

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

GENERAL JURISDICTION DIVISION

<p>HSBC Bank USA, National Association as Trustee for First NLC Trust 2005-4 Mortgage Loan Asset Backed Certificates, 2005-4,</p> <p>Plaintiff,</p> <p>v.</p> <p>Keys Gate Community Association, Inc., a Florida Non Profit Corporation, et al.</p> <p>Defendants. /</p>	<p>CASE NO. 07-18411 CA 09</p> <p>THE ORIGINAL FILED ON</p> <p>NOV 10 2009</p> <p>IN THE OFFICE OF HARVEY RUVIN</p> <p>Florida Bar Number: 62015</p>
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**DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND ISSUANCE
OF CERTIFICATE OF TITLE TO PLAINTIFF**

COMES NOW, Defendant, Keys Gate Community Association, Inc. (the "Association"), by and through its undersigned counsel, and moves this Honorable Court to enter a Partial Summary Judgment of Foreclosure against the Association and directing the Clerk of this Court to issue a Certificate of Title to the Plaintiff forthwith without foreclosure sale and as grounds therefore would state the following:

1. Plaintiff, HSBC Bank USA, National Association as Trustee for First NLC Trust 2005-4 Mortgage Loan Asset Backed Certificates, 2005-4 , is the holder of a first mortgage and note which is secured by the property (the "Property") which is the subject matter of the above styled cause and legally described as:

LOT 27, BLOCK 8, KEYS LANDING, ACCORDING TO THE
PLAT THEREOF, AS RECORDED IN PLAT BOOK 160, AT
PAGE 54, OF THE PUBLIC RECORDS OF MIAMI-DADE
COUNTY, FLORIDA.

Property Address: 1119 SE 17 Avenue, Homestead, FL 33035.

Said Property is located within the community operated by the Association and is subject to the covenants, restrictions, rules and regulations, and/or other provisions as provided for in the governing documents of the Association.

2. The Association filed a claim of lien against the Property on June 27, 2006, and recorded same in Official Records Book 24671, at Page 0537, of the Public Records of Miami-Dade County. The Association foreclosed its statutory lien on the Property and pursuant to a Summary Final Judgment of Foreclosure entered in Miami-Dade County, 11th Circuit Court Case Number 06-22950 CA 11, and the foreclosure sale arising therefrom, the Association was issued a Certificate of Title on April 10, 2007. Said Certificate of Title is recorded in Official Records Book 25523 at Page 4413 of the Public Records of Miami-Dade County, Florida. A copy of said Certificate of Title is attached hereto as "Exhibit A". The Association requests the court to take judicial notice of the pleadings filed in Miami-Dade County, 11th Circuit Court Case Number 06-22950 CA 11 pursuant to Florida Evidence Code 90.202.

3. As of October 26, 2009, the total amount owed to the Association for unpaid assessments and late fees related to the Property exclusive of attorney's fees, collection costs and interest, was \$8,196.72. Regular monthly assessments, late fees and interest continue to accrue each month.

4. Plaintiff's predecessor in interest, Deutsche Bank National Trust Company, filed its foreclosure action herein on June 19, 2007. The Association is a defendant in said action pursuant to its contractual and statutory lien under Florida Statutes Chapter 720. Deutsche Bank was issued a Certificate of Title on October 16, 2007. However, as a consequence of Deutsche Bank's erroneous legal description in its complaint and lis pendens, said Certificate of Title was issued on the wrong property. Seven months later, on May 21, 2008, an Order vacating

Deutsche Bank's Final Summary Judgment, Foreclosure Sale, Certificate of Sale and Certificate of Title was entered. Deutsche Bank filed an Amended Notice of Lis Pendens on July 10, 2008 correcting the legal description of the subject property. Deutsche Bank, however, did not actively pursue its foreclosure action after that point. Another four months later, on November 13, 2008, an Order Substituting Party Plaintiff was entered substituting HSBC Bank USA, National Association as Trustee for First NLC Trust 2005-4 Mortgage Loan Asset Backed Certificates, 2005-4 for Deutsche Bank as the proper Plaintiff in this action.

5. The current real estate market has caused Plaintiff's mortgage encumbrance on the Property to exceed the fair market value of the Property. The Plaintiff in its complaint filed herein claims there is \$284,000.00 in principal due under its mortgage. Pursuant to the Miami-Dade County Property Appraiser, the Property has a current market and assessed value of only \$208,991.00. A copy of the Comparison of Market and Assessed Values Report of the Miami-Dade County Office of the Property Appraiser is attached hereto as "Exhibit B". As a consequence thereof, it is anticipated that there will be no party other than Plaintiff taking title to the subject property at a foreclosure sale or by a deed in lieu of foreclosure. Upon Plaintiff acquiring title to the subject property, Plaintiff will presumably avail itself of statutory protections afforded to qualifying first mortgagees, limiting Plaintiff's liability to Association, as to past due assessments, to those assessments that accrued during the twelve (12) months immediately preceding the acquisition of title or one percent (1%) of the original mortgage debt, whichever is less pursuant to Fla. Stat. §720.3085.

6. Plaintiff's failure to diligently pursue its foreclosure action severely impairs the alienability of the property. Under Florida law, "conditions that operate as restraints on alienation are held to be void against public policy." 22 Fla. Jur 2d Estates, Powers and

Restraints § 70. Seagate Condominium Association, Inc. v. Duffy, 330 So.2d 484 (Fla. 4th DCA 1976); see also Metropolitan Dade County v. Sunlink Corporation, 642 So.2d 551 (Fla. 3rd DCA 1992). Given that Plaintiff's encumbrance exceeds the fair market value of the property, there were no bidders when the Association foreclosed its lien. Furthermore, no buyer will purchase the property from the Association with an outstanding first mortgage held by Plaintiff which exceeds the value of the property. Florida courts have consistently held that the rule disfavoring unreasonable restraints on alienation is based on the principle that the free alienability of property promotes economic and commercial development. Peavey v. Reynolds, 946 So.2d 1125 (Fla. 5th DCA 2006).

7. The Association admits Plaintiff is entitled to the foreclosure relief Plaintiff seeks, subject to the rights of the Association as set forth in Fla. Stat. §720.3085.

8. In order to avoid unnecessary expense and delay and to expedite final disposition of the above styled cause, the Association waives any right of redemption it may have in the property, waives its right to have the property sold at foreclosure sale and consents to the issuance of a Certificate of Title to the Plaintiff forthwith without the need of a foreclosure sale.

WHEREFORE, the Association requests the Court to enter a Partial Summary Judgment of Foreclosure against the Association and direct the Clerk of Court to issue a Certificate of Title to Plaintiff forthwith without a foreclosure sale. In the alternative, Association prays this Court grant Association's Motion to Compel Plaintiff contemporaneously filed herein to complete its foreclosure action and sale within ninety (90) days or to pay to Association the regular and

special assessments accruing on and after thirty days from the date of this Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: Maria Tamayo at 1119 SE 17 Avenue, Homestead, FL 33035 and HSBC Bank USA, National Association as Trustee for First NLC Trust 2005-4 Mortgage Loan Asset Backed Certificates, 2005-4 c/o Florida Default Law Group, P.L., P.O. Box 25018, Tampa, Florida 33622 on November 9, 2009.

Association Law Group, P.L.
*Attorney for Defendant Keys Gate
Community Association*
P.O.Box 415848
Miami Beach, FL 33141
Telephone: 305-938-6922
Fax: 305-938-6914



By: Lisa Kalman, Esq.
Association Law Group, P. L.



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 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA
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IN THE CIRCUIT COURT OF THE JUDICIAL
 CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CIVIL ACTION NO. 06-22950 SEC. 11

HELEN D. GARRETT

Keys Gate Community Association, Inc., A Florida Non Profit Corporation,
 Plaintiff (s) / Petitioner (s)

vs.

Maria Tamayo
 Defendant (s) / Respondent (s)

CERTIFICATE OF TITLE
 Chapter 45

THE UNDERSIGNED CLERK OF this Court Certifies that a Certificate of Sale was executed and filed in this action on March 28, 2007, for the property described herein and that objections to the sale have either not been filed within the time allowed by statutory law or, if filed, have been heard by the court. The property in Dade County, Florida and described as follows:

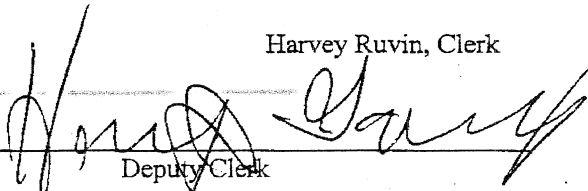
Lot 27, Block 8, Keys Landing, according to the Plat thereof, as recorded in Plat Book 160, at Page 54, of the Public Records of Miami-Dade County, FLorida.

was sold to:
 Keys Gate Community Association, Inc., A Florida Non Profit Corporation,

c/o Neil H. Rubin, Esq., P.O. Box 415848, Miami Beach, Fl .

WITNESS my hand and seal of this Court on April 10, 2007

Harvey Ruvin, Clerk

By: 
 Deputy Clerk

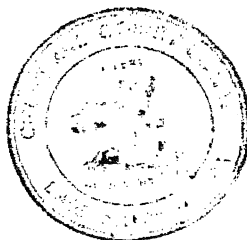


Exhibit A

My Home

miamidade.gov

MIAMI-DADE

Property Information Report
Summary Details:

Folio No.:	10-7920-012-2540
Property:	1119 SE 17 AVE
Mailing Address:	KEYS GATE COMMUNITY ASSN INC C/O NEIL H RUBIN ESQ PO BOX 415848 MIAMI BEACH FL 33141-7848

Property Information:

Primary Zone:	0100 SINGLE FAMILY RESIDENCE
CLUC:	0005 RESIDENTIAL- CLUSTER HOME
Beds/Baths:	4/3
Floors:	1
Living Units:	1
Adj Sq Footage:	2,267
Lot Size:	6,552 SQ FT
Year Built:	2003
Legal Description:	KEYS LANDING PB 160-54 T-21234 LOT 27 BLK 8 LOT SIZE 6552 SQFT FAU 10-7920-001-0010 0011 0012 & 0013 & 0080

Assessment Information:

Year:	2009	2008
Land Value:	\$0	\$0
Building Value:	\$0	\$0
Market Value:	\$208,991	\$291,768
Assessed Value:	\$208,991	\$260,151

Exemption Information:

Year:	2009	2008
Homestead:	\$25,000	\$25,000
2nd Homestead:	YES	YES

Taxable Value Information:

Year:	2009	2008
Taxing Authority:	Applied Exemption/ Taxable Value:	Applied Exemption/ Taxable Value:
Regional:	\$50,000/\$158,991	\$50,000/\$210,151
County:	\$50,000/\$158,991	\$50,000/\$210,151
City:	\$50,000/\$158,991	\$50,000/\$210,151
School Board:	\$25,000/\$183,991	\$25,000/\$235,151

Sale Information:

Sale Date:	3/2007
Sale Amount:	\$0
Sale O/R:	25523-4413
Sales Qualification Description:	Sales which are disqualified as a result of examination of the deed
View Additional Sales	

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This report was created on 10/29/2009 5:49:56 PM for reference purposes only.

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Exhibit B

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

GENERAL JURISDICTION DIVISION

HSBC Bank USA, National Association
as Trustee for First NLC Trust 2005-4
Mortgage Loan Asset Backed Certificates, 2005-4,

Plaintiff,

v.

Keys Gate Community Association, Inc.,
a Florida Non Profit Corporation, et al.

Defendants

CASE NO. 07-18411 CA 09

THE ORIGINAL
FILED ON

JAN 12 2010

IN THE OFFICE OF
CIRCUIT COURT DADE CO F

AMENDED PARTIAL FINAL SUMMARY JUDGMENT IN FORECLOSURE

THIS CAUSE, having come before this court on January 11, 2010, on Defendant, Keys Gate Community Association, Inc.'s ("**Association**") Motion for Entry of Partial Final Summary Judgment against the Association and for the Issuance of a Certificate of Title to the Plaintiff forthwith without a foreclosure sale and the Court being otherwise fully advised in the premises, makes the following finding of facts:

1. The Court takes judicial notice of Miami-Dade County Circuit Court Case Number 06-22950 CA 11 and the Certificate of Title issued therein by the Clerk of this Court to the Association on April 10, 2007 and recorded in Official Records Book 25523 at Page 4413 of the Public Records of Miami-Dade County, Florida. Said real property was the subject of Plaintiff's foreclosure herein and was conveyed in foreclosure to the Association, to wit:

LOT 27, BLOCK 8, KEYS LANDING, ACCORDING TO THE
PLAT THEREOF, AS RECORDED IN PLAT BOOK 160, AT
PAGE 54, OF THE PUBLIC RECORDS OF MIAMI-DADE
COUNTY, FLORIDA.

Property Address: 1119 SE 17 Avenue, Homestead, FL 33035.

2. The Association admits Plaintiff is entitled to the foreclosure relief requested by Plaintiff subject to the rights of the Association as set forth in Fla. Stat. 720.3085.

3. The Association waived any right of redemption in the above described property, waived its right to have the property sold at foreclosure sale and consented to the issuance of a Certificate of Title to the Plaintiff forthwith without the need of a foreclosure sale.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED as follows:

4. The Association is the current lawful owner of the property which is the subject of Plaintiff's foreclosure and legally described in the above mentioned Certificate of Title and Plaintiff's complaint herein and described as:

LOT 27, BLOCK 8, KEYS LANDING, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 160, AT PAGE 54, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Property Address: 1119 SE 17 Avenue, Homestead, FL 33035.

5. The Plaintiff is granted a Partial Final Summary Judgment herein as to Keys Gate Community Association, Inc. Any and all persons claiming by, through, and under the Association since the date of the filing of the Notice of Lis Pendens, are forever barred and foreclosed of and from all right, title, interest, claim or demand of any kind or nature whatsoever in and to the property.

6. The Association's Motion for Issuance of a Certificate of Title to the Plaintiff is granted.

7. The Association has voluntarily consented and agreed to the entry of this Partial Final Summary Judgment foreclosing its interest in said property subject to the rights of the

Association as set forth in Fla. Stat. 720.3085. The Association has further waived any right it may have to redemption or to a foreclosure sale.

8. The Clerk of this Court is ordered to issue a Certificate of Title to the above described property to the Plaintiff, forthwith. The Clerk shall assess minimum documentary stamps, which shall be paid by the Association as an advance on collection costs.

9. Upon filing of the Certificate of Title, the Plaintiff, its representatives or assigns shall be let into possession of the property forthwith. If any occupant of the property fails to vacate the property within 10 days of the Certificate of Title, the Plaintiff may apply to this court for a writ of possession and such other relief as may be appropriate.

10. The Court retains jurisdiction of this cause to determine the liability of the remaining defendants, if any.

DONE AND ORDERED in chambers this 11th day of January, 2010.

Conformed Copy

JAN 12 2010

Jerald Bagley

Jerald Bagley

Circuit Court Judge

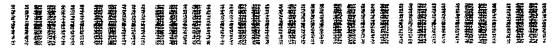
Circuit Court Judge

Copies furnished to:

HSBC Bank, USA, National Association as Trustee
For First NLC Trust 2005-4 Mortgage Loan Asset
Backed Certificates, 2005-4
c/o Florida Default Law Group, P.L.
P.O. Box 25018
Tampa, FL 33622

David C. Arnold, Esq.
Association Law Group
Attorney for Keys Gate Community Association, Inc.
P.O. Box 415848
Miami Beach, FL 33141

Maria Tamayo
1119 S.E. 17th Avenue
Homestead, FL 33035



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MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

**IN THE CIRCUIT COURT OF THE JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

CIVIL ACTION: 07-18411 CA 09

HSBC Bank USA, National Association as Trustee for First NLC Trust 2005-4 Mortgage Loan
Asset Backed Certificates, 2005-4,

Plaintiff,

v.

Keys Gate Community Association, Inc.,
a Florida Non Profit Corporation, et al.

Defendants.

CERTIFICATE OF TITLE

THE UNDERSIGNED, Harvey Ruvin, Clerk of this Court Certifies that he has executed and filed this Certificate of Title pursuant to the Court Order filed herein on January 11, 2010 directing the Clerk of Court to issue a Certificate of Title to Plaintiff, HSBC Bank USA, National Association as Trustee for First NLC Trust 2005-4 Mortgage Loan Asset Backed Certificates, 2005-4, without foreclosure sale.

The following property in Miami-Dade County, Florida:

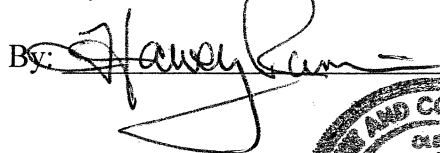
LOT 27, BLOCK 8, KEYS LANDING, ACCORDING TO THE PLAT
THEREOF, AS RECORDED IN PLAT BOOK 160, AT PAGE 54, OF THE
PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Property Address: 1119 SE 17 Avenue, Homestead, FL 33035
is hereby conveyed to:

HSBC Bank USA, National Association as Trustee for First NLC Trust 2005-4 Mortgage Loan
Asset Backed Certificates, 2005-4, ., c/o Florida Default Law Group, P.L., P.O. Box 25018,
Tampa, FL 33622.

WITNESS my hand and seal of this Court on 1-11-2010.

Harvey Ruvin, Clerk

By: 

Copies furnished to all parties

