

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED STATES OF AMERICA,

v.

Case No.: 4:22-cr-00032-
MW/MAF

FELICIA TIFFANY JACKSON-
STANLEY AND
WILBERT JEAN STANLEY, III,

Defendants.

**PETITION OF AMERICAN COMMERCE BANK, N.A. FOR
ADJUDICATION OF INTEREST IN PROPERTY**

American Commerce Bank, N.A. (“American Commerce Bank”), pursuant to 21 U.S.C. § 853(n)(2) and Fed. R. Crim. P. 32.2(a)(1)(A), petitions the Court for an Order recognizing the secured interest it has in the subject property, and respectfully shows the Court as follows:

1. The real property subject to this petition is described in the Notice of Lis Pendens Re: Forfeiture (Dkt. 33) (the Notice)¹, is commonly known as Lot 10C on Painted Post Lane, Tallahassee, Florida 32305 (Property), and is more particularly described as follows:

¹ Two other notices of lis pendens were filed in this action. *See* Dkts. 32, 34. American Commerce Bank also claimed an interest in the property subject to the lis pendens filed at Docket No. 32. However, by agreement of the parties, the property subject to the lis pendens at Docket 32 was sold, the interests of American Commerce Bank in that separate property was satisfied. *See* Dkts. 53, 56, 58.

Real property located and situated in Leon County, Florida: Lot 10, Block C, Tallahassee Ranch Club, according to the plat thereof, recorded in Plat Book 18, Page(s) 1 through 35, of the inclusive, Public Records of Leon County, Florida, and further described in Leon County Official Records Book 5496 and Page 1308, and known to the Leon County Property Appraiser as Parcel Identification # 332525 C0100.

2. Felicia Jackson Stanley executed a promissory note in the original principal amount of \$51,000.00 (Note) in favor of American Commerce Bank dated September 29, 2020. The loan is secured by a first-lien mortgage executed on or about September 29, 2020 by Felicia Jackson Stanley, recorded in Book 5496 at Pages 1309-1316 in the Leon County Public Records (Mortgage). True and correct copies of the Mortgage and Note are attached as Exhibits A and B.

3. American Commerce Bank is the holder of the Mortgage lien on the Property.

4. The payoff amount due and owing on the loan as of March 27, 2023, to include principle, interest, late charges and fees is \$45,901.56, plus attorney's fees. A true and correct copy of the payoff statement for the Loan through March 27, 2023, exclusive of attorney's fees, is attached as Exhibit C. By its terms, the Loan continues to accrue interest, charges, and fees, including attorney's fees. The daily interest per diem is \$6.60127.

5. American Commerce Bank is a secured creditor with respect to the Property.

6. American Commerce Bank's Mortgage lien and security interest in the Property vested upon the recording of the Mortgage on October 2, 2020, and is superior to the right, title and interest of any other person or entity as to the amounts due thereunder at the time of the events giving rise to the Preliminary Order of Forfeiture.²

7. American Commerce Bank's interest in the Property is not subject to forfeiture to the United States by reason of an act or omission of Felicia Jackson Stanley because (1) American Commerce Bank did not know of the conduct giving rise to the Complaint or any violation of the law, (2) American Commerce Bank is a bona fide lender for value; (3) American Commerce Bank did not know and were reasonably without cause to believe that the Property was involved in any violation of the law or was subject to forfeiture, and/or (4) American Commerce Bank did not explicitly or implicitly consent to the acts or omissions giving rise to this action, and had no

² See e.g., *Brown Bark III, LP v. Torres*, 2010 WL 10363 at 5 (S.D. Fla. January 4, 2010) (a recorded mortgage establishes a lien superior to any subsequent claims and liens attaching to property subject to that mortgage); see also §695.01, Fla. Stat., Florida's race-notice recording statute ("No conveyance, transfer or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law").

knowledge the user of the Property had any record for violating the law of the United States.

8. Accordingly, pursuant to 18 U.S.C. §1963(1) and Fed. R. Crim. P. 32.2(c), American Commerce Bank respectfully seeks a determination of the validity of American Commerce Bank's security interest in the Property as evidenced by the Mortgage in an amount not less than the outstanding principal balance due thereunder, plus any costs and expenses related thereto, as well as a determination that American Commerce Bank's security interest is not forfeited to the United States of America as a result of the Order or any subsequent final order of forfeiture.

9. The Court previously entered an Order extending the time to file a petition asserting an interest in the Property (as well as other properties identified in the Preliminary Order of Forfeiture (Dkt. 41)), to and through February 17, 2023, to allow the parties to potentially sell the properties and obviate the need for a hearing on any petition. Dkt. 57.

10. The United States and Defendants did reach an arrangement to sell certain of the properties subject to the Preliminary Order of Forfeiture, which resulted in satisfying other mortgages held by American Commerce Bank on those specific properties. *See* Dkts. 56, 58. However, the Property at issue in this petition was not included in that sale, nor was the Mortgage satisfied by the prior sale of the other properties. Due to an oversight on the

part of counsel for American Commerce Bank, it was not realized that the Mortgage and Property were not covered in the prior sale of property. As soon as this was discovered, on March 23, 2023, counsel for American Commerce Bank reached out to the U.S. Attorney's Office to explain the situation, and inquire whether the United States opposed filing a petition at this time, as to the Property in light of this inadvertent oversight, despite the time under the prior Order extending time to do so having expired. The United States responded that it did not oppose American Commerce Bank filing its petition as to the Property at this time.

11. Pursuant to Fed. R. Crim. P. 45(b)(1)(B), the Court may extend the time to undertake an act even after the deadline has passed if the party failed to act because of excusable neglect. "Whether the party's neglect of a deadline may be excused is an equitable decision turning on all relevant circumstances surrounding the party's omission." *Henderson v. Sec'y, Dep't of Corr.*, No. 3:19CV422-LC-HTC, 2022 WL 379312, at *3 (N.D. Fla. Jan. 18, 2022), *report and recommendation adopted*, No. 3:19CV422-LC-HTC, 2022 WL 379309 (N.D. Fla. Feb. 8, 2022) (citing *Pioneer Investment Svcs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380 (1993)). "The factors to consider include (1) the danger of prejudice to the [opposing party], (2) the length of the delay and its potential impact on judicial proceedings, (3) the

reason for the delay, including whether it was in the reasonable control of the movant, and (4) whether the movant acted in good faith.” *Id.*

12. As noted above the reason for the failure to file this petition prior to the February 17, 2023 deadline was confusion about which mortgages were being satisfied pursuant to the prior agreed sale that occurred in this matter. Once it was determined the loan on the Property remained outstanding, barely thirty days after that prior sale, counsel for American Commerce Bank immediately contacted the U.S. Attorney’s Office to alert them of the issue, and promptly filed this petition upon confirming the U.S. Attorney’s Office had no objection to filing the petition at this time, obviating any claim of prejudice, and demonstrating the good faith of the movant.

13. Nor will this impact the proceedings since the delay has been short, and there has been no final order of forfeiture at this time nor has the Property been sold.

14. Thus, because the United States does not oppose the filing of the petition by American Commerce Bank at this time, no final order of forfeiture has been entered, the Property has not been sold, the delay was the result of excusable neglect for which American Commerce Bank should not be penalized, and American Commerce Bank acted promptly to remedy the delay as soon as it was aware of the issue, the Court should allow the petition to be filed at this time.

WHEREFORE, American Commerce Bank petitions the Court, if the parties are unable to stipulate or reach settlement, for a hearing to adjudicate the validity of its secured interest in the Property, for the release of any lis pendens filed and/or recorded against the Property, and for an order (a) recognizing the continued existence and validity of its first lien on the Property because American Commerce Bank is an innocent owner; (b) ordering the unpaid principal balance, escrow advances, interest, charges, and fees on the Loan, including attorney's fees as provided in the mortgage document, be paid from the proceeds of the sale of the Property after the expenses of preservation of the sale and before distribution to other claimants; and (c) for all further relief to which American Commerce Bank may be entitled.

VERIFICATION

STATE OF GEORGIA

HARALSON COUNTY

My name is DIANA RABUN. I am capable of making this verification. I am an officer of American Commerce Bank, N.A. I have read the foregoing petition for adjudication of interest in property. I verify under the penalty of perjury under the laws of the United States of America the facts stated in it are true and correct based upon my personal knowledge and review of the records relating to the loan and subject property.

Executed on the 27th day of March 2023.



Dated: March 28, 2023

BURR & FORMAN LLP

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**ATTORNEYS FOR AMERICAN
COMMERCE BANK, N.A.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 28, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notice of the filing to all parties.

/s/ Adam R. Smart

Attorney