(10)

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

January 14, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Guven, Nursen v. Kimberly Dowd and Christopher Jacobs, County Clerk*
Document Received:	Order to Show Cause
Name of Claimant:	Nursen Guven
Claimant's attorney:	Parick M. Balkin, Esq. Jackson & Balkin One Washington Hunt Manor 365 Market Street, P.O. Box 468 Lockport, New York 14094

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker (dld)
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

At a term of the Supreme Court of the State of New York, Held in and for the County of ERIE at Buffalo,, New York on December 20, 2013

PRESENT: HON. JEREMIAH J. MORIARTY III
SUPREME COURT JUSTICE

STATE OF NEW YORK
COUNTY OF ERIE : SUPREME COURT

NURSEN GUVEN fka
NURSEN GERMANN
Petitioner,

-vs-

KIMBERLY DOWD, and
CHRISTOPHER JACOBS in his capacity as
ERIE COUNTY CLERK Respondents.

ORDER TO SHOW CAUSE

I 804426/2013

Index No.

Upon reading and filing the annexed Petition of Nursen Guven, verified on November 1, 2013 and upon all papers filed herein, it is hereby,

ORDERED, that the Respondents, KIMBERLY DOWD and Christopher Jacobs in his capacity as ERIE COUNTY CLERK, show cause at a Term of the Supreme Court, ERIE County, to be held at the ERIE County Courthouse, 25 Delaware Avenue, Part 15, Buffalo, NY on the 23 day of January, 2014, at 9:30 a.m./~~p.m.~~ in the fore noon of that day or as soon thereafter as counsel can be heard why an Order should not be granted directing:

Releasing of record from the lien of the mortgage made by Andrew R. Germann and Nursen G. Germann (Nursen Guven) as Mortgagors to Charles S. Dowd and Kimberly A. Dowd as Mortgagees dated and recorded in the Erie County Clerk's Office on March 30th, 2007 at Liber 13343 of Mortgages page 1251 which mortgage and the bond or obligation it was secures were transferred by operation of law to the Defendant Kimberly A. Dowd as the survivor of the aforesaid mortgagees (the annexed Petition sets forth the exact premises covered by the lien of said mortgage), and directing the Clerk of Erie County, in whose office the mortgage has been recorded as aforesaid, to mark the same upon his records as released as to the aforesaid parcel(s), and further ordering or directing that the debt or other obligation secured by the mortgage be reduced to zero or in an amount of to be set by the court, that is, the amount tendered upon condition that the said sum be paid to the Clerk of Erie County, New York, the county where the premises are situate, the said Clerk being the officer specified by law to hold court funds and moneys deposited in court, for the purpose of paying said sum over to the holder of said mortgage, and it is further

That personal service pursuant to CPLR 308 and 311 to the Clerk of Erie County and upon said Kimberly A. Dowd, by delivering to and leaving with each of them a copy of said Petition and Order to Show

Cause by 13 day of January 2014 and said Service shall be deemed good and sufficient service thereof.

Dated: December 23, 2013

Hon. JEREMIAH J. MORIARTY III JSC

GRANTED

DEC 20 2013

BY

MARGARET P. MCMAHON
COURT CLERK

STATE OF NEW YORK
COUNTY OF ERIE : SUPREME COURT

NURSEN GUVEN fka
NURSEN GERMANN
6549 Royal Parkway North
Lockport, NY 14094

Petitioner,

-vs-

PETITION FOR RELEASE OF LIEN OF MORTGAGE OF RECORD

KIMBERLY A. DOWD
75 Lindan Drive, Depew NY 14043, and

CHRISTOPHER JACOBS in his capacity as
ERIE COUNTY CLERK
92 Franklin Street
Buffalo NY 14202

Respondents.

Index No.

TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE:

The Petition of Nursen Guven, fka Nursen G. Germann respectfully shows to the Court:

1. The Petitioner herein resides at 6549 Royal Parkway N. Lockport, New York . She is the sole owner of the real property commonly known as 425 French Road, Depew New York. This is commercial property that was previously owned by the Petitioner and her ex-husband. Petitioner purchased the ex-husband's interest in said property from his bankruptcy estate.
2. The Respondent Kimberly A. Dowd is an individual and the survivor of the holders of the Mortgage hereinafter referred to. She resides at 75 Lindan Drive, Depew NY 14043.
3. The Respondent Christopher Jacobs is the Clerk of Erie County has an office at 92 Franklin Street, Buffalo NY 14202.

4. Petitioner is the owner in fee simple of 425 French Road, Depew New York which has a legal description as follows, all situate in the County of Erie:

All that tract or parcel of land situate in the Village of Depew, Town of Cheektowaga, County of Erie and State of New York, being part of Lot No. 69, Township 11, Range 7 of the Holland Land Company's Survey, described as follows:

Beginning at a point in the Southerly line of French Road distant 100.00 feet westerly of a stone monument at the intersection of the westerly line of Transit Road with the southerly line of French Road, which point is the northeast corner of land conveyed to Charles S. Dowd by deed recorded in liber 10474 of Deeds at page 103; thence southerly parallel with the westerly line of Transit Road and along the easterly line of said Dowd and an extension thereof 232.60 feet to a point in the southerly line of lands conveyed to Charles S. Dowd and Kimberly A. Dowd, his wife by deed recorded in liber 10894 of Deeds at page 127; thence westerly and along the southerly line of said Charles S. and Kimberly A. Dowd 433.00 feet to the southwest corner of said lands; thence northerly along the westerly line of said lands 80.00 feet to the northwest corner of said lands; thence easterly along the northern line of said lands 338.00 feet to the southwest corner of said land conveyed to Charles S. Dowd by deed recorded in Liber 10474 of Deeds at page 103; thence northerly parallel with the westerly line of Transit Road and along said west line of Charles S. Dowd by last aforementioned deed 152.60 feet to a point in the southerly line of French Road which point is the northwest corner of said land conveyed to Charles S. Dowd thence easterly along the southerly line of French Road 95.00 feet to the point and place of beginning.

5. The above described premises are subject to a mortgage as follows: Mortgage made by Andrew R. Germann and Nursen G. Germann (now Nursen Guven) to Charles S. Dowd and Kimberly A. Dowd or the survivor of them dated March 30, 2007 and recorded in the Office of the said Clerk of Erie County in Liber 13343 of Mortgages at page 1251. (attached as Exhiblt A).
6. The said premises consists of a commercial building used as a restaurant bar and contiguous vacant land. The aforesaid property is under a contract of sale at the present time between Petitioner and a third party.

7. The surviving Mortgagee Kimberly A. Dowd has refused to provide a payoff figure although said figures were requested from her counsel of records in various proceedings that predate this petition.(Exhibit B).
8. Also for unknown reasons on or about December 1, 2012 the Respondent Kimberly A. Dowd put locks on the Petitioner's building at 425 French Road, Depew NY and refused to allow re-entry to the owners of the building, including the Petitioner Nutsen Guven. My attorney called and wrote the Respondent's attorney and warned that Respondent Dowd's actions were creating damages. For unknown reasons when Petitioner attempted to re-enter the premises the Respondent Dowd and her agents threatened and prevented Petitioner's re-entry. Upon information and belief the Respondent Dowd was lying and telling the Depew Police Department that she was the owner of the property. (see attached Exhibit C).
9. Upon information and belief the Respondent Dowd intended to "reclaim" the property without following any foreclosure process prescribed by New York State Real Property Actions and Proceedings Law.
10. Upon information and belief, said actions of Respondent Dowd led the other owner of the property at the time, my ex-husband, Andrew Germann to file a Chapter 7 bankruptcy on or about January 16, 2013.
11. The Respondent Dowd's actions precluded the Petitioner from re-entering the business for approximately 5 ½ months from December 1, 2012 until May 15, 2013. This shut off the income stream from the property for this period of time.

Upon information and belief this income stream loss far exceeded any mortgage balance due to the Respondent Dowd.

12. During the period of time that Respondent Dowd retained exclusive control of the aforesaid property she allowed the heat to be turned off in the building causing waterlines to rupture in the properties ceiling. It has been estimated by Respondent Dowd that the amount of damages is $20,000.00.

13. There are significant taxes owed on the property to Erie County and other taxing authorities. The Respondent Dowd's failure to provide a payoff figure and her actions aforesaid have placed the Petitioner in the position of losing any equity that she has in the property to a tax foreclosure. I seek this relief by Order to Show Cause pursuant to RPAPL sec. 1921 et.al.as I have a ready willing and able buyer and I need immediate relief.

WHEREFORE, your petitioner prays for an order to show cause why an order should not be made by the Court releasing of record from the lien of the aforesaid mortgage the parcel described herein and directing the Erie County Clerk, in whose office the mortgage has been recorded as aforesaid, to mark the same upon his records as released as the parcel of land aforesaid in said order, and further ordering and directing that the debt or other obligation secured by the mortgage be reduced as aforesaid, or that the court set an amount that may be paid into the court, to secure the release of the mortgage of record to allow the sale of the aforementioned property and to have the Clerk of the County of Erie hold said funds deposited until further order of this Court for the benefit of the Respondent

Dowd or the Petitioner herein, and such other and further relief as to the Court may seem just and equitable in the premises.

Dated: Lockport, NY
December 8, 2013

NURSEN GUVEN fka
NURSEN G. GERMANN

State of New York, County of Niagara

On the 8th day of December in the year 2013 before me, the undersigned, a notary public in and for said state, personally appeared Nursen Guven, fka Nursen G. Germann personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

PATRICK M. BALKIN
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires May 31, 20

COVER SHEET REV 02-14-06

ERIE COUNTY CLERKS OFFICE
County Clerk's Recording Page

Return To:
BOX 394

Book: 13343 Page: 1251
Page Count: 7
Doc Type: MTG-COMMERCIAL
Rec Date: 03/30/2007
Rec Time: 01:45:11 PM
Control #: 2007068202
User ID: jackie
Trans Num: 320229
DEED SEQ:
MTG SEQ: MTCX2006038739
UCC:
SCAR:
INDEX:

Party 1:
GERMANN ANDREW R

Party 2:
DOWD CHARLES S

Recording Fees:	
RECORDING	$38.00
COE COUNTY	1.00
BASIC	$840.00
SONYMA	$420.00
ADDL	$420.00
COE STATE GENERAL	$14.25
COE STATE RM	$4.75

Consideration Amount:	$168,000.00
BASIC	$840.00
SONYMA	$420.00
ADDL	$420.00
NFTA MT	$0.00
TRANSFER	$0.00
NFTA TT	$0.00

Total: $1,738.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

David J. Swarts
County Clerk

EXHIBIT A

© 1999 by Bar Association of Erie County ("BAEC")

THIS MORTGAGE HAS BEEN APPROVED BY THE BAR ASSOCIATION OF ERIE COUNTY
IT IS RECOMMENDED THAT ANY PERSON NAMED IN THIS
MORTGAGE CONSULT HIS/HER ATTORNEY BEFORE SIGNING.

MORTGAGE

1. WORDS USED OFTEN IN THIS DOCUMENT.
   (A) "Mortgage" – This document which is dated March 30, 2007 will be called the "Mortgage."
   (B) "Borrower" – Andrew R. Germann and Nursen G. Germann

   sometimes will be called the "Borrower" and sometimes simply "I" or "me." Borrower's address is the Property Address unless otherwise stated in this paragraph. 6549 Royal Pkwy., N. Lockport, NY 14094
   (C) "Note Holder" – Charles S. Dowd and Kimberly A. Dowd **
   or anyone who takes this Mortgage by transfer will be called "Note Holder." Note Holder's address is 75 Linden Drive, Depew, New York 14043
   (D) "Note" – The note signed by Borrower and dated March, 2007 will be called the "Note." The Note shows that I owe Note Holder One Hundred sixty-eight thousand Dollars (U.S. $168,000.00) plus interest. I have promised to pay the debt in full by April 1, 2015.
   (E) "Property" – The property that is described below in this section entitled "Description of the Property" will be called the "Property."

2. BORROWER'S TRANSFER TO NOTE HOLDER OF RIGHTS IN THE PROPERTY.
   I hereby mortgage the Property to Note Holder subject to the terms of this Mortgage. By signing this Mortgage I am giving Note Holder the rights contained in this Mortgage and also the rights that the law gives to Note Holders who hold mortgages on real property. I am doing this to protect Note Holder from possible losses that might result if I fail to:
   (A) Pay all the amounts that I owe Note Holder under the Note;
   (B) Pay, with interest, any amounts that Note Holder may advance under this Mortgage to protect the value of the Property and Note Holder's rights in the Property; and
   (C) Keep my other promises and agreements under this Mortgage.

3. DESCRIPTION OF THE PROPERTY.
   I give Note Holder rights in the Property described in A through I below:
   (A) The Property address is 426 French Road, Depew, NY 14043 "Property Address"
   This Property is in Erie County. It has the following legal description:

   ** Or the survivor of them.

   Legal Description Schedule A attached hereto

Box 544

This Property is or will be:
- ☐ principally improved by a one or two family residence.
- ☐ improved by three to six residential dwelling units each with their own separate cooking facilities
- ☒ vacant land or improved by a commercial building with no residential dwelling units
- ☐ other: _____

This Mortgage:
- ☒ is a purchase money mortgage. This Mortgage is given to secure part of the purchase price of the Property and is intended to be recorded at the same time as the deed to the Borrowers
- ☐ is not a purchase money mortgage.

(B) All buildings and other improvements that are located now or in the future on the Property
(C) All rights in other property that I have as owner of the Property including strips and gores of land adjoining the Property. These rights are known as "easements, rights and appurtenances attached to the Property."
(D) All rents or royalties from the Property.

6 CK6
M25-6

12. **AGREEMENTS ABOUT CONDEMNATION OF THE PROPERTY.**

(A) A taking of property by any governmental authority by eminent domain is known as "condemnation." I give to Note Holder my right: (i) to proceeds of all awards or claims for damages resulting from condemnation or other governmental taking of the Property; and (ii) to proceeds from a sale of the Property that is made to avoid condemnation. All of those proceeds will be paid to Note Holder.

(B) If all of the Property is taken, the proceeds will be used to reduce the amount that I owe to Note Holder under the Note and under this Mortgage. If any of the proceeds remain after the amount that I owe to Note Holder has been paid in full, the remaining proceeds will be paid to me. Unless Note Holder and I agree otherwise in writing, if only a part of the Property is taken, the amount that I owe to Note Holder will be reduced only by the amount of proceeds multiplied by the following fraction: (i) the total amount of the sums secured immediately before the taking, divided by (ii) the fair market value of the Property immediately before the taking. The remainder of the proceeds will be paid to me.

(C) If I abandon the Property, or if I do not answer, within thirty (30) days, a notice from Note Holder stating that a governmental authority has offered to make a payment or to settle a claim for damages, Note Holder has the authority to accept payment and to settle a claim for damages and collect the proceeds. Note Holder may then use the proceeds to repair or restore the Property or reduce the sums secured. The thirty (30) day period will begin when the notice is given.

(D) If any proceeds are used to reduce the amount of principal which I owe to Note Holder under the Note, that use will not delay the due date or change the amount of any installment payment due under the Note or this Mortgage. However, Note Holder and I may agree in writing to those delays or changes.

13. **NOTICES REQUIRED UNDER THIS MORTGAGE.**

Any notice that must be given to me under this Mortgage and for purposes of service of process in any foreclosure proceeding will be given by mailing it by first class mail or personally delivering it to me at the Property Address (or other address if listed in Paragraph 1(B) of this Mortgage), or at a different address if I have given the Note Holder prior written notice of my different address.

14. **LAW THAT GOVERNS THIS MORTGAGE.**

This Mortgage is governed by New York State Law.

15. **BORROWER'S COPY.**

I acknowledge receipt of one conformed copy of the Note and of this Mortgage.

16. **AGREEMENTS ABOUT NOTE HOLDER'S RIGHT IF THE PROPERTY IS SOLD OR TRANSFERRED.**

Note Holder may require immediate payment in full of all sums secured by this Mortgage if either the legal or equitable title of the Property is transferred without Note Holder's prior written permission. Note Holder also may require immediate payment in full if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person. If the Note Holder requires immediate payment in full under this paragraph, Note Holder shall give Borrower a notice which states this requirement. The notice shall provide a period of not less than fifteen (15) days from the date the notice is mailed or delivered to me within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to make the required payment during that period, Note Holder may act to enforce its rights under this Mortgage without giving me any further notice or demand for payment.

17. **NOTE HOLDER'S RIGHTS IF BORROWER FAILS TO KEEP PROMISES AND AGREEMENT.**

(A) If I fail to keep any promise or agreement made in this Mortgage within any applicable cure period, including the promises to pay when due the amounts I owe to Note Holder, or if I default in any of the conditions and covenants of the Note, Mortgage or any other mortgage which is a lien against the Property within any applicable cure period, then the Note Holder may demand the full amount of the indebtedness then due by requiring payment in full. If Note Holder so declares, Note Holder may (i) bring a lawsuit on the Note to seek enforcement of the debt, or (ii) bring a foreclosure action and sell the Property in one or more parcels to enforce the debt or (iii) seek any other remedy provided by law. If applicable, Note Holder may seek a deficiency judgment against me should the Property not bring sufficient funds at foreclosure sale to satisfy the debt due to Note Holder. If applicable, Note Holder shall also have the right to sell the Property pursuant to Article 14 of the New York Real Property Actions and Proceedings Law.

(B) If I am in default, I agree to pay all costs and disbursements incurred by Note Holder, whether or not a lawsuit is brought, to the extent not prohibited by applicable law. These costs and disbursements may include, but are not limited to, appraisals, broker's price opinions, property inspections and property maintenance, in addition to customary foreclosure disbursements. I also agree to pay reasonable attorney's fees.

(C) If I fail to pay all taxes, assessments and any other charges and fines that may be imposed on the Property or any required insurance premiums when due, Note Holder may in its discretion require the establishment of a tax and insurance escrow funded by the Borrower in a manner reasonably acceptable to Note Holder.

18. **RECEIVER.**

In any lawsuit for foreclosure and sale, Note Holder will have the right to have a Receiver appointed by a Court without first giving notice to me and without regard to the value of the Property.

19. **WRITTEN STATEMENT.**

Within ten (10) days of the mailing or delivery of written request, I will furnish to Note Holder a written statement duly acknowledged of the amount then secured by this Mortgage and whether any offsets against the amount secured by this Mortgage or any defenses to the enforcement of the Note and/or this Mortgage exist.

20. **ASSIGNMENT OF LEASES AND RENTALS.**

In the event of default, I hereby assign to the Note Holder all existing and future leases, rents, issues and profits of the Property as further security for the payment of said indebtedness, and I grant to the Note Holder the right to enter upon and to take possession of the Property for the purpose of collecting the same to let the Property or any part thereof and to apply the rents, issues and profits after payment of all necessary charges and expenses in account of the indebtedness secured by this Mortgage which assignment shall continue in effect until the indebtedness is paid in full. Note Holder will not be under any obligation to exercise any right under this Paragraph 20.

21. **AGREEMENTS ABOUT NEW YORK LIEN LAW.**
I will receive all amounts lent to me by Note Holder subject to the trust fund provisions of Section 13 of the New York Lien Law.

22. **OBLIGATIONS OF PERSONS UNDER THIS MORTGAGE.**
If more than one person signs this Mortgage, each person is fully and personally obligated to keep all the promises made in this Mortgage.

23. **FURTHER ASSURANCES.**
Upon request of the Note Holder, I will execute, acknowledge and deliver to Note Holder any supplemental instrument Note Holder may reasonably request in order to accomplish the intended purpose of this Mortgage.

By signing below, I accept and agree to the promises and agreements contained in Paragraph 1 through 22 of this Mortgage and in any rider(s) signed by me and recorded with it.

Andrew R. Germann — Borrower

Borrower

Nursen G. Germann — Borrower

Borrower

USE WHEN EXECUTED WITHIN THE STATE OF NEW YORK

STATE OF NEW YORK :
SS:
COUNTY OF ERIE :

On the 30 day of March in the year 2007 before me, the undersigned a Notary Public in and for said State, personally appeared Andrew R. Germann & Nursen G. Germann, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

PATRICIA K. TAMMARO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 10/31/2010

STATE OF NEW YORK :
SS:
COUNTY OF _____ :

On the _____ day of _____ in the year _____ before me, the undersigned a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

:
:

Notary Public

USE WHEN EXECUTED OUTSIDE OF NEW YORK STATE

STATE OF :
SS:
COUNTY OF :

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to the be individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____.

(Insert the city or other political subdivision and the state or country or other place the acknowledgment was taken.)

Notary Public

PREPAYMENT SCHEDULE

Upon written notice received by Charles S. Dowd and Kimberly A. Dowd, at least sixty (60) days prior to making such payment; provided, however, that together with such payment the Purchaser shall pay to Charles S. Dowd and Kimberly A. Dowd a premium equal to:

Five percent (5%) of the amount thereof if paid before April 1, 2008
Four percent (4%) of the amount thereof if paid before April 1, 2009
Three percent (3%) of the amount thereof if paid before April 1, 2010
Two percent (2%) of the amount thereof if paid before April 1, 2011
One percent (1%) of the amount thereof if paid before April 1, 2012

JACKSON & BALKIN
Attorneys at Law
One Washington Hunt Manor
365 Market Street, P.O. Box 468
Lockport, New York 14095
email - PZBALK@aol.com

Arthur E. Jackson, Jr., Esq.
Patrick M. Balkin, Esq.

(716) 434-8891
(716) 434-1302
(716) 434-9105 - Fax

May 17, 2013

Wendy Christopherson, Esq.
Chapter 7 Trustee
403 Main Street
Suite 500
Buffalo, NY 14203

FAX & MAIL
855-4610

Re: Andrew Germann bankruptcy
Sgt. Pepperoni's 425 French Road, Depew NY

Dear Ms. Christopherson:

As I indicated to you on Thursday, I have changed the locks and my client Nursen Guuven, formerly Germann is in the process of cleaning the above-stated address so that it can be shown to potential purchasers.

As I indicated to you yesterday, my client will offer $2000.00 for Andrew Germann's interest in the building, and that fact, together with the fact that I am also aware of two potential buyers who want to view the property, should preclude any "abandonment" by you as trustee.

My client is probably the largest unsecured creditor of Mr. Germann. She is owed over $200,000.00 and maintenance. She strongly objects to "abandoning" Mr. Germann's interest.

Obviously I will give you a key to the premises. Be aware that my client is on the premises and is cleaning and removing rotting food, etc. left by the debtor. My client will not remove any fixtures or equipment from the premises. Upon entering the building my client noticed that there was one or two TV's missing from the walls, and the security camera's that she had installed had been remove, alcohol and food inventory also missing. Other than that most everything else appears to be present.

A secured creditor, Kim Dowd, holds the mortgage on the above-stated property. Ms.

EXHIBIT B

Dowd is under, what I believe, is the mistaken belief that she has a security interest in the equipment at Sgt. Pepperoni's. Ms. Dowd's prior counsel, Arthur Rumizen, Esq, admitted to me that there was never a security interest filed for that equipment upon sale in 2007. Ms. Dowd is a secured creditor and an unsecured creditor. Ms. Dowd does not have any right to possess or dispossess the bankruptcy estate or my client from the real property at 425 French Road, Depew New York. When I was present at the property yesterday during the lock change one of Ms. Dowd's employees started screaming and yelling and calling the police. Ms. Guiven fka Germann and myself went to the Depew Police Station and talked to the responding officer. The Depew Police now understands that Ms. Germann is an owner of the property. We told the police officer that if Ms. Dowd has interested buyers (which we heard she had six such people) that upon request we would give her buyers access to look at the property. My client has also agreed that if Kim Dowd wants to watch her clean the property she is welcome as long as she doesn't interfere with the cleaning and any subsequent showings to potential buyers. We really need Ms. Dowd to stay out of the process so we can sell the property and get her paid.

I am sending a copy of this letter to her present legal counsel, John D'Amato, Esq. Obviously if he has proof of a security interest in the equipment of Sgt. Pepperoni's (filed UCC) he should present it now. I also would request that he provide a payoff figure for the mortgage debt.

My client is expending considerable time and expense to the benefit of the bankruptcy estate. While she doesn't want to be paid for labor it would be fair and reasonable if costs of dumpster, electricity (and deposits for same) lock changes should be shared by the estate with her.

Very truly yours,

JACKSON & BALKIN

Patrick M. Balkin, Esq.

PMB/jb
cc: John D'Amato, Esq. FAX 706-0013

JACKSON & BALKIN
Attorneys at Law
One Washington Hunt Manor
365 Market Street, P.O. Box 468
Lockport, New York 14095
email - PZBALK@aol.com

Arthur E. Jackson, Jr., Esq.
Patrick M. Balkin, Esq.

(716) 434-8891
(716) 434-1302
(716) 434-9105 - Fax

Joel M. Grundy, Esq.

December 6, 2012

Arthur Rumizen, Esq.
6024 Main Street
Williamsville, NY 14221

Re: Kim Dowd
Mortgagee on "Sgt. Pepperoni's" property

Fax only 839-9334

Dear Mr. Rumizen:

Please be aware that I represent Nursen Guven, fka Nursen Germann. I was told that you were involved in the original purchase of the property and your are aware that Ms. Dowd apparently holds a mortgage on the property. As you and your client know Ms. Guven owns this property jointly with her ex-husband Andrew Germann.

I did receive your telephone call back indicating that it was your client's intention to keep the place locked. What section of the Real Property Procedures Act gives your client the right to do that? My client needs access to the building. She in no way shape or form gave your client any permission express or implied to lock her out. Has your client sent a default notice? Is the mortgage even in default? Be aware that you are apparently advising your client to create damages. I will immediately bring an action that includes damages against your client. Your theory that Ms. Dowd is going to lock Ms. Guven out is incorrect and it will cost your client money.

Very truly yours,

JACKSON & BALKIN

Patrick M. Balkin, Esq.

PMB/jb

EXHIBIT C

* * * Communication Result Report (Dec. 6. 2012 3:30PM) * * *

1) Jackson, Balkin
2)

Date/Time: Dec. 6. 2012 3:29PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
6073	Memory TX	88399334	P. 1	OK	

Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
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JACKSON & BALKIN
Attorneys at Law
One Washington Mutual Mines
[illegible] Market Street, P.O. Box [illegible]
Lockport, New York [illegible]
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Arthur E. Jackson, Jr., Esq.
Patrick M. Balkin, Esq.

[illegible]
[illegible]
[illegible] - Fax

Joel M. Grady, Esq.

December 6, 2012

Arthur Randazzo, Esq.
[illegible] Street
Williamsville, NY 14221

Re: Kim Dowd
Mortgages on "Lyl. Peppercorn's" property

Fax only 839-8334

Dear Mr. Randazzo

Please be aware that I represent Karen Green, fka Karen Grossman. I was told that you were involved in the original purchase of the property and you are aware that Ms. Dowd apparently holds a mortgage on the property. As you and your client know Ms. Green owns this property jointly with her co-tenant Andrew Grossman.

I did receive your telephone call last Wednesday that it was your client's intention to keep the place locked. What section of the Real Property Procedures Act gives your client the right to do that? My client would access to the building. She is no way shape or form gave your client any permission express or implied to lock her out. Has your client sent a default notice? Is the mortgage even in default? Be aware that you are apparently advising your client to create damages. I will immediately bring an action that includes damages against your client. Your theory that Ms. Dowd is going to lock Ms. Green out is incorrect and it will cost your client money.

Very truly yours,

JACKSON & BALKIN

Patrick M. Balkin, Esq.

mcp

* * * Communication Result Report (May. 15. 2013 9:30AM) * * *

1) Jackson. Balkin
2)

Date/Time: May. 15. 2013 9:29AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
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Reason for error
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(716) 434-8876
(716) 434-2881
(716) 434-8780 - Fax

May 15, 2013

Arthur Rawlins, Esq.
6314 Main Street
Williamsville, NY 14221

Re: Kim Dowd
Mortgagee on "Sgt. Pepperoni's" property

Fax only 839-9334

Dear Mr. Rawlins:

My client intends to re-enter her property. As you and I discussed previously you indicated that you were aware that your client has no interest in the real property or the personalty other than a mortgage. I called yesterday morning indicating that I need a key for the lock your client placed on the premises. My client will re-enter the property and place her own lock on the premises. Make sure your client does not enter the property or touch the lock, we intend to hold your client responsible financially for any losses incurred by my client due to her illegal "retaking" of the property.

Your client's lack of cooperation and response is noted.

Very truly yours,
JACKSON & BALKIN

Ronald M. Balkin, Esq.

rmmp