

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)

CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**TCA 4675 NW 103 AVENUE SUNRISE, LLC'S UNOPPOSED
MOTION FOR RELIEF FROM OR CLARIFICATION OF STAY**

Pursuant to Fed. R. Civ. P. 7 and in compliance with Rule 7.1 of the Local Rules of the United States District Court in and for the Southern District of Florida, TCA 4675 NW 103 Avenue Sunrise, LLC ("Sunrise") moves for limited stay relief from and clarification of this Court's stay to allow it to complete a state court foreclosure action and sale of real property located at 4675 NW 103rd Avenue, Sunrise, FL 33351 (the "Property"). The Property is unoccupied but still subject to a tenancy that was held but subsequently abandoned by TCA Broward Collision, LLC ("Broward Collision"), a Receivership asset. The grounds for this motion are as follows.

Introductory Statement

1. Sunrise is not one of the Receivership Entities in this case. Broward Collision is, however Broward Collision has ceased operations.¹ Sunrise and Broward Collision were at one

¹ See Receiver's Fourth Quarterly Status Report [ECF #141] at p.23 ("Since the last Receiver's Report, Broward Collision has ceased operations.") and p.24 ("As discussed in the Third Report, Broward Collision ceased operations in early January 2021 after failing to successfully resolve a myriad of pending legal matters.").

time managed by TCA Fund Management Group Corp., but they were owned by different funds. Broward Collision was owned by TCA Global Credit Master Fund, LP and Sunrise was owned by the New Horizons Special Situations Credit Strategies ICAV and is not a Receivership asset.²

2. Broward Collision never operated its business from the Property. Prior to the initiation of this case by the Securities and Exchange Commission (the “S.E.C.”), Sunrise’s foreclosure action had advanced to the point that Sunrise obtained a final judgment of foreclosure, but the sale date was withheld pending the determination of a counterclaim against Sunrise and Broward Collision. Sunrise seeks relief from the stay to adjudicate the counterclaim and complete the foreclosure. To the extent that the counterclaim seeks relief against Broward Collision other than its surrender of possession of the Property, it would remain subject to the stay of actions against Receivership entities and assets. However, the stay should not prevent Sunrise’s completion of its foreclosure action and disposition of the counterclaim against Sunrise.

Background

3. On August 14, 2018, Centennial Bank filed a foreclosure action against the Property (Case No. CACE-18-019377 (09); Broward County, Circuit Court) (the “Foreclosure Action”) in the Seventeenth Judicial Circuit in and for Broward County, Florida (the “State Court”). Centennial Bank held a first and second mortgage on the property. The property was owned by RZNK 2, LLC. It was leased to Broward Collision, Inc.

² New Horizons Special Situations Credit Strategies ICAV is in a Members’ Voluntary Liquidation in Dublin, Ireland in accordance with Section 154 of the Irish Collective Asset-Management Vehicles Act of 2015, pursuant to Clause 21.13 of the Instrument of Incorporation of the ICAV. Mr. Kieran Wallace and Mr. Andrew O’Leary of KPMG, Dublin, Ireland were appointed Joint Liquidators of the ICAV for the purpose of the winding up

4. On September 13, 2018, TCA Broward Collision, LLC bought the lease for the Property through the bankruptcy of Broward Collision, Inc. (*In re Broward Collision, Inc.*, Case No. 18-17492-RBR (Bankr. S.D. Fla.)).

5. RZNK 2, LLC subsequently deeded the Property to Shalom Auerbach, who then deeded the property to Alliance Holdco, LLC. Their interests were inferior to Centennial Bank's mortgage and subject to the notice of lis pendens that Centennial Bank filed when it commenced its mortgage foreclosure action.

6. On April 11, 2019, Centennial Bank sold the loans to Sunrise. Sunrise substituted into the Foreclosure Action as the plaintiff.

7. Alliance Holdco filed a counterclaim against Sunrise and Broward Collision. The counterclaim alleges that Sunrise and Broward Collision colluded to prevent the eviction of Broward Collision and the sale of the property by Alliance Holdco. The main claim brought by Alliance Holdco is labeled as "economic oppression" and relies on the allegations that Sunrise and Broward Collision refused to permit an eviction and that Broward Collision refused to vacate the premises. Alliance Holdco alleges that the combined actions of Sunrise and Broward Collision made it impossible for Alliance Holdco to collect the rents or, to evict the tenant, preventing it from selling the property and paying off the mortgage loans and from exercising the statutory right of redemption.³

8. The allegations contained in the counterclaim fail to state a cause of action under Florida law because parties are privileged to act to safeguard or promote their own financial

³ Alliance Holdco seeks relief against Sunrise and Broward Collision, jointly and severally, for damages and attorneys' fees or "[a]lternatively, to the extent RZNK2 lacks an adequate remedy at law, it seeks a judgment granting equitable relief requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward."

interests. The conduct of Sunrise and Broward Collision was privileged, and they are not liable because they did nothing more than insist upon existing legal rights, pursuant to the assignment of leases and rents and other loan documents, in a permissible manner. Moreover, Florida, have never recognized economic oppression as a tort. *See NN Inv'rs Life Ins. Co. v. Prof'l Group, Inc.*, 468 So. 2d 532, 533 (Fla. 3d DCA 1985) (“the overwhelming majority of jurisdictions, including Florida, have never recognized the tort of economic duress”); *Leader Glob. Sols., LLC v. Tradeco Infraestructura, S.A. DE C.V.*, 155 F. Supp. 3d 1310, 1317 n.7 (S.D. Fla. 2016) (“Under Florida law, economic duress is not an independent tort, only a defense or remedy in a contractual context”). Florida’s litigation privilege affords absolute immunity to any act occurring during the course of judicial proceedings, applying to both common law causes of action, those initiated pursuant to a statute, or of some other origin, so long as the act had some relation to the proceeding. Alliance Holdco’s claim is therefore barred. *See Levin, Middlebrooks, Mabie, Thomas, Mayes Mitchell, P.A. v. United Sates Fire Insurance Co.*, 639 So. 2d 606 (Fla. 1994); *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380 (Fla. 2007).

9. On February 26, 2020, the State Court entered a final judgment of foreclosure in favor of Sunrise in the amount of \$1,991,947.22, but withheld the sale date pending determination of the counterclaim. A copy of the final judgment of foreclosure is attached as Exhibit 1.⁴

10. The operative pleading remaining to be adjudicated in the Foreclosure Action is a second amended counterclaim, a copy of which is attached as Exhibit 2.

11. The S.E.C. filed this case on May 11, 2020 and the Court entered an Order Granting Plaintiff Securities and Exchange Commission’s Unopposed Expedited Motion for Appointment of Receiver. [ECF No. 5]. The Court took exclusive jurisdiction and possession of the assets of the

⁴ A default has previously been entered against Broward Collision, on November 19, 2019.

Receivership Entities and enjoined all persons from taking any action against Receivership Property without the agreement of the Receiver or leave of Court.

12. On April 26, 2021, the State Court held a status conference and administratively closed the Foreclosure Action upon request by Broward Collision based on this Court's stay order. A copy of the state court's direction to close the case is attached as Exhibit 3.

Argument

13. "The purpose of a litigation stay entered pursuant to a receivership order is to give the receiver 'a chance to do the important job of marshaling and untangling a company's assets without being forced into court by every investor or claimant.'" *S.E.C. v. Stinson*, No. CIV.A. 10-3130, 2012 WL 1994770, at *1 (E.D. Pa. Jun. 4, 2012) (quoting *United States v. Acorn Tech. Fund, L.P.*, 429 F. 3d 438, 443 (3d Cir. 2005)). "Nevertheless, an appropriate escape valve, which allows potential litigants to petition the court for permission to sue, is necessary so that litigants are not denied a day in court during a lengthy stay." *Id.* (quoting *Acorn Tech.*, 429 F. 3d at 443).

14. "To determine whether to lift a stay of litigation under these circumstances, a district court should consider: '(1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from stay is made; and (3) the merit of the moving party's underlying claim.'" *Id.* (quoting *Acorn Tech.*, 429 F. 3d at 443; *S.E.C. v. Wencke*, 742 F. 2d 1230, 1231 (9th Cir. 1984)). "The movant has the burden of proving that these factors weigh in favor of lifting the stay." *Id.* (citing *S.E.C. v. Illarramendi*, No. 3:11CV78 JBA, 2012 WL 234016, at *4 (D. Conn. Jan. 25, 2012)). In this case, the factors all favor lifting the stay for the purpose of allowing Sunrise to complete the foreclosure in state court.

15. The first factor balances the receiver's interest with those of the moving party.

Here, refusing to lift the stay would not genuinely preserve any status quo because Sunrise is only seeking the ability to foreclose on its property, which Broward Collision has already abandoned and, as it is not a Receivership asset, could not legitimately be liquidated for the benefit of the creditors.

16. Broward Collision has ceased operations and never used the Property to operate its business; it had two other locations that were operational. Broward Collision's leasehold interest in the property is inferior to the mortgage lien held by Sunrise, and the leasehold interest is subject to being extinguished in the foreclosure and has no value for purposes of liquidation and distribution to creditors evidenced by the Receiver's abandonment of the tenancy and its agreement to the limited stay relief sought by Sunrise. In contrast, Sunrise is owed over \$2 million (including interest, fees, and costs) on its two loans. Foreclosing the liens of the mortgages and selling the property is Sunrise's only legitimate method of collecting the debt.

17. Sunrise's request to lift the stay against Broward Collision is limited to foreclosing Broward Collision's tenancy interest in the property which it has already abandoned. Sunrise also seeks clarification that the Court's stay is limited to claims against Broward Collision as a Receivership Asset and does not operate to prevent Sunrise from prosecuting its mortgage foreclosure or to prevent Alliance Holdco from prosecuting its counterclaim against Sunrise.

18. The second factor, the timing of the filing of this motion, is not particularly significant to the analysis because Broward Collision's leasehold interest in the property has no value and will not be liquidated in this case. There is no reason to delay relief. The relief would be without prejudice to the ability of Alliance Holdco to seek leave of this Court to prosecute its claim against Broward Collision, should it choose to do so.

19. As to the third factor, the merit of Sunrise's claim, the state court has already

entered a final judgment of foreclosure in favor of Sunrise, thus finding merit in Sunrise's claim. Sunrise believes that the pending counterclaim is specious for, among other reasons, those set forth above. Moreover, the relief Sunrise seeks is limited to permitting Sunrise to complete the Foreclosure Action, including disposition of the counterclaim against Sunrise. To the extent that the counterclaim seeks relief against Broward Collision other than its surrender of possession of the Property, it would remain subject to the stay of actions against Receivership entities and assets.

Rule 7.1 Certification

20. In accordance with Local Rule 7.1, the undersigned counsel for Sunrise certifies that he has conferred with counsel for the Receiver and the S.E.C. regarding this motion, and represents that the Receiver and the S.E.C. do not oppose the relief being sought for purposes of in rem relief against the Property but not as to liability against Broward Collision.

WHEREFORE, based upon the foregoing argument and authority, Sunrise respectfully requests that the Court grant limited relief from stay so that Sunrise can complete the Foreclosure Action in State Court, including disposition of the counterclaim against Sunrise, and the sale of the Property located at 4675 NW 103rd Avenue, Sunrise, FL 33351, with the proviso that any other claim for relief against Broward Collision by any party beyond extinguishing Broward Collision's leasehold interest in the Property is stayed pending further order of this Court. A proposed order is attached as Exhibit 4.

Respectfully submitted,

WEISSMAN & DERVISHI, P.A.

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Attorneys for TCA 4675 NW 103 Avenue
Sunrise, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 3, 2021, a true and correct copy of the foregoing was served by email via CM/ECF on all persons registered to receive electronic filings in this case.

/s/ Brian S. Dervishi

Brian S. Dervishi

Exhibit 1

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 2/26/2020 4:30:00 PM.****

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

TCA 4675 NW 103 AVENUE SUNRISE,
LLC,

Plaintiff,

vs.

RZNK 2, LLC, et al.,

Defendants.

Circuit Civil Division
Case No. CACE-18-019377 (09)

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON FEB 26 2020
BY Rendel

FINAL JUDGMENT OF FORECLOSURE
(EXECUTION WITHHELD PENDING DETERMINATION OF COUNTERCLAIMS)

THIS ACTION came before the Court on February 26, 2020, upon Plaintiff's Motion to Enforce Order Directing Mortgagor to Make Payments During the Pendency of the Foreclosure Proceeding Pursuant to Fla. Stat. § 702.10(2) ("Motion"). Having considered the Motion and the arguments of counsel, and on the evidence presented, **IT IS ORDERED AND ADJUDGED** that the Motion is GRANTED and final judgment of foreclosure is entered against Defendants RZNK 2, LLC, Keith Petron, William Dalrymple, Jr. d/b/a Dal's Sprinkler and Landscaping, Phase 2 Electric, LLC d/b/a Wesworth Electric, Unknown Tenant(s) in Possession n/k/a TCA Broward Collision, LLC, and Alliance Holdco, LLC.

1. **Amounts Due and Owing.** Plaintiff, TCA 4675 NW 103 Avenue Sunrise, LLC, is due:

<u>First Loan</u>	
Principal balance	\$857,079.88
Interest at the note rate of 4.50% from July 1, 2018 to October 15, 2019	\$39,333.79
Interest at the default rate of 13.00% from August 1, 2018 to October 15, 2019	\$140,354.09
Per diem interest at \$416.64 per diem through February 26, 2020	\$55,829.76
Escrow balance	(\$5,066.34)
Late fees	\$1,978.78
Other charges and fees charged by Centennial Bank	\$1,152.52
SUB-TOTAL:	\$1,100,795.16

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Second Loan

Principal balance	\$688,147.48
Interest at the note rate of 4.50% from July 1, 2018 to October 15, 2019	\$28,528.05
Interest at the default rate of 13.00% from August 1, 2018 to October 15, 2019	\$110,987.69
Per diem interest at \$334.52 per diem through February 26, 2020	\$44,825.68
Escrow balance	(\$0.00)
Late fees	\$879.65
Other charges and fees charged by Centennial Bank	\$17,783.51
SUB-TOTAL:	\$891,152.06

Attorneys' fees

TOTAL:

RESERVED
~~\$17,783.51~~
\$1,991,942.22
~~\$2,009,652.22~~

that shall bear interest at the initial statutory rate of 6.77% per year and thereafter as provided by section 55.03 of the Florida Statutes.

2. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of Defendants, on the following described property in Broward County, Florida:

**SEE EXHIBIT "A" ATTACHED
 HERETO AND MADE A PART HEREOF**

3. **Sale of Property.** If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Court shall sell the property at public online sale at www.broward.realforeclose.com, commencing at 9:00 a.m., on a date to be determined by subsequent order, to the highest bidder for cash. **Sale date withheld.**

4. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for documentary stamps affixed to the certificate of title. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

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5. **Distribution of Proceeds.** On filing the certificate of title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of Plaintiff's costs; second, documentary stamps affixed to the certificate; third, Plaintiff's attorneys' fees; fourth, the total sum due to Plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this Court.

6. **Right of Redemption/Right of Possession.** Upon filing of the certificate of sale, Defendants and all persons claiming under or against Defendants since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, and Defendants' right of redemption as prescribed by section 45.0315 of the Florida Statutes shall be terminated, except as to claims or rights under chapter 718 or chapter 720 of the Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property.

7. **Attorneys' Fees.** ~~The Court finds, based upon the affidavits/testimony presented and upon inquiry of Plaintiff's counsel that 55.5 hours were reasonably expended by Plaintiff's counsel and that hourly rates of \$100.00-\$375.00 are appropriate. Plaintiff's counsel represents that the attorneys' fees awarded do not exceed its contract fee with Plaintiff. The Court finds that there are no reduction or enhancement factors for consideration by the Court pursuant to Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985).~~ To be determined by separate motion.

8. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, a writ of possession, a deficiency judgment, and an award of additional attorneys' fees and costs.

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IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

DONE and ORDERED in Broward County, Florida, on February 26, 2020
JEFFREY R. DEVENSON
Circuit Court Judge

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Case No. CACE-18-019377 (09)

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EXHIBIT "A"**Real Property**

A portion of Parcel "A", of SUNRISE INDUSTRIAL PARK PARCEL 68, according to the Plat thereof, as recorded in Plat Book 129, Page 9, of the Public Records of Broward County, Florida, being more particularly described as follows: Commence at the Northwest corner of said Parcel "A"; thence North 89° 26' 56" East (plat bearing) along the North line of said Parcel "A", a distance of 20 feet, to the Point of Beginning; thence continue North 89° 26' 56" East along said North line a distance of 468.98 feet to a point on the West right-of-way line of N.W. 103rd Avenue; thence South 01° 07' 31" East along said West right-of-way line a distance of 185.61 feet; thence South 89° 26' 56" West a distance of 469.55 feet; thence North 00° 56' 52" West a distance of 185.60 feet to the Point of Beginning.

Property Address: 4675 NW 103rd Avenue, Sunrise FL 33351
Parcel No. 4941-18-36-0010

Personal Property

All buildings, structures, and improvements of any nature whatsoever now or hereafter situated upon the real property, and all heating, lighting, laundry, gas, incinerating, power, air cooling and air conditioning, plumbing, electrical refrigerating, waste, garbage, sewerage, telephone and water, fixtures, fittings, and all replacements thereof now or any time hereafter affixed to, attached to, placed upon or used in connection with operation of the improvements upon the real property hereinabove described, including, but not in any manner limiting the generality of the foregoing: all blinds, stairs, screens, stair railings, fire extinguishers, air cooling and air conditioning equipment, ventilators, lights-and lighting equipment, exhaust fans, fuel, laundry equipment, water meters, electric meters, ladders, window screening, shelves; dishwashers, sinks, tubs and showers, commodes, garbage disposals, doors, water closets, lavatories, washing machines, water heaters, bidets, shower doors, electric transformers, T.V. antennae, elevators, motors, machinery, generators, sprinkling systems, waterlines, pipes, wiring, water and sewerage connections and appurtenances thereto, and sanitary sewerage connections, trash chutes and appurtenances thereto, swimming pools and sauna baths, together with all the accessories thereto, radiators, heaters, boilers, ranges, hoods, water basins, pipes, faucets, mantles, refrigerating plants and ice boxes, glass windows, storm shutters and awnings, planting and landscaping, and the hazard insurance policy covering said premises, furnaces, oil burners, or units thereof, communication systems, shades, signs, mirrors, water softeners, carpets, carpeting, and all substitutions, additions, extensions, improvements, betterments, renewals, and replacements thereof, and all the proceeds thereof and any replacements thereof, and any and all rights of subrogation, any monies in any escrow accounts, and property and other things of value acquired, all of which are hereby declared and shall be deemed to be fixtures and an accession to the freehold and a part of the realty.

All water lines with sprinkler system service connections, soakage pits, hose bibs, sanitary sewer lines, sewerage force mains, paving and all equipment and fixtures of every kind and nature whatsoever forming a part of said building and improvements, or of any building or other

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improvement erected or installed upon the premises or any part thereof, now or hereafter erected, situated or placed thereon.

All of the right, title and interest of the Mortgagor in any fixtures located on, or attached to, said real property which may hereafter become subject to a conditional sales contract, chattel mortgage, or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by the Mortgagor thereon.

All leases, subleases, and contracts for the sale now or hereafter relating to the real and personal property now or hereafter entered into, together with all rights, titles and interests of the Mortgagor as Lessor and/or Seller thereunder, including the right to upon occurrence in the event of default to receive and collect the rents and/or sales prices payable thereunder, and all other rents, revenue, income, issues and profits, which are all hereby specifically assigned, transferred and pledged primarily and on a parity with said real estate, together with all management agreements, service agreements, or contracts as they affect the Property.

All and singular easements, rights of way, streets, roads, ways, lanes, sidewalks, curbs, alleys, passages; sewer rights, waters, water courses, littoral and/or riparian rights, water rights and powers, and all areas adjacent to or adjoining said real estate and portions thereof, and all estates, rights, title, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating to or appertaining to any of the property hereinabove described, or which hereafter shall, in any way belong, relate or be appurtenances thereto, whether now owned or hereafter acquired by the Mortgagor and the reversion and reversions, remainder and remainders, rent, issues and profits thereof, and all estates, rights, titles, interests, properties, portions, claims and demand's whatsoever at law, as well as in equity, of the Mortgagor in and to the same.

Together with any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the premises as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of the street, or (c) any other injury to or decrease in the value of the premises

All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Property, hereafter acquired by, or released to the Mortgagor, or constructed, assembled or placed by the Mortgagor on the premises

All insurance proceeds and policies relating to the collateral or property described herein, including unearned premiums, if any.

All development permits/orders, together with deposits paid or held in connection therewith, including but not limited to any and all bonds, letters of credit, permit fees or prepaid impact or development fees relating to the premises or the collateral.

All trade names, trademarks and logos used in connection with the operation of the Property, and all contracts and licenses pertaining thereto.

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All Architect, Contractors, Engineers, Surveyors Contracts/Plans/Drawings for the Improvements to the Property.

Rents

All of RZNK 2, LLC's right, title, interest and privilege in and to the rents, issues, profits, revenues, income, royalties, rights and benefits from the real property more particularly described above. All leases of the Property, whether written or oral, as the same may be modified, extended or renewed, or to be made hereafter, all guaranties of leases and all rents, income and profits due and becoming due therefrom. All awards made to RZNK 2, LLC on account of any of the leases in any State or Federal bankruptcy, insolvency or reorganization proceedings, and to all payments made by lessees thereunder in lieu of rent.

Exhibit 2

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

TCA 4675 NW 103 AVENUE SUNRISE, LLC,

Case No. CACE 18-019377

Plaintiff,

vs.

KEITH PETRON, RZKN 2, LLC, *et al.*,

Defendants.

_____/

**ALLIANCE HOLDCO, LLC'S AND RZKN 2, LLC'S
SECOND AMENDED COUNTERCLAIM AGAINST TCA 4675 NW 103
AVENUE SUNRISE, LLC AND TCA BROWARD COLLISION LLC**

The defendant, RZKN 2, LLC and the defendant/intervenor, Alliance Holdco, LLC file this Second Amended Counterclaim against the counterdefendants, TCA 4675 NW 103 Avenue Sunrise, LLC and TCA Broward Collision, LLC, and allege:

General Allegations

1. This counterclaim seeks damages exceeding \$30,000, excluding costs, interest and attorneys' fees.
2. TCA 4675 and TCA Broward are Florida limited liability companies.
3. The counterdefendants have committed the tortious conduct described below in Broward County, Florida.
4. At the commencement of this suit in August 2018, RZKN 2, LLC (“**RZKN2**”) owned the real property which is the subject of the complaint, located at 4675 NW 103rd Avenue, Sunrise, Florida (“**the Property**”)
5. At the commencement of this suit, the tenant of the Property was Broward

Collision, Inc. under a lease with RZNK2. Broward Collision, Inc. operated an auto body shop business on the Property.

6. At the commencement of this suit, the original plaintiff, Centennial Bank, held or claimed to hold promissory notes from RZNK 2 secured by first and second mortgages, assigned to Centennial Bank by original lender Stonegate Bank, and guaranteed by Broward Collision, Inc. and Keith Petron.

7. Sometime before June 20, 2017, TCA Global Credit Master Fund, L.P. made a loan accommodation to the Property's tenant, Broward Collision, Inc. and took a security interest in substantially all Broward Collision, Inc.'s personal property, recording a UCC-1 financing statement on June 20, 2017. However, no TCA entity held any interest in RZNK2's Property in 2017 or 2018.

8. On September 19, 2018, in exchange for valuable consideration, RZNK 2 gave Michael Freedland a \$287,534.25 promissory note and a [third] mortgage on the Property recorded as Instr. No. 115338209, Public Records of Broward County.

9. On October 9, 2018, RZNK2 gave counterplaintiff Alliance Holdco, LLC ("**Alliance**") a [fourth] mortgage on the Property recorded as Instr. No. 115399942, Public Records of Broward County, the stated consideration being a loan accommodation of \$340,000.

10. On June 22, 2018, the tenant, Broward Collision, filed a voluntary petition commencing a chapter 11 case in the United States Bankruptcy Court for the Southern District of Florida, Case No. 18-17492-RBR. Soneet R. Kapila was later appointed trustee.

11. TCA Global Credit Master Fund, L.P. or its principals formed a company, TCA Broward Collision, LLC ("**TCA Broward**"), on July 6, 2018.

12. On or about September 13, 2018, TCA Broward purchased the lease on the Property

and certain other assets of Broward Collision from Broward Collision's bankruptcy trustee by "assumption and assignment" pursuant to Section 365 of the Bankruptcy Code and the bankruptcy court's *Order Approving Sale of Substantially All Assets of Debtor Free and Clear of All Junior Liens, Claims, Encumbrances, and Interests; and Assumption and Assignment of Certain Related Leases*. As to this lease (and a lease on another property), the bankruptcy judge in the Broward Collision, Inc. case concluded in an October 23, 2019 *Order Granting Alliance Holdco, LLC's Motion for Clarification of Order Approving Sale of Substantially All Assets of the Estate*, that "TCA Broward Collision, LLC has assumed all contractual burdens of the two leases, including any pre-petition obligations that may have existed as of the time of the assumption and assignment."

13. On January 14 or 15, 2019:

(a) RZNK2 conveyed title to the Property to Alliance's principal, Shalom Auerbach, by deed recorded as Instr. No. 115554077, Public Records of Broward County, stating as the consideration "the full cancellation of all debts, obligations, costs and charges heretofore existing under and by virtue of the terms of a certain mortgage made by RZNK 2, LLC,...to Shalom Auerbach,...recorded in Instrument Number 115399942...."

(b) Auerbach conveyed title to the Property to Alliance by deed recorded as Instr. No. 115556371, Public Records of Broward County; and

(c) Alliance "ratified and affirmed" RZNK2's mortgage obligation to Michael Freedland, by executing a "Note and Mortgage Modification Agreement" recorded as Instr. No. 115561139, Public Records of Broward County.

14. On March 27, 2019, TCA Global Credit Master Fund, L.P. or its principals formed an affiliated entity, the counterdefendant TCA 4675 NW 103 Avenue Sunrise, LLC ("**TCA 4675**").

15. On April 11, 2019, TCA 4675, by an assignment recorded in the Public Records of Broward County, purportedly purchased the first and second mortgages originally given by RZNK2 to Stonegate Bank. Shortly after, it substituted for Centennial Bank as the plaintiff in this case.

16. On April 12, 2019, Alliance filed an eviction suit against the new tenant of the Property, TCA Broward. At that time and at all times since (i) TCA Broward has been in default of its obligation to pay arrears that were due under the Broward Collision lease at the time of its September 13, 2018 assumption of the lease, including two construction liens and the payments due under the mortgages, and (ii) TCA Broward has failed to pay most of the obligations that became due after its assumption, including all payments that became due after TCA 4675 became the holder of the first and second mortgages.

17. TCA Broward defended the eviction suit. Its only defense of any substance was that TCA 4675 controlled both the lease and any right to evict TCA Broward. TCA 4675 took this same position in this case, and the attorney who represents both TCA 4675 and TCA Broward used reported comments from this court to defend the eviction suit in county court. That counsel also represented to RZNK's counsel that TCA Broward had made all the payments required by its lease. As a result, Alliance dismissed its eviction action. But after learning that TCA Broward was *not* making the lease payments Alliance refiled an eviction suit, which TCA Broward and TCA 4675 have continued to defend.

18. TCA Broward stopped operating in 2019 and removed substantially all personal property not affixed to the structure. Nonetheless, TCA Broward does not concede that it has abandoned possession of the Property.

19. TCA Broward and TCA 4675 have, through their common counsel, Weissman &

Dervishi, P.A., consistently asserted in both the circuit court foreclosure case and the eviction cases that only TCA 4675 can choose to evict, and that TCA 4675 has not so chosen and so TCA Broward may not be evicted by anyone else, even for not paying rent.

20. The basis of TCA 4675's argument that it, and not RZNK2 or Alliance, controls the lease is the following language in a December 14, 2015 "Assignment of Rents, Leases and Profits":

...Assignor hereby assigns, sets over, transfers and conveys unto Assignee all the right, title, interest and privilege of Assignor in and to the rents, issues, profits, revenues, income, royalties, rights and benefits (hereinafter sometimes referred to as "Rents") from that certain property [describing the Property]."

Assignor hereby further assigns, sets over, transfers and conveys unto Assignee all leases of the Property,...

Thus far, TCA 4675 has been successful in its argument that this language puts TCA 4675 in control of both the rental income stream and the lease itself. However, this court has not gone so far as to say that TCA 4675's *use* of this control to leave the property burdened with a nonperforming tenant is proper.

21. The only reason TCA Broward cannot be evicted is because TCA 4675 refuses to permit the eviction.

22. It is standard in the commercial real estate market for any prospective buyer of non-owner-occupied property to require that the property be vacant at the time of the sale closing or that the occupant be performing its lease obligations.

23. The ability to sell or refinance non-owner-occupied commercial real estate is seriously impaired by having the property occupied by a non-performing tenant who cannot be evicted. The reduction in the fair market value of the Property—as compared to the same property

with an evict-able tenant—is substantial.

24. TCA 4675's legitimate interest in the Property which it can protect has always been limited to a lien interest. For this reason, to assure payment of notes, it has the right to preserve and foreclosure its liens and to collect rents. There is no legitimate reason why a mortgage holder ostensibly in control of the lease would decline to either evict the non-performing tenant or otherwise cause the tenant to abandon real property so that the property could be relet or sold.

25. TCA 4675 could have protected its own financial interests without blocking the Property's owner from evicting the tenant. It still would have been entitled to a payoff of its mortgage notes or to a foreclosure sale.

26. TCA Broward's legitimate interest which it can protect has always been limited to the right to remain in the leased premises in exchange for paying the rent. There is no legitimate reason why a tenant would in good faith oppose abandoning the Property to mitigate its own monetary exposure for ongoing lease obligations.

27. TCA Broward could have protected its financial interests by either paying rent or asserting some cognizable defense. Its only cognizable defense is that Alliance lacks the standing to assert a complaint for eviction, and that defense was created by improper means through the collusion of TCA 4675 and TCA Broward.

28. By their conduct described above, TCA 4675 and TCA Broward have made it impossible for to the Property's owner (Alliance) to collect the rents and arrears *and* impossible to evict the nonperforming tenant, thereby as a practical matter precluding Alliance from redeeming the equity in the property by selling the property and paying off the mortgages.

29. As default interest and attorney's fees continue to mount during this case, redemption becomes improbable or impossible, and the payoff of even the third mortgage

(Freedland) becomes improbable.

Count 1
[Claim by Alliance]
Economic Oppression

The allegations in paragraphs 1 through 29 are realleged as if asserted in this count.

30. Since January 14, 2019, Alliance, as an interest holder in the Property subordinate to the mortgages, has held a right of redemption prior to a foreclosure sale, pursuant to §45.0315, Florida Statutes.

31. By their conduct described in the general allegations, and particularly in paragraphs 17-21, and in the circumstances described above, TCA 4675 and TCA Broward have been acting in concert to oppress Alliance economically through the peculiar power of numbers or economic influence that either of them acting alone does not possess.

32. By this same conduct, TCA 4675 and TCA Broward are exercising a power of coercion that depresses the value of the Property unnaturally, discouraging potential purchasers from paying the fair value of the Property.

33. By this same conduct, TCA 4675 and TCA Broward are knowingly injuring Alliance by preventing it from exercising its right of redemption and thereby preserving the Property's equity.

34. TCA 4675 and TCA Broward had and continue to have a malicious motive to prevent the eviction, which is to provide benefit to TCA 4675 by improper means by keeping the Property's market value artificially low during the case, knowing that it (a) diminishes the subordinate interests of Alliance and Mr. Freedland by the accrual of default interest, and (b) clogs the equity of redemption to the point where TCA 4675 can take title at a foreclosure sale free and clear of the subordinate interests.

35. Alliance has suffered damages exceeding \$500,000, excluding costs, interest, and attorney's fees, as a proximate result of this oppression, including (a) Alliance's lost opportunity to relet the Property, (b) Alliance's lost or diminished opportunity to sell it or refinance it to redeem the property from the mortgages, and (c) the reduction in equity caused by the accrual of TCA 4675's interest, late charges, attorney's fees, and other costs, that would not have accrued but for TCA 4675 and TCA Broward's economic oppression.

36. In order to protect Alliance's equity of redemption, any damages awarded by the court should first be applied in the form of an offset against the amounts due under the first and second mortgages.

37. Alternatively, Alliance lacks an adequate remedy at law because the money damages caused by the counterdefendants preventing Alliance from redeeming the Property from the mortgages continue to rise as interest, late charges, attorney's fees and other costs continue to accrue upon the plaintiff's mortgages, and also upon the third mortgage note held by Mr. Freedland. The damages could rise indefinitely to meet any rise in the real estate market, and only by removing the obstacle placed by the counterdefendants may the damages be controlled and Alliance avoid irreparable harm. No public interest would be disserved by the court requiring TCA 4675 and TCA Broward to cease using any claim of control over the lease to artificially impair the fair market value of the Property.

38. Alliance has been drawn into this litigation to vindicate its property right by protecting its equity of redemption from the counterclaim defendants' wrongful acts, and has been compelled to engage the services of an attorney and to incur an obligation for the attorney's fees.

Wherefore, Alliance seeks entry of a judgment against both TCA 4675 and TCA Broward, jointly and severally, for damages, including attorney's fees. Alternatively, to the extent Alliance

lacks an adequate remedy at law, it seeks entry of a judgment granting equitable relief requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward.

Count 2
[Claim by RZNK2]
Economic Oppression

The allegations in paragraphs 1 through 29 are realleged as if asserted in this count.

39. Since the two Stonegate Bank mortgages were first made, RZNK2, as the mortgagor, has held a right of redemption prior to a foreclosure sale, pursuant to §45.0315, Florida Statutes. The holder of the two notes to Stonegate Bank continues to have recourse against RZNK2, and its guarantor, Keith Petron, and they are exposed to any deficiency amount that would remain in the event of a foreclosure sale in this case.

40. By their conduct described in the general allegations, and particularly in paragraphs 17-21, and in the circumstances described above, TCA 4675 and TCA Broward have been acting in concert to oppress RZNK2 economically through the peculiar power of numbers or economic influence that either of them acting alone does not possess.

41. By this same conduct, TCA 4675 and TCA Broward are exercising a power of coercion that depresses the value of the Property unnaturally, discouraging potential purchasers from paying the fair value of the Property.

42. By this same conduct, TCA 4675 and TCA Broward are knowingly injuring RZNK2 by exposing RZNK 2 and its guarantor to a deficiency judgment.

43. TCA 4675 and TCA Broward had and continue to have a malicious motive to prevent the eviction, which is to provide benefit to TCA 4675 by improper means by keeping the Property's market value artificially low during the case, knowing that it (a) clogs the equity of

redemption to the point where TCA 4675 can take title at a foreclosure sale free and clear of the subordinate interests and (b) exposes RZNK 2 and its guarantor to a deficiency judgment.

44. In order to protect the right of redemption, any damages awarded by the court should first be applied in the form of an offset against the amounts due under the first and second notes and mortgages.

45. Alternatively, RZNK2 lacks an adequate remedy at law because the money damages caused by the counterdefendants preventing Alliance from redeeming the Property from the mortgages continue to rise as interest, late charges, attorney's fees and other costs continue to accrue upon the plaintiff's mortgages, continuing to raise RZNK's exposure on the notes. Only by removing the obstacle placed by the counterdefendants may the damages be controlled and RZNK2 avoid irreparable harm. No public interest would be disserved by the court requiring TCA 4675 and TCA Broward to cease using any claim of control over the lease to artificially impair the fair market value of the Property.

Wherefore, RZNK2 demands judgment against TCA 4675 and TCA Broward, jointly and severally, for damages to be set off against RZNK2's liability under the first and second mortgage notes. Alternatively, to the extent RZNK2 lacks an adequate remedy at law, it seeks entry of a judgment granting equitable relief requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward.

Count 3
[Claim by Alliance]
Interference with Advantageous Business Relationships

The allegations in paragraphs 1 through 29 are realleged as if asserted in this count.

46. From the time of Alliance's acquisition of title to the Property, it sought to sell the Property and redeem the mortgages. It engaged a real estate broker, solicited offers, and negotiated

with potential buyers. Alliance's broker showed the Property to numerous interested purchasers, some of whom lost interest only after learning of Alliance's unsuccessful eviction suit.

47. TCA 4675 and TCA Broward were asked to let potential buyers inspect the Property accompanied by Alliance's broker. They refused to allow the broker key rights and on at least one occasions stalled the showing of the Property to the point where the potential purchaser lost interest, and on other occasions Felix Gregory of TCA Broward badgered the potential purchaser during the viewing. This failure to cooperate with sale efforts and the counterdefendants' continued refusal to vacate the Property or to permit Alliance to evict TCA Broward intentionally and unjustifiably interfered with Alliance's business relationship with all the potential purchasers who had visited the Property or otherwise informed Alliance's broker of an interest in purchasing the Property.¹

48. Alliance suffered damage as a result of the breach of its relationships with potential buyers who (a) showed an interest in purchasing the Property and (b) after finding that the mortgage holder was protecting the tenant from eviction, either (i) did not make an offer or (ii) made an offer for an amount that was hundreds of thousands of dollars less than the Property would normally be expected to sell for.

49. Alternatively, Alliance lacks an adequate remedy at law because the money damages caused by the counterdefendants preventing Alliance from redeeming the Property from the mortgages continue to rise as interest, late charges, attorney's fees and other costs continue to accrue upon the plaintiff's mortgages, and also upon the third mortgage note held by Mr.

¹ The list of the potential purchasers who engaged with Alliance's broker is available to the counterdefendants' attorney upon the execution of an agreement protecting those purchasers from being identified by name or upon entry of an order protecting the purchasers from being contacted so long as they have an interest in buying the Property.

Freedland. The damages could rise indefinitely to meet any rise in the real estate market, and only by removing the obstacle placed by the counterdefendants may the damages be controlled and Alliance avoid irreparable harm. No public interest would be disserved by the court requiring TCA 4675 and TCA Broward to cease using any claim of control over the lease to artificially impair the fair market value of the Property.

Wherefore, Alliance demands judgment against TCA 4675 and TCA Broward for damages. Alternatively, to the extent Alliance lacks an adequate remedy at law, it seeks entry of a judgment granting equitable relief requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward.

Count 4
[Claim by Alliance]
Conspiracy to Intentionally Interfere with Advantageous Business Relationship

The allegations in paragraphs 1 through 29 are realleged as if asserted in this count.

50. By their conduct described in the general allegations, and particularly in paragraphs 17-21, and in the circumstances described above, TCA 4675 and TCA Broward have conspired to improperly deprive Alliance of a substantial property right, its equity of redemption. TCA 4675's and TCA Broward's conduct used improper means to achieve an otherwise unachievable end: the effective elimination of the redemption right. The counterdefendants agreed in advance of that conduct to attempt to assure that TCA 4675 would take title to the Property in a foreclosure sale free of all subordinate interests, by using the broad language of the assignment of leases to keep the nonperforming tenant immune from eviction until the equity in the Property that properly belonged to the third and fourth mortgagees and the title holder was effectively transferred to TCA 4675.

51. Alliance has been damaged by its loss of equity in the Property, exceeding \$30,000.

52. Alliance has been drawn into this litigation to vindicate its property right by protecting its equity of redemption from the counterclaim defendants' wrongful acts, and has been compelled to engage the services of an attorney and to incur an obligation for the attorney's fees and costs.

53. Alternatively, Alliance lacks an adequate remedy at law because the money damages caused by the counterdefendants preventing Alliance from redeeming the Property from the mortgages continue to rise as interest, late charges, attorney's fees and other costs continue to accrue upon the plaintiff's mortgages, and also upon the third mortgage note held by Mr. Freedland. The damages could rise indefinitely to meet any rise in the real estate market, and only by removing the obstacle placed by the counterdefendants may the damages be controlled and Alliance avoid irreparable harm. No public interest would be disserved by the court requiring TCA 4675 and TCA Broward to cease using any claim of control over the lease to artificially impair the fair market value of the Property.

Wherefore, Alliance demands judgment for damages, including attorney's fees and costs. Alternatively, to the extent Alliance lacks an adequate remedy at law, it seeks entry of a judgment granting equitable relief requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward.

Count 5
[Claim by Alliance]
Conspiracy to Prevent Exercise of Equity of Redemption

The allegations in paragraphs 1 through 29 are realleged as if asserted in this count.

54. By their conduct described in the general allegations, and particularly in paragraphs 17-21, and in the circumstances described above, TCA 4675 and TCA Broward have conspired to improperly deprive Alliance of a substantial property right, its equity of redemption. TCA 4765's

and TCA Broward's conduct used improper means to achieve an otherwise unachievable end: the effective elimination of the redemption right. The counterdefendants agreed in advance of that conduct to attempt to assure that TCA 4675 would take title to the Property in a foreclosure sale free of all subordinate interests, by using the broad language of the assignment of leases to keep the nonperforming tenant immune from eviction until the equity in the Property that properly belonged to the third and fourth mortgagees and the title holder was effectively transferred to TCA 4675.

55. Alliance has been damaged by its loss of equity in the Property, exceeding \$30,000.

56. Alliance has been drawn into this litigation to vindicate its property right by protecting its equity of redemption from the counterclaim defendants' wrongful acts, and has been compelled to engage the services of an attorney and to incur an obligation for the attorney's fees and costs.

57. Alternatively, Alliance lacks an adequate remedy at law because the money damages caused by the counterdefendants preventing Alliance from redeeming the Property from the mortgages continue to rise as interest, late charges, attorney's fees and other costs continue to accrue upon the plaintiff's mortgages, and also upon the third mortgage note held by Mr. Freedland. The damages could rise indefinitely to meet any rise in the real estate market, and only by removing the obstacle placed by the counterdefendants may the damages be controlled and Alliance avoid irreparable harm. No public interest would be disserved by the court requiring TCA 4675 and TCA Broward to cease using any claim of control over the lease to artificially impair the fair market value of the Property.

Wherefore, Alliance demands judgment for damages, including attorney's fees and costs. Alternatively, to the extent Alliance lacks an adequate remedy at law, it seeks entry of a

judgment granting equitable relief requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward.

Count 6
[Claim by RZNK2]
Conspiracy to Prevent Exercise of Equity of Redemption

The allegations in paragraphs 1 through 29 are realleged as if asserted in this count.

58. By their conduct described in the general allegations, and particularly in paragraphs 17-21, and in the circumstances described above, TCA 4675 and TCA Broward have conspired to improperly deprive RZNK2 of a right to redeem the property from the mortgage and relieve itself of its obligations under the two promissory notes which TCA 4675 says it holds. TCA 4675's and TCA Broward's conduct used improper means to achieve an otherwise unachievable end: the effective elimination of the redemption right. The counterdefendants agreed in advance of that conduct to attempt to assure that TCA 4675 would take title to the Property in a foreclosure sale free of all subordinate interests, by using the broad language of the assignment of leases to keep the nonperforming tenant immune from eviction until the equity in the Property that properly belonged to the third and fourth mortgagees and the title holder was effectively transferred to TCA 4675.

59. RZNK2 has been damaged by its exposure to a potential deficiency judgment in foreclosure.

60. In order to protect the right of redemption, any damages awarded by the court should first be applied in the form of an offset against the amounts due under the first and second notes and mortgages.

61. Alternatively, RZNK2 lacks an adequate remedy at law because the money damages caused by the counterdefendants preventing Alliance from redeeming the Property from

the mortgages continue to rise as interest, late charges, attorney's fees and other costs continue to accrue upon the plaintiff's mortgages, continuing to raise RZNK's exposure on the notes. Only by removing the obstacle placed by the counterdefendants may the damages be controlled and RZNK2 avoid irreparable harm. No public interest would be disserved by the court requiring TCA 4675 and TCA Broward to cease using any claim of control over the lease to artificially impair the fair market value of the Property.

Wherefore, RZNK2 demands judgment against TCA 4675 and TCA Broward, jointly and severally, for damages to be set off against RZNK2's liability under the first and second mortgage notes. Alternatively, to the extent RZNK2 lacks an adequate remedy at law, it seeks entry of a judgment granting equitable relief requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward.

Count 7
[Claim by Alliance]
Violation of Florida Deceptive and Unfair Trade Practices Act

The allegations in paragraphs 1 through 29 are realleged as if asserted in this count.

62. This is an action under Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201-.213.

63. The right to redeem a property from a mortgage through sale without interference by the mortgage holder is one upon which owners of real property depend in buying and selling real property.

64. The availability of the opportunity to sell and purchase property in the real estate marketplace free of obstruction from mortgage holders is required for the sustenance of a free and open market in the buying and selling of real property.

65. The conduct of the counterdefendants described in the general allegations, and

particularly in paragraphs 17-21, in combining to prevent Alliance and RZNK2 from redeeming the Property from the mortgages, constitutes an unfair, deceptive, or unconscionable act or practice in the conduct of trade or commerce—one that offends established public policy and is immoral, unethical, oppressive, and unscrupulous.

66. The conduct of the counterdefendants described in the general allegations, and particularly in paragraphs 17-21, in combining to prevent Alliance from preserving its equity of redemption, unjustifiably hinders real property purchasers' free market decisions and prevents the forces of supply and demand from maximizing benefits and minimizing costs for purchasers and sellers.

67. Alliance and RZNK2 have suffered actual damages exceeding \$30,000 as a result of the counterdefendants' conduct, including in the form of the diminution in value of the Property in the marketplace, for which the counterdefendants are liable.

68. Alliance and RZNK2 have been required to engage the services of attorneys to enforce their rights, and are entitled pursuant to Florida Statutes, §501.2105(1), to recover attorney's fees and costs.

69. Alternatively, Alliance lacks an adequate remedy at law because the money damages caused by the counterdefendants preventing Alliance from redeeming the Property from the mortgages continue to rise as interest, late charges, attorney's fees and other costs continue to accrue upon the plaintiff's mortgages, and also upon the third mortgage note held by Mr. Freedland. The damages could rise indefinitely to meet any rise in the real estate market, and only by removing the obstacle placed by the counterdefendants may the damages be controlled and Alliance avoid irreparable harm. No public interest would be disserved by the court requiring TCA 4675 and TCA Broward to cease using any claim of control over the lease to artificially

impair the fair market value of the Property.

Wherefore, Alliance and RZNK2 demand judgment for damages, attorney's fees and costs. Alternatively, to the extent Alliance and RZNK2 lack an adequate remedy at law, they seek entry of a judgment (a) declaring, under the authority of Florida Statutes §501.211(1) that the counterdefendants' collusive acts violate the Deceptive and Unfair Trade Practices Act and requiring the counterdefendants to cease using the collateral assignment of lease to block Alliance from its eviction of TCA Broward.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2020 a copy of this Counterclaim was served by electronic mail through the Florida E-Filing portal system to the parties on the attached service list and all others registered to receive electronic notices.

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Exhibit 3

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE18019377 DIVISION 09 JUDGE Jeffrey Levenson

TCA 4675 NW 103 Avenue Sunrise, LLC, et al

Plaintiff(s) / Petitioner(s)

v.

RZNK 2 LLC, et al

Defendant(s) / Respondent(s)

_____ /

DIRECTIONS TO CLERK-DISPOSED

THIS CAUSE came before the Court and after appropriate review and/or hearing, said cause MUST BE CLOSED because:

- () the Defendant has filed Bankruptcy Court in Case
- () the matter has been removed to Federal Court Case No.
- () the parties have entered into an agreement that will not necessitate Court action for a period of time.
- () the file shows the relief sought has been granted in full and the file shall be closed.
- () a Joint Stipulation for Dismissal and Order was entered on
- () The Court was notified by Plaintiff/Defense counsel that the case has fully SETTLED.
- () FINAL ORDER OF DISMISSAL was filed.
- () FINAL JUDGMENT entered.
- () CASE DISMISSED WITHOUT PREJUDICE due to lack of Prosecution. Notice was mailed to the parties as to the court's intent to dismiss pursuant to Fla. R. Civil Procedure 1.420 (a) (1) (A), as of this date there has been no record activity per the clerk office.
- () Relief Sought was Obtained.
- () If Order complied within _____ days, the case shall be dismissed without further notice to the parties.
- () Other Case be Closed RE: Per hearing on April 26, 2021, due to pending federal court receivership.

The matter as captioned is hereby closed for statistical purposes, subject to reopening, if applicable, upon appropriate petition. The Clerk shall bring such petition to the attention of the Court immediately

upon filing.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 04-26-2021.


CACE18019377 04-26-2021 11:28 AM

CACE18019377 04-26-2021 11:28 AM

Hon. Jeffrey Levenson

CIRCUIT JUDGE

Electronically Signed by Jeffrey Levenson

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Diana Sobel, Room 20140, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301, 954-831-7721 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

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Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)

CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

ORDER

THIS CAUSE came before the Court upon TCA 4675 NW 103 Avenue Sunrise, LLC's Unopposed Motion for Relief from Stay [ECF #___], filed on August 3, 2021 (the "Motion").

TCA 4675 NW 103 Avenue Sunrise, LLC ("Sunrise") is the plaintiff in a pending state court foreclosure action (Case No. CACE-18-019377 (09); Broward County, Circuit Court) (the "Foreclosure Action"), in the Seventeenth Judicial Circuit in and for Broward County, Florida (the "State Court"), against real property located at 4675 NW 103rd Avenue, Sunrise, FL 33351 (the "Property"), subject to a tenancy held by TCA Broward Collision, LLC ("Broward Collision"). Broward Collision has ceased operations. The State Court entered a final judgment of foreclosure in favor of Sunrise in the amount of \$1,991,947.22 in the Foreclosure Action, but withheld the sale date pending determination of a counterclaim filed by the current owner of the Property. Sunrise seeks relief from stay so that it can complete the Foreclosure Action and the sale of the Property.

Pursuant to Local Rule 7.1, counsel for Sunrise certified that it conferred with counsel for the Receiver and the S.E.C. regarding the Motion and neither opposes the relief being sought.

Being fully advised, it is

ORDERED AND ADJUDGED that the Motion is **GRANTED**. Sunrise is granted relief from stay to complete the Foreclosure Action in the State Court including the sale of the Property, with the proviso that a judgment for money damages cannot be entered against Broward Collision.

DONE AND ORDERED in Miami, Florida, this ___ day of August, 2021.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record