, a joint motion and an agreed order replacing the transferee as the real party in interest in this matter and replacing the name of the party to be bound by this order. The RESPONSIBLE PARTIES shall however, remain a party to this action until it is closed or dismissed.

13. In the event of a breach of this Order by the RESPONSIBLE PARTIES, the Court may enforce this Order including, but not limited to, by appointing a receiver pursuant to Fla. R. Civ. P. 1.620, and imposing sanctions, including but not limited to, contempt, if the RESPONSIBLE PARTIES do not promptly comply; and to award the CITY its additional costs, including attorney's fees as provided in Section 34-205(b) of the CITY Code.

14. Pursuant to Fla. R. Civ. P. 1.610(b), the Court, having due regard for the public interest, dispenses with the bond and surety.

15. Pursuant to Fla. R. Civ. P. 1.610(c), this Order shall be binding on the parties to this action, their officers, agents, servants, employees, and attorneys and on those persons in active concert or participation with them, who receive actual notice of this Order.

16. Nothing in this order shall preclude the CITY from enforcing its Code by any other means available, including, but not limited to, seeking fines in any code enforcement actions.

17. The Court retains jurisdiction to enforce this Order and, specifically, to award the CITY its costs and attorney's fees as provided in Section 34-205(b) of the CITY Code.

18. *If the RESPONSIBLE PARTIES file a motion to dissolve within 10 days of the date of this Order, the Order shall be stayed pending the resolution of the motion.*
DONE and ORDERED in Miami, Miami-Dade County, Florida on this 31st day of October, 2019.

MM

[Handwritten Signature]
Michael A. Hanzman
Circuit Court Judge
**MICHAEL HANZMAN
CIRCUIT COURT JUDGE**

- cc: Alexander L. Palenzuela, *Counsel for the City of Coral Gables*
Alexander P. Almazan and Johanna Castellon-Vega, *Counsel for Perla Machaen and Robert F. Thorne*
Jonathan Blackmore, *Counsel for BankUnited, N.A.*
Francisco Tournon and Timothy D. Corwin, *Counsel for Concrete Holdings & Services, LLC*
CENLAR FSB
Robert Morvay, *Counsel for Safeguard Properties Management, LLC, d/b/a Safeguard Properties, LLC*