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<p>MAURICE CHEDID, and MARLENE CHEDID,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>THE ESTATE OF ZAKI HELEWA, GEORGE HELEWA, EXECUTOR OF THE ESTATE OF ZAKI HELEWA, GEORGE HELEWA, individually, KAMAL HELEWA, and MICHAEL HELEWA,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY</p> <p>DOCKET NO: C-25-12</p> <p>Civil Action</p> <p>CERTIFICATION OF MARLENE CHEDID IN SUPPORT OF MOTION TO COMPEL <i>PENDENT LITE</i> SALE OF PROPERTY</p>
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MARLENE CHEDID, being of full age, hereby certifies as follows:

1. I am an adult over the age of 18 years old, and presently reside at 124 Pasadena Avenue, Hasbrouck Heights, New Jersey (the "Property"), which is my home that I share with my husband and two children, and previously shared with my parents until their deaths.
2. I submit this Certification based on facts within my personal knowledge and in support of my motion to compel the defendants to sell their interest in the Property, *pendent lite*, for an amount of \$62,585.67. This amount is based on the defendant Estate of Zaki Helewa's ("Estate") net equity in the Property, after accounting for the expenses I have advanced on behalf of my father's Estate.
3. As explained in greater detail in the ensuing paragraphs, I have calculated the Estate's gross equity in the Property to be \$67,468.37 based on the Court-appointed

appraiser's valuation of \$460,000, and after deducting a second mortgage which my brother Kamal Helewa ("Kamal") has acknowledged is his sole responsibility.

4. Even though I maintain that the Estate's ½ interest should be further reduced by \$4,882.70 on account of contribution payments that I have made on the defendants' behalf for maintenance, mortgage and other carrying costs, upon advice of counsel I am ready, willing and able to deposit \$67,468.37 in escrow as a condition of the Court ordering the *pendente lite* sale of the Estate's ½ interest. If the Court grants the motion, the case would then be limited to resolving any disputes about contribution costs attributable to the Estate.

5. As background to this motion, in August 29, 1997 my husband and I purchased the Property with my parents for \$350,000.00, taking ownership as tenants in common. My parents and I each paid ½ of the initial deposit of \$91,000.00, split all closing costs, and funded the remaining balance with a purchase money mortgage. A copy of the Deed and initial Mortgage is annexed hereto as **Exhibit 1**.

6. The Property consists of a ground level or basement, first floor, and a separate rental apartment. At the time we purchased the Property, it was agreed that my parents would live on the main floor, my husband and I (and our two children) on the ground level, and that the second floor would continue as a rental unit to generate income to offset the mortgage costs. The ground floor and main floor are configured as a "mother-daughter" unit, which allowed for my parents and my family to have separate living spaces.

7. My parents and I also agreed to evenly split all costs on the mortgage and utilities. From August 1997, and for the remainder of my parents' lifetimes, we equally divided the carrying costs for the Property, with the exception of the 2nd and 3rd mortgages as described below. I emphasize that my parents regularly contributed **one half** of all

carrying costs, including the first mortgage payments (which included an escrow for taxes and insurance) and maintenance and utility costs.

8. My mother Siham Helewa passed away in September 21, 2006. My father inherited her interest, and continued to reside at the Property until May 2010.

9. In 2007, at the request of my father Zaki Helewa, my husband and I agreed to authorize a second mortgage in the amount of \$50,000, to assist my brother Kamal with his financial difficulties. A true and complete copy of the second mortgage dated August 1, 2007 is attached hereto as **Exhibit 2**.

10. Kamal received the full proceeds from the second mortgage. Although my husband and I authorized this second mortgage, **we conditioned our approval on an agreement that Kamal make all repayments on that mortgage**, and that if we ever sold the Property the second mortgage be repaid solely from my father's share of equity. The payments on the second mortgage were roughly \$1000 per month.

11. On September 20, 2007, my husband and I took a home equity line of credit or third mortgage in the principal amount of \$67,000, which we used to make substantial improvements to the Property. A true and complete copy of the third mortgage is attached hereto as **Exhibit 3**. My father consented to our taking this line of credit, as he was aware that we intended to use the loan to make improvements to the Property.

12. On or about April 2010, my father made his pro rata share of the payment on the first mortgage. In May 2010, my father became ill and required hospitalization. Once my father had health problems, Kamal managed his financial affairs under the authority of a durable power of attorney. A true copy of this power of attorney is annexed hereto as **Exhibit 4**. After the execution of the power of attorney, however, Kamal made no further payments on my father's behalf to his pro rata share of the first mortgage.

13. In addition, Kamal ceased making payments on the second mortgage. The last payment Kamal made towards the second mortgage was applied to the payment due for March 2010.

14. Subsequently, my father passed away on June 9, 2010.

15. Prior to his death, my father named my brother George Helewa ("George") as the Executor of his Estate. My father's Last Will and Testament named George, Kamal, and my other brother Michael Helewa ("Michael") as his heirs with respect to his one-half ownership interest in the Property. A true and complete copy of my father's Will is attached hereto as **Exhibit 5**.

16. After my father's death, the defendants refused to contribute any monies towards the mortgage or carrying costs of the Property, despite having full knowledge that my parents and I always agreed to evenly split the payments for the first mortgage and the expenses on the Property, and that Kamal had agreed to make all payments on the second mortgage.

17. None of my brothers has ever occupied the Property, either during my parents' lifetime or following their deaths, nor have they expressed any desire to do so. In fact, after my father's death, my brothers' attorney sent a letter to my attorneys indicating that they were agreeable to allowing me to purchase their interest in the Property. See letter from Marc Greenberg dated June 30, 2010 attached hereto as **Exhibit 6**.

18. Subsequently, my brothers reversed their position and demanded the Property be sold on the open market. Although I have made offers to purchase the Estate's interest, my brothers have refused to accept any of my offers.

19. Soon after my father's death, the lease on the rental apartment expired and the tenants vacated the apartment. My brothers refused to allow me to re-rent the second floor apartment, despite having no legitimate reason to object to the same.

20. During this period, my husband Maurice Chedid also experienced extreme financial difficulty, and had to file a Chapter 7 bankruptcy (Case No.: 09-32580). Although my brothers knew of my family's extreme financial hardships, they continued their refusal to contribute the Estate's share of the first mortgage and carrying costs, or allow me to re-rent the second floor apartment.

21. Our bankruptcy attorney eventually filed a motion with the bankruptcy court seeking court approval to re-rent the second floor apartment. The court entered an order allowing for the rental of the unit. See Exhibit 7 annexed hereto. After this order was entered, we eventually succeeded in renting the apartment, but went without rental income until February 2011.

22. However, due to a combination of factors, including my brothers failure to contribute to the Estate's respective share of the monthly payments towards the mortgages and carrying costs of the Property, as well as their refusal to re-rent the apartment and the significant period of time without rental income, we were unable to make the necessary mortgage payments and defaulted on the first and second mortgages. After the default, Bank of America did not accept further payments on the mortgage. As a result, in November 2010, we agreed to list the Property for sale.

23. My brothers insisted the Property be initially listed at \$599,000; after attracting no offers, the list price was reduced to \$525,000. Still no offers were received.

24. Since the Property received no offers and foreclosure appeared imminent, in an effort to save the Property my husband and I applied to Bank of America for a loan modification with respect to the first mortgage. I received a trial period modification in November 2011, and made trial period payments for three months. In February 2012, we received a permanent loan modification. A copy of the loan modification agreement is attached hereto as **Exhibit 8**.

25. From August until November 2011, I spent countless hours on the phone with representatives of Bank of America in an effort to secure the loan modification. I believe that without my continued efforts to obtain a loan modification, Bank of America would have foreclosed and likely sold the Property at sheriff's sale.

26. Both individually and through counsel, I have made multiple good faith attempts to purchase the Estate's ½ interest in the Property. This is my family's home, and I would prefer to keep the Property, especially considering that my 2 daughters are enrolled in public school. Despite indicating their initial willingness to sell me the Estate's ½ interest in the Property, my brothers have been unresponsive to all of subsequent requests and continue to demand that the Property be sold to a third party.

27. Prior to this litigation, while we were still seeking to resolve the issue without court intervention, I had a realtor perform an appraisal on the Property. My appraisal came in at \$450,000.

28. Unable to amicably resolve the matter, I retained counsel and on January 24, 2012, filed the present litigation, against my father's Estate and my brothers as heirs of the Estate.

29. Following a case management conference, the Court appointed Mason, Helmstetter, LLC, to perform an independent appraisal of the Property. The parties agreed to be bound by this appraiser's valuation. On August 2, 2012, the Court-appointed appraiser valued the Property at \$460,000. A copy of the appraisal dated August 2, 2012 attached hereto as **Exhibit 9**.

30. After commencement of the litigation, in June 2012, I received a notice of intent to foreclose from Bank of America on the second mortgage, indicating that, as of June 11, 2012, the reinstatement amount for the loan was \$27,923.20. A copy of the letter is

attached hereto as **Exhibit 10**. Interest on this amount continues to accrue each month, as Kamal has failed to make any payments on the second mortgage since March 2010.

31. Although the payments on the second mortgage are Kamal's responsibility, which he admits in his Answer filed with the Court, I again have had to undertake efforts to save the Property and have spent considerable time and resources to the benefit of all parties. Currently, I am in contact with representatives of Bank of America in an effort to resolve the deficiency on the second mortgage and prevent foreclosure of the Property.

32. None of my brothers have made any effort to address the pending foreclosure on the first mortgage, and have ignored the notice of intent to foreclose on the second mortgage. It appears that they are content with the status quo believing they apparently have nothing to lose. I maintain that the primary reason my brothers refuse to uncooperative is because they have not had to open their wallets or contribute any monies in connection with the past and/or future carrying costs of the Property.

33. My brother George, both as the Executor of my father's Estate, and individually, as an heir of my father's Estate, as well as my two other brothers, Kamal and Michael, as heirs of my father's Estate, have an ongoing obligation to contribute to the past and future costs of the Property.

34. Based on the Court appointed appraiser's valuation of \$460,000, the Estate's share of the equity in the Property is as follows:

\$460,000.00
<u>-\$269,216.86</u> – payoff on first mortgage
\$190,783.14
<u>Divided by two</u>
\$95,391.57
<u>-\$27,923.20</u> – payoff on second mortgage
\$67,468.37

Payoff figures for the first and second mortgages are attached hereto as **Exhibit 11**.

35. As a result of this loan modification with the first mortgagee, I resumed paying my monthly mortgage payments, inclusive of real estate taxes and property insurance escrows. Since the loan modification I have made, and continue to make, all of the mortgage payments without any contribution from my father's Estate. Since my father's death, the total amount of mortgage payments my husband and I have made to date is \$37,865.98. For the Court's convenience attached as **Exhibit 12** is an itemization of these mortgage payments and proofs of such payments.

36. As detailed above, since February 2011, I have received rental income from the second floor rental unit. The total amount of rental income I have received is \$40,150. I am aware that the Estate is entitled to a credit of ½ of the rental income. A breakdown of the rental income is attached hereto as **Exhibit 13**.

37. Furthermore, since my father's death I have made significant payments to 3rd parties for maintenance and repairs to the Property. The total amount I have expended to present is \$12,049.41, one half of which is the Estate's responsibility. An itemized list of these expenses is annexed hereto as **Exhibit 14**.

38. Based on the Estate's required ½ contribution to the mortgage payments and carrying costs, and their ½ share of the rental income, an additional \$4,963.53 should be subtracted from the Estate's equity, as calculated below:

\$37,865.98	- total mortgage payments
<u>Divided by two</u>	
\$18,932.99	- each parties' pro rata obligation for mortgage payments
\$12,049.41	-total expenditures for repairs/ maintenance on the Property
<u>Divided by two</u>	
\$6,024.71	- each parties' pro rata obligation for repairs and maintenance
\$40,150.00	- total rental income
<u>Divided by two</u>	
\$20,075.00	-each parties' pro rata share of the rental income
\$18,932.99	-pro rata obligation for mortgage payment

+\$6,024.71	-each parties' pro rata obligation for repairs and maintenance
\$24,957.70	
<u>-\$20,075.00</u>	- defendants' pro rata share of rental income
\$4,882.70	
\$4,882.70	- amount equity of Estate should be reduced based on failure to contribute to mortgage payments and carrying costs

39. As shown by the above calculation, the Estate's equity is \$62,585.67 (\$67,468.37 - \$4,882.70). This is a fair and reasonable value of the Estate's equity in the Property, and is detailed by the attached appraisals and exhibits showing proof of expenses. Each day that passes, the Estate's equity decreases and it makes it more difficult for me to save the Property. I would request that the Court set the value of the Estate's equity in the Property and allow my husband and I to purchase the Estate's interest at said amount.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Marlene Chedid

Dated: December 13, 2012

EXHIBITS INTENTIONALLY OMITTED