

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

BACK BAY AT CARILLON LLC, a
Delaware limited liability company; and
ECHELON DEVELOPMENT LLC, a
Delaware limited liability company,

Appellants,

v.

Case No. 2D12-2455

QUALITY PROPERTIES ASSET
MANAGEMENT COMPANY, as
Assignee of Bank of America, N.A.;
ANDREW BANISH; MATTHEW
MILASK a/k/a MARK MILASK; WILL
LUMPKIN a/k/a WIL LUMPKIN;
SONCERAY LUMPKIN; JUNG SUH;
KIM GOUN; MALIC VANN; TELAP
TAN; LARRY VANDERVELDE;
KATHY VANDERVELDE; GREG
TITUS; SAISUNEE RUNGFAR a/k/a
SAISUNEE TITUS; WILLIAM
VANDERFORD a/k/a BILL
VANDERFORD; RENEE
VANDERFORD; MANDY ZUBRICK
a/k/a MANDY ZURBINCK; DONALD
ZUBRICK a/k/a DONALD ZURBINCK;
DARYN YOUNG; MONIQUE
GENTILE; MICHAEL WATKINS;
AYAKAO WATKINS; WILLIAM JAMES
a/k/a BILL JAMES; LISA JAMES;
ZAWDIE LITTLE; ANGELIQUE
LITTLE; RICHARD GLENN
CILIMBERG; ISABEL CILIMBERG;
SHAWN PATTERSON; JAMILA
PATTERSON; JASON RAY; RACHEL

FOX a/k/a RACHEL RAY; DARIA)
FEAZELL; and DARIA P. SIMMONS,)
)
Appellees.)
_____)

Opinion filed May 8, 2013.

Appeal from the Circuit Court for Pinellas
County; Bruce Boyer, Judge.

Marie Tomassi, Roberta A. Colton, and
Stephanie C. Lieb of Trenam, Kemker,
Scharf, Barkin, Frye, O'Neill & Mullis, P.A.,
Tampa, for Appellants.

John M. Mullin, Richard L. Petrovich, and
Stephanie C. Vellios of Tripp Scott, P.A.,
Fort Lauderdale, for Appellee Quality
Properties Asset Management Company.

No appearance for remaining Appellees.

VILLANTI, Judge.

Back Bay at Carillon LLC and Echelon Development LLC (collectively "Appellants") appeal the final deficiency judgment entered against them after Bank of America foreclosed on a construction loan and then assigned the foreclosure judgment to Quality Properties Asset Management Company. Quality Properties has conceded that the deficiency judgment fails to account for \$181,671.11 in proceeds that Quality Properties—through Bank of America—received from the court-appointed receiver. In addition, the record shows that the deficiency judgment fails to account for the value of certain tangible personal property that Appellants turned over to the receiver. Hence, we reverse the deficiency judgment and remand for the trial court to enter a corrected

judgment that accounts for Quality Properties' receipt of these assets. In all other respects, we affirm.

Appellants borrowed substantial sums of money from Bank of America to finance the construction of a luxury townhome community in St. Petersburg. When the housing bubble burst, Appellants ceased making payments on their loans. After a negotiated forbearance failed, Bank of America filed a foreclosure complaint, and a receiver was appointed by the court to manage the property. The receiver's initial inventory reflected that Appellants had turned over certain tangible personal property, including equipment and furnishings in the clubhouse as well as in the three model townhomes. In addition, during the course of the foreclosure proceedings, the receiver collected rents from the existing tenants; paid for maintenance, repairs, taxes, and general upkeep of the property; and paid the balance of the collected funds—approximately \$400,000—to Bank of America.

In November 2009, the trial court entered a consent foreclosure judgment in the amount of \$30,885,991.59. Bank of America assigned the foreclosure judgment to Quality Properties, its wholly-owned subsidiary, and after the foreclosure sale Quality Properties filed a motion seeking a deficiency judgment. The trial court held an evidentiary hearing on the motion and ultimately entered a deficiency judgment against Appellants in the amount of \$17,485,991.59.

In this appeal, Appellants have raised numerous issues relating to the amount of the deficiency judgment. However, we find merit only in the argument that

the trial court erred by not accounting for certain payments and property that Quality Properties received prior to the entry of the deficiency judgment. Therefore, we reverse and remand for limited adjustments to the amount awarded.

Cash on Hand

Appellants first argue that the evidence before the trial court showed that Quality Properties received \$181,671.11 in proceeds from the receiver after the foreclosure judgment was entered, that these proceeds were not accounted for in the foreclosure judgment (nor could they have been since they post-dated that judgment), and that these proceeds should have been accounted for when the trial court determined the amount of the deficiency judgment but were not. Quality Properties concedes that the deficiency judgment is overstated by the amount of these proceeds, and the record supports this concession. We therefore reverse the deficiency judgment due to this error. On remand, the trial court shall reduce the deficiency judgment by \$181,671.11 to account for Quality Properties' receipt of these proceeds.

Tangible Personal Property

Appellants also argue that the deficiency judgment fails to account for the value of certain tangible personal property that they turned over to the receiver when the foreclosure complaint was first filed. At the deficiency hearing, Appellants' corporate representative testified that the value of this tangible personal property was \$100,000. Quality Properties does not dispute that it received this tangible personal property, nor does it dispute that the value of the property was not accounted for in the deficiency judgment. Instead, it argues only that the testimony from Appellants' corporate representative concerning the value of that property was incompetent. However, the

record shows that the corporate representative was qualified to testify as to the value of the property. See *Witchell v. Londono*, 707 So. 2d 796, 799 n.2 (Fla. 1st DCA 1998) (noting that as a general rule "an officer of a corporation is qualified to testify regarding value if he has experience in the management of the affairs of the corporation and has a knowledge of relevant values"). Moreover, Quality Properties neither impeached the corporate representative's testimony nor offered any competing evidence to establish a different value for the tangible personal property it admits it received. Under these circumstances, we must agree with Appellants that the deficiency judgment is overstated by the undisputed value of the tangible personal property. Hence, on remand, the trial court shall reduce the deficiency judgment by \$100,000 to account for the value of the tangible personal property Quality Properties received.

In sum, we reverse the deficiency judgment and remand for the trial court to credit Appellants for the \$181,671.11 in cash and \$100,000 in tangible personal property that Quality Properties received but which was not accounted for during the foreclosure or deficiency judgment proceedings. In all other respects, the final deficiency judgment is affirmed.

Affirmed in part, reversed in part, and remanded with instructions.

DAVIS and KHOUZAM, JJ., Concur.