

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

2005 NY Slip Op 30199(U)

September 14, 2005

Supreme Court, New York County

Docket Number: 0603116/2002

Judge: Herman Cahn

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

PRESENT: CAHN
Justice

PART 49M

TEEVERE DON'S, INC.
- v -
PRODEBIT SECURITIES,
CREDIT, CORP

INDEX NO. 603116/02-
MOTION DATE 11/6/04
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

FILED

SEP 16 2005

NEW YORK
COUNTY CLERKS OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 9/14/05

Ken Cels
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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

-----X
TEEVEE TOONS, INC., TVT CATALOG :
ENTERPRISES, LLC, TVT MUSIC, INC., WAX TRAX!
RECORDS, INC., TVT MUSIC II, LLC, WHITE RHINO : Index No. 603116/02
MUSIC II, LLC, DUTCHMASTAS II, LLC, :

Plaintiffs,

- against -

PRUDENTIAL SECURITIES CREDIT CORP., LLC,

Defendant.

FILED
SEP 16 2005
NEW YORK
COUNTY CLERK'S OFFICE

-----X
Herman Cahn, J.

Plaintiffs move (seq. no. 008) for a preliminary injunction restraining defendant secured creditor from withholding certain revenues deposited in a Cash Collateral Account established pursuant to the parties' Loan Agreement, dated February 19, 1999, CPLR 6301.

This action was commenced shortly after defendant's commencement of a companion case entitled *Prudential Securities Credit Corp., LLC v Teevee Toons, Inc.* (index No. 603112/02), which sought foreclosure of Prudential's security interest in collateralized assets of the TVT entities on account of an outstanding indebtedness of more than \$16,000,000.00.¹ By decision and order in the companion case, dated September 23, 2003, the court granted Prudential's motion for summary judgment and directed a turn-over of the collateralized assets (*affd* 5 AD3d 226 [1st Dept 2004]). The assets, consisting of valuable copyrighted and trademarked musical works, have remained in Prudential's possession, and under its supervision and control, since that time.

¹ The original loan amount was \$23,500,000.00.

The TVT entities commenced this action, claiming various breaches by Prudential of the parties' February 19, 1999, loan-related agreements, and related causes of action. By decision and order dated October 3, 2003, the court granted Prudential's motion to dismiss the original complaint with leave to replead one surviving cause of action, alleging that Prudential breached Loan Agreement § 2.9 by failing to remit certain Cash Collateral and Lockbox deposits to the TVT entities (*affd* 8 AD3d 134 [1st Dept 2004]).

Factual and Procedural Background:

Plaintiff TeeVee Toons, Inc. ("TeeVee") is an independent record label. The remaining plaintiffs are entities affiliated with TeeVee (collectively, the "TVT Entities"). Plaintiff TVT Catalog Enterprises LLC ("Catalog") was created as a Special Purpose Entity for the purpose of borrowing \$23,500,000.00 from UCC Lending Corp. under a series of agreements entered into on February 19, 1999 (the "Transaction Documents"). Plaintiffs TVT Music II, LLC, White Rhino Music II, LLC and Dutchmastas II, LLC are all subsidiaries of Catalog (collectively, the "SPE Subsidiaries"). Said loan was eventually assigned to Prudential.

The Transaction Documents include: (1) a Loan Agreement among Catalog (as borrower), the SPE Subsidiaries, and Prudential (as lender); (2) a Security Agreement among Catalog (as borrower), the SPE Subsidiaries, and Prudential (as lender); and (3) a Management Agreement among TeeVee (as manager), Catalog (as borrower), the SPE Subsidiaries, and Prudential (as lender). Steven Gottlieb, president of each of the plaintiffs, signed the Transaction Documents on behalf of Catalog, TeeVee, and each of the SPE Subsidiaries.

TeeVee distributes a wide array of music. It alleges that in the late 1990s, Prudential approached it and sought to have it accept a record royalties securitization loan, a

unique financial product that Prudential was marketing to potential clients in the record industry. Prudential promoted this product as a non-recourse, low-risk, financial vehicle that would give TeeVee substantial monetary benefits without jeopardizing its assets or posing a threat of disruption to its operations, even if royalty income were to decline and trigger a loan default.

Pursuant to the Transaction Documents, Catalog used the principal of the loan to buy from TeeVee specific assets, the best known of which included a compilation of recordings known as Television's Greatest Hits and music by the group Nine Inch Nails, which were to serve as the collateral for the loan. Per the Transaction Documents, gross revenues generated by those assets were to be deposited in a Cash Collateral Account, preparatory to distribution to Prudential, at 63%, and to Catalog, at 37% (Management Agreement §§ 1.01 at 4, 2.02). Such revenues, thus, generated debt service for Prudential's benefit, and income for Catalog.

While the assets were still under Tee Vee's management, i.e., prior to the TVT Entities' default and resultant seizure of the collateralized assets by Prudential,² Tee Vee was

² Under the Loan Agreement, the collateralized assets must reflect a minimum one-to-one (1.00:1.00) Debt Service Coverage Ratio immediately preceding the first of the month installment payment date. Failure of the assets to satisfy that ratio is an express "Event of Default" under the Loan Agreement (Loan Agreement § 9.1 [j]). Moreover, failure of the assets to reflect a minimum Debt Service Coverage Ratio of 1.15:1.00 for such period constitutes what is referred to as both a "Termination Event" and a "Coverage Deficiency Event" under the Loan Agreement and the Management Agreement (Loan Agreement § 1.1 at 4, 18; Management Agreement § 1.01 at 10). On June 30, 2001, Catalog advised Prudential that the Debt Service Coverage Ratio was not in compliance with the contractual threshold and, on September 21, 2001, further advised Prudential that the ratio would deteriorate to the point of being a Termination Event by the end of October 2001. Accordingly, by Catalog's own admission, both an Event of Default and a Termination Event have occurred under the Loan Agreement. Based on Catalog's conceded default, Prudential commenced the related action in August 2002 seeking a judgement of foreclosure of its security interest in the collateral. As stated earlier, Prudential was awarded summary judgment in September 2003. The instant motion deals with the pre-termination, pre-seizure, obligations of Tee Vee to exploit the collateral while it was still under its control.

obligated to exploit the assets for Prudential's benefit, subject to the aforesaid percentage distributions. Specifically, the Management Agreement (§ 2.01 [a]) provides that:

The Manager^[3] hereby agrees to use its best efforts in accordance with past business practice to protect, defend and Exercise Rights in the Collateral and to make collections in respect thereof on behalf of the Borrower^[4] and each SPE Subsidiary^[5] with due regard to the protection of the interests of the Lender^[6] herein.

"Exercise Rights" is defined therein as follows: "sell, lease, license, exercise, exploit, promote, market, publicize or otherwise deal in or dispose of Rights in the Collateral (or license a Person to do any or all of the foregoing)" (*id.*, § 1.01 at 4).

"Collateral," referring to the collateralized musical rights and recordings lying at the heart of this and the related action, is particularly defined in schedules attached to the Transaction Documents, and will be discussed more thoroughly, *infra*.

As a mechanism plainly designed for creditor supervisory control, section 5.02 of the Management Agreement required Tee Vee to deposit all revenues into a Cash Collateral Account, whether derived from the collateralized assets, or not. As a counter-balancing measure, Tee Vee was entitled – indeed, required – promptly after deposit, to furnish a written allocation statement identifying which portion was derived from the Collateral and, thus, subject to the aforesaid percentage sharing arrangement with Prudential (Management Agreement § 5.02). Naturally, deposits consisting of revenues from non-collateralized assets, i.e., assets not listed in

³ Manager is defined as Tee Vee (Management Agreement § 1.01 at 6).

⁴ Borrower is defined as Catalog (*id.*, at 1).

⁵ SPE Subsidiaries are defined as the remaining plaintiffs (*id.*).

⁶ Lender is defined as defendant's predecessor – UCC Lending Corp. (*id.*).

the collateral schedules attached to the Transaction Documents, are allocable, solely, to the TVT Entities.

On this motion, the TVT Entities assert that Prudential is wrongfully withholding approximately \$630,000.00 in deposits which are derived from non-collateral assets. They assert that Prudential has done so, and continues to do so, despite detailed allocation statements furnished to it in full accord with the Management Agreement (*see, Savcic Aff., passim*).

Prudential responds that the subject deposits must be deemed as derived from the collateral and, thus, subject to the 63:37 allocation formula. Specifically, Prudential asserts – and the TVT Entities do not deny – that the deposits derive from sales by the TVT Entities of a music album called “TV Guide: 50 All-Time Favorite TV Themes” (the “TV Guide Album”), during the term of the Transaction Documents. That album contains music tracks which were previously marketed by the TVT Entities as “Television’s Greatest Hits,” a specific category on the list of Collateral, attached to the Security Agreement (Category E).

Since the filing of this motion, the TVT Entities have acknowledged that of the 50 tracks recorded on the TV Guide Album, 21 are collateral derivative. Prudential maintains the correct number of collaterally derived is 43. Thus, the disposition of this motion revolves around the factual issue of how many of the music tracks found on the TV Guide Album are collateral as to which Prudential is entitled to a 63% share of gross revenues pursuant to the Management Agreement.

An evidentiary hearing was conducted before the undersigned, at which Steven Gottlieb, president of the TVT Entities, testified.

The Credible Evidence Adduced at the Hearing:

Gottlieb executed the Transaction Documents (Tr. at 14).⁷ The Management Agreement terminated in July 2002 (*id.*, at 78). Gottlieb acknowledged that, pursuant to the Management Agreement, Tee Vee was obliged to protect and exploit the collateralized assets with due regard for Prudential's rights therein (*id.*, at 20-21). For that, Tee Vee received its 37% manager's fee (*id.*, at 21, 23-24). Tee Vee was also required to bear the production costs for the assets (*id.*, at 21-22; *see*, P-Ex. 3 [Management Agreement] § 2.01 [f] [i]).⁸

On the other hand, Gottlieb understood that exploitation of non-collateralized assets by the TVT Entities was permitted, and for their exclusive benefit (Tr. at 24). Tee Vee released the TV Guide Album on October 29, 2002 (*id.*, at 82). He explained that it was an idea distinct from the Television's Greatest Hits series, which was listed as collateral in conjunction with the Transaction Documents (*id.*). For example, the album cover was designed as a TV Guide production (T-Ex. 1).⁹

The management of TV Guide Magazine approached Gottlieb with the idea of producing a television theme song album to celebrate the magazine's 50-year anniversary, which also involved a planned televised special to be broadcast by ABC, and the publication of a coffee table book about the magazine (Tr. at 83, 85). Gottlieb explained that the TVT Entities could never acquire the rights to the graphics of the television stars depicted on the album cover,

⁷ References to "Tr." are to the hearing transcript.

⁸ References to "P-Ex." are to Prudential's exhibits admitted in evidence at the hearing.

⁹ References to "T-Ex." are to the TVT Entities' exhibits admitted in evidence at the hearing.

without TV Guide's cooperation (*id.*; T-Ex. 1). As Gottlieb explains, the TV Guide project was "out of reach to the Television's Greatest Hit franchise" due to the exclusive rights which TV Guide possessed (Tr. at 84). Had the TVT Entities gone forward with such a project, billed as a "Television's Greatest Hits" album, it would have cost much more – perhaps, unfeasibly more – because the Entities would have had to purchase the rights which TV Guide already owned (*id.*).

Gottlieb testified that TV Guide protested any notion that the planned album would be just another link in the Televisions Greatest Hits series of albums (Tr. at 84-85). TV Guide was focused only on promoting the magazine (*id.*, at 85).

Gottlieb pointed out at the hearing that the concept of the TV Guide Album, as manifested by its cover and diverse content, differed greatly from that of the Television's Greatest Hits series of albums (Tr. at 86-88). Unlike the former, the latter were consistently marketed based on generational genres of TV theme songs, categorized by decade (*compare* T-Ex. 1 *with* T-Ex. 2). The former, on the other hand, is based on the concept of an overall 50-year TV Guide history, as expressed through 50 years of television theme music (*id.*).

Prudential argues that the TVT Entities had no right to engage in the TV Guide project, as it diverted them from their managerial, contractual, duty to "use its best efforts" to "sell, lease, license, exercise, exploit, promote, market, publicize or otherwise deal in or dispose of Rights in the Collateral (or license a Person to do any or all of the foregoing)" (Management Agreement §§ 1.01 at 4, 2.01 [a]). However, Gottlieb observed that none of the Transaction Documents contain a covenant restricting Tee Vee from pursuing its own avenues of income during the contract term (Tr. at 88-89). He testified that such a clause was proposed by Prudential, but rejected by the TVT Entities (*id.*, at 89). Prudential has submitted no admissible

evidence to refute that testimony. Indeed, Gottlieb made the point that such a restriction could have been plainly and succinctly stated without the patent complexity and detail of the Transaction Documents (*id.*, at 89).

In other words, Gottlieb maintains that while the TVT Entities bargained away their right to freely market past and future Television's Greatest Hits records, they did not bargain away their right to engage in other, exclusive, business enterprises. As he put it, "[t]hey weren't lending against my talents in any manner, shape or form" (Tr. at 89.)

Gottlieb's point is borne out by the contractual language itself (*Slamow v Del Col*, 79 NY2d 1016, 1018 [1992] ["The best evidence of what parties to a written agreement intend to say is what they say in their writing"]; *W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162 [1990] ["a familiar and eminently sensible proposition of law is that, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms"]). The parties entered into an exhaustively detailed "Collateral" list (Management Agreement Ex. 1.1). Particular categories, or "catalogs," of recordings are listed -- Items A through K. A comparison between Category A, the "Connells Catalog," and Category E, the "Television's Greatest Hits" Catalog, highlights the careful negotiations which went into the TVT Entities' decision to collateralize certain of its assets, as opposed to the wholesale encumbrance of all its business activity -- the notion which Prudential strenuously promotes in opposition to this motion.

Item A (i) lists various musical titles and master recordings by the group, the Connells, owned by or licensed to the TVT Entities. Item A (iv) goes on to include within the scope of this category of Collateral, "any and all future Records or Masters created by the

Connells.” Thus, as for any musical recordings by the Connells, whatsoever, as to which the TVT Entities own or have license to, they are collateralized, and subject to the percentage arrangement between Prudential and Tee Vee.

Item E, on the other hand, listing Television’s Greatest Hits recordings, stands in stark contrast. As with the Connells, the Television’s Greatest Hits category of Collateral begins with a list of various albums within that series, i.e., volumes 1 through 7, and another titled “CBS: The First 50 Years.” However, whereas Item A (iv) (the “Connells”) included “any and all future Records or Masters created by the Connells,” Item E (iv) is dramatically limited, as follows: “any and all future Records and Masters created or licensed as or under the title, name or Mark of ‘Television’s Greatest Hits.’” (Emphasis added. *See, Muzak Corp. v Taft Hotel Corp.*, 1 NY2d 42, 46 [1956]).¹⁰

Plainly, therefore, Prudential was not contractually entitled to 63% of any future TV theme enterprise conducted by the TVT Entities. Rather, as Gottlieb testified, the TVT Entities negotiated for themselves the ability to leave free from encumbrance, any future TV theme enterprise not “created or licensed as or under the title, name or Mark of ‘Television’s Greatest Hits.’” The TV Guide Album was not so created or licensed, at least with regard to two categories of tracks: (1) tracks which never before appeared on prior albums of the Television’s Greatest Hits series;¹¹ and (2) tracks which appeared before on prior albums of that series, but for

¹⁰ Item E (v) is similarly limited, to “any and all Marks now owned or hereafter acquired and/or used by the Manager or any of its affiliates in the name ‘Television’s Greatest Hits.’”

¹¹ No dispute among the parties exists as to this category of music. Prudential does not maintain that it is Collateral. There are seven such tracks on the TV Guide Album (T-Ex. 3).

which Catalog only owned limited licenses, as opposed to outright ownership of the master recordings.¹² Steven Gottlieb explained the two categories, as follows.

Gottlieb testified, without rebuttal, that a producer of a track of music who is not the actual copyright owner, must obtain what is known as a “mechanical license” for use of the song itself, as to which the song composer is, most often, the copyright holder (Tr. at 61, 98-99). In order to own the right to freely market the song, the producer must also obtain a “master license” for the musical performance, or, expression, of the song (*id.*, at 98-99). Catalog owned master licenses to no more than 21 performances on the TV Guide album (*id.*, at 100-01; T-Ex. 3). The TVT Entities admit that Prudential is entitled to 63% of the gross revenue earned by them on account of those songs, but dispute its entitlement on the balance of the tracks.

Gottlieb further explained that, alternatively, a producer may obtain a limited, “statutory license” for the song, which allows for the purchase of the right to use an already recorded song at a specific price, and on specific terms, even in cases where there is no actual consent from the copyright holder to license the song (Tr. at 99-100). His testimony comports with section 115 of the Copyright Act of 1976 (11 USC 115) “which, generally speaking, permits one wishing to record a copyrighted nondramatic musical work to do so in the absence of the copyright owner’s consent in exchange for payment of a statutory royalty” (*Cherry River Music Co. v Simitar Entertainment, Inc.*, 38 F Supp 2d 310, 312 [SD NY 1999]). As to such songs, the producer cannot own a master license to freely market the song, as he or she is limited to the specified use for which the statutory license was issued (*id.*). Catalog held such limited licenses

¹² The parties are in dispute as to this category of music. Prudential maintains that it is Collateral. There are 22 such tracks on the TV Guide Album (T-Ex. 3).

to 22 distinct performances on the TV Guide Album (T-Ex. 3). Prudential asserts a 63% right to the gross revenues earned by the TVT Entities on account of those songs. The Entities deny such a right, as follows.

Gottlieb persuasively testified that the understanding of the parties, as manifested by the language of the Transaction Documents, was that only those future musical productions containing tracks as to which Catalog owned the master license, were Collateral (Tr. at 102). The Music Rights Schedule attached to the parties' definition of Collateral (Security Agreement Ex. 1.1) includes, as Collateral, "any and all future Records and Masters created or licensed as or under the title, name or Mark of "Television's Greatest Hits." "Record[s]" is defined as "every form of reproduction, transmission or communication of Masters . . ." (*id.*, Ex. 1.1 at 2.) "Masters," in turn, is defined as "every recording . . . owned or controlled by the Borrower [i.e., the TVT Entities] . . ." (Loan Agreement § 1.1 at 13.)¹³ Pursuant to that understanding, Prudential possesses no creditor rights in the 22 performances as to which the TVT Entities only had limited rights of production, as such property was never "owned or controlled" by them and, thus, were never encumbered under the Transaction Documents.¹⁴

Absent evidence to the contrary, and in the face of the contractual definitions, aforesaid, the court accepts Gottlieb's testimony as to the scope of property subsumed within the definition of Collateral under the Transaction Documents. Accordingly, plaintiff's motion for a

¹³ Section 1.1 of the Security Agreement incorporates the definitions set forth in the Loan Agreement.

¹⁴ Tee Vee owned no portion of the TV Guide Album itself; rather, it received a licensing fee based on net profits pursuant to a Merchandising License Agreement between it and TV Guide Magazine Group, dated June 5, 2002 (Tr. at 30; T-Ex. 14).

preliminary injunction restraining defendant from withholding certain revenues deposited in the Cash Collateral Account is granted, to the extent of deposits attributable to the 22 tracks of the TV Guide Album as to which plaintiffs did not own master licenses.¹⁵

Thus, of the 50 tracks contained in the TV Guide Album, 21 are conceded by the TVT Entities to be Collateral because they fall within the parties' definition of Collateral (Security Agreement Ex. 1.1). The TVT Entities owned the master licenses to those tracks, which were all previously marketed in the Television's Greatest Hits series of albums (T-Ex. 3). Both criteria being present, Prudential may retain a 63% share of the gross revenues generated by those tracks, as deposited in the Cash Collateral Account by the TVT Entities. Accordingly, plaintiff's motion for a preliminary injunction restraining defendant from withholding certain revenues deposited in the Cash Collateral Account is granted, to the further extent of deposits attributable to 37% of the gross revenue from the 21 tracks of the TV Guide Album as to which plaintiffs own master licenses.¹⁶

Seven remaining tracks contained in the TV Guide Album were neither owned by Catalog or licensed by the TVT Entities for purposes of Television's Greatest Hits albums (T-Ex. 3). As such, Prudential is not entitled to any deposits deriving from such tracks, and plaintiff's motion for a preliminary injunction restraining defendant from withholding certain revenues deposited in the Cash Collateral Account is granted, to the further extent of deposits attributable

¹⁵ Such tracks are identified in TVT Entities' Exhibit 3 as nos. 9, 12, 15, 19-20, 22-23, 25-27, 29-31, 34-37, 39-43.

¹⁶ Such tracks are identified in TVT Entities' Exhibit 3 as nos. 1-8, 10-11, 13-14, 16-18, 21, 24, 28, 32-33, 38.

to such tracks.¹⁷

At the hearing, Prudential argued that the TVT Entities were in breach of the Transaction Documents by engaging in the TV Guide Album venture instead of working to exploit the Television's Greatest Hits series of albums, collateralized in Prudential's favor. It made reference to a letter from Gottlieb to Tom Terchek, Prudential's vice president, dated September 21, 2001 (Tr. at 48; P-Ex. 12). In it, Gottlieb, on Catalog's behalf, proposed the release of "no fewer than 3 new Television's Greatest Hits (TVGH) compilations by next Christmas" (P-Ex. 12). No such releases ensued.

The argument is without merit. First, as explained above, the TVT Entities' obligation to exploit Collateral for Prudential's benefit does not contain any restriction on efforts by them to exploit their own, non-collateralized, property.

Second, Gottlieb testified, without rebuttal, that his September 2001 desire to release three Television's Greatest Hits albums was later tempered by the realization that the market was not ready for it at that time (Tr. at 55). An eighth volume of Television's Greatest Hits¹⁸ simply could not yet be profitably produced, in Gottlieb's estimation, due to a dearth of new repertoire to support market demand for such an album (*id.*, at 95-96). Gottlieb understood that the Transaction Documents did not place an unqualified obligation on the TVT Entities to produce continuous revenue for Prudential, through blind exploitation of the Collateral, under circumstances which would have been hurtful to their own economic interests, and under which

¹⁷ Such tracks are identified in TVT Entities' Exhibit 3 as nos. 44-50.

¹⁸ Seven "Television's Greatest Hits" albums had been produced at the time of execution of the Transaction Documents (*see*, Security Agreement Ex. 1.1 [II] [E] [i]).

no profit could be realized (*id.*, at 96). Nothing in the Transaction Documents contradicts that understanding, and no evidence was presented by Prudential to refute it.

Conclusion:

A preliminary injunction may issue where the movant shows a likelihood of success on the merits; irreparable harm absent the injunction; and a balancing of the equities in its favor (*Bishop v Rubin*, 228 AD2d 222 [1st Dept 1996]; *Headquarters Buick-Nissan, Inc. v Michael Oldsmobile*, 149 AD2d 302 [1st Dept 1989]). Plaintiffs have amply satisfied these factors.

As explained above, the credible evidence at the hearing, as well as the contractual language, demonstrate that master recordings contained in the TV Guide Album which the TVT Entities did not own outright were not included in the Collateral identified in the Transaction Documents. The equities lean in favor of plaintiffs, which have apparently complied with their contractual duty to deposit both collateral and non-collateral income into the Cash Collateral Account, along with allocation statements.

Accordingly, it is

ORDERED that plaintiffs' motion for a preliminary injunction restraining defendant from withholding certain revenues deposited in a Cash Collateral Account established pursuant to the parties' Loan Agreement, dated February 19, 1999, is granted in accordance with the foregoing decision; and it is further

ORDERED that the issue of the exact amount owing to plaintiffs in accordance herewith is respectfully referred to a Special Referee, to hear and report; and it is further

ORDERED that plaintiffs shall serve a copy of this decision and order on the

Office of the Special Referees' Part within 20 days from the date hereof, in order to schedule a hearing thereon.

Dated: September 14, 2005

ENTER:


J. S. C.

FILED
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