

**Prudential Securities Credit Corp., LLC, Inc. v  
TeeVee Toons, Inc.**

2004 NY Slip Op 30198(U)

June 7, 2004

Supreme Court, New York County

Docket Number: 0603112/2002

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT:                     MURRAY CAHILL                      
*Justice*

PART   99  

0603112/2002

PRUDENTIAL SECURITIES  
VS  
TEEVEE TOONS, INC.,

SEQ   C 017  

INDEX NO. \_\_\_\_\_

MOTION DATE   2/2/04  

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

Motion to/for \_\_\_\_\_

**PAPERS NUMBERED**

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**FILED**  
JUN 10 2004  
COUNTY CLERK'S OFFICE  
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION IN MOTION SEQUENCE.....**

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

Dated:   6     7     04  

  A. Cahill  

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 49

- - - - -X

PRUDENTIAL SECURITIES CREDIT CORP., LLC, Index No. 603112/02  
INC.,

Plaintiff,

-against-

TEEVEE TOONS, INC., TEEVEE CATALOG  
ENTERPRISES, LLC, TVT MUSIC II, LLC,  
and DUTCHMASTAS II, LLC,

Defendants

- - - - -X

CAHN, J.:

Plaintiff Prudential Securities Credit Corp., LLC, Inc.  
("Prudential") moves for a declaration (CPLR 3001) that (1)  
Prudential is entitled under the parties' agreements and  
applicable law to retain a manager to exploit and rehabilitate  
certain collateral (the "Collateral") and is not restricted to an  
immediate sale, (2) any such management transaction entered into  
between Prudential and a third party would not be subject to  
defendant TeeVee Catalog Enterprises' ("Catalog") matching right  
under the Parties' Security Agreement, and (3) should Prudential  
elect to dispose of the Collateral at a public auction,  
Prudential may exercise its right to credit bid at any such

auction, without liability or accountability to Catalog or any of the defendants.

The background of this action has been set forth in prior decisions of this court, familiarity with which is presumed. As is relevant here, by order dated September- 23, 2003, the court granted Prudential's motion for summary judgment to foreclose on certain collateral -- consisting of music titles and publishing rights -- pledged by TeeVee as security for a \$23.5 million loan.<sup>1</sup> In November, 2003, TeeVee advised Prudential by letter of its position that "a prompt public or private sale of the Collateral is the only commercially reasonable method of disposition."

In the letter, TeeVee also expressed its concern that Prudential was contacting licensees of the rights related to the collateral and wrongfully representing to them that it "owned" the Collateral. Additionally, TeeVee requested that Prudential advise it of any "interim actions" it planned to take with respect to the Collateral. Shortly thereafter, TeeVee filed an amended complaint in a companion action seeking a declaration that Prudential was required to effect a prompt disposition of the Collateral. Concerned that its ability to maximize recovery

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<sup>1</sup> The Appellate Division, First Department, affirmed on March 16, 2004 (see, Prudential Securities Credit Corp. v TeeVee Tunes,      5 AD3d 226[1<sup>st</sup> Dept 2004]).

from the Collateral would be impaired by TeeVee's potential demands regarding the timing of the disposition and its right to participate in the management of the assets, Prudential brought the instant motion.

The motion is granted to the limited extent of declaring that pending a final disposition of the Collateral (1) Prudential is entitled to retain a manager to exploit the Collateral without requiring approval or participation of TeeVee, and (2) that such right to retain a manager shall not be subject to any matching right by TeeVee. "A court may in its discretion render a declaratory judgment to stabilize the rights and legal relations of the parties to a justiciable controversy that involves substantial legal interests, when . . . the judgment will have some practical effect" (In Re New York City Asbestos Litigation, 194 Misc2d 214, 221 [Sup Ct NY Co 2002]). Although a court ordinarily will not render an advisory opinion regarding the parties' rights with respect to future occurrences which may or may not come to pass, a declaration is appropriate where the probability of a contingent event is great or where the declaration will have the immediate effect of influencing the parties' conduct (Id.; M & A Oasis, Inc. v MTM Assocs., L.P., 307 AD2d 87 [1<sup>st</sup> Dept 2003]; Remsen Apartments, Inc. v Nayman, 89 AD2d 1014 [2d Dept 1982], aff'd, 58 NY2d 1083 [1983]). Here, a

declaration regarding TeeVee's claimed matching rights is essential to free Prudential to negotiate a binding agreement with an interim manager without the threat of disruptive litigation.

As a secured lender, Prudential is entitled under U.C.C. §9-610(a), to "sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or *following any commercially reasonable preparation or processing.*" Section 8.2 of the parties' Security Agreement mirrors this provision, stating that the collateral "may be sold, leased, or otherwise disposed of . . . *after any overhaul or repair which the Lender shall determine to be commercially reasonable.*" Although neither the statute nor the case law provide guidance on what might constitute the commercially reasonable rehabilitation of intangible collateral such as intellectual property rights, the official comment to section 9-610 provides some limited, general guidance. Comment 3 suggests that "[i]t may . . . be prudent not to dispose of goods when the market has collapsed[]" and Comment 4 notes that "[a] secured party may not dispose of collateral 'in its then condition' when, taking into account the costs and probable benefits of preparation or processing and the fact that the secured party would be advancing the costs at its risk, it

would be commercially unreasonable to dispose of the collateral in that condition."

Thus, although TeeVee is correct that Prudential must ultimately make either a final disposition of the Collateral or retain it in full satisfaction of the debt (see, Warnaco, Inc. v Farkas, 872 F2d 539 [2d Cir 1989]); U.C.C. § 9-620, Prudential is entitled to undertake commercially reasonable measures to maximize the marketability of the assets (see, Bankers Trust v J.V. Dowler & Co., Inc., 47 NY2d 138 [1979]). Nothing in the language of the statute or the parties' agreement precludes the retention of an interim manager.

Teevee's argument that Prudential forfeited the right to appoint a Back-Up Manager upon termination of the Management Agreement is misguided. While appointment of a contractually-defined Back-Up Manager was specifically enumerated as one of Prudential's pre-termination options, that provision did not impose any limitations upon Prudential's post-termination remedies. Plaintiff may appoint a manager with whatever powers are necessary to effect a commercially reasonable rehabilitation of the collateral. The fact that such powers might have been granted to a Back-Up Manager while the Management Agreement was in effect does not mean that plaintiff is powerless to grant them now that the agreement has been terminated.

Furthermore, the right to appoint a manager is not subject to participation by TeeVee. Section 8.2 of the Security Agreement, upon which TeeVee relies to assert its matching right, provides as follows:

Any such disposition which shall be a private sale or other private proceeding permitted by such requirements [of applicable law] shall be made upon not less than 10 days' written notice to [TeeVee] specifying the time at which such disposition is to be made and the intended sale price or other consideration therefor, and shall be subject, for the 10 days after the giving of such notice, to the right of [TeeVee] or any nominee of the Borrower to acquire the Collateral involved at a price or for such other consideration at least equal to the intended sale price or other consideration so specified.

This provision by its terms applies only to a private sale resulting in the acquisition of title to the Collateral. Prudential is merely seeking to retain a manager to exploit the assets on an interim basis pending a final disposition. Although TeeVee may ultimately challenge the commercial reasonability of such efforts, it has no right to block or usurp such efforts at the outset by asserting a match right.'

That branch of Prudential's motion relating to a potential public sale of the Collateral, and seeking a declaration that it

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<sup>2</sup> It is noted that section 8.2 of the Security Agreement (quoted in part above) permits "overhaul or repairs which the lender shall determine to be commercially reasonable."

has the right to credit bid at such an auction -- a right TeeVee does not dispute -- is also granted.

Accordingly, it is

ORDERED, that the motion is granted to the extent of declaring that pending a final disposition of the Collateral (1) Prudential is entitled to retain a manager to exploit the Collateral without any approval, participation or interference by TeeVee; (2) that such right shall not be subject to any matching right by TeeVee; and (3) that at any public sale of the Collateral, Prudential may bid the balance of the amount due to it, or any other amount it seeks to bid.

The foregoing constitutes the decision and order of the court.

Dated: June 7, 2004

ENTER:

  
\_\_\_\_\_  
J.S.C.

**FILED**

JUN 10 2004

COUNTY CLERK'S OFFICE  
NEW YORK