

CDR Creances S.A.S. v Cohen
2008 NY Slip Op 33150(U)
November 21, 2008
Supreme Court, New York County
Docket Number: 109565/03
Judge: Walter B. Tolub
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB
Justice

PART 15

CDR CRÉANCES S.A. Successor to
Société de Banque Occidentale,

INDEX NO. 109566 /2003

Plaintiff,

MOTION DATE 10/17/08

- v -

MAURICE COHEN, SUMMERSON INTERNATIONAL
ESTABLISHMENT, BLUE OCEAN FINANCE, LTD.,
WORLD BUSINESS CENTER, INC., and
IDERVAL HOLDING, LTD.,

MOTION SEQ. NO. 017

Defendants.

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 ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Motion Sequences 017 and 018 are consolidated and resolved in accordance with the accompanying memorandum decision.

FILED

NOV 24 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 11/12/08

WALTER B. TOLUB, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

PRESENT: WALTER B. TOLUB
Justice

PART 15

CDR CRÉANCES S.A. Successor to
Société de Banque Occidentale,

INDEX NO. 109566/2003

Plaintiff,

MOTION DATE 10/17/08

- v -

MOTION SEQ. NO. 018

MAURICE COHEN, SUMMERSON INTERNATIONAL
ESTABLISHMENT, BLUE OCEAN FINANCE, LTD.,
WORLD BUSINESS CENTER, INC., and
IDERVAL HOLDING, LTD.,

Defendants.

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Motion Sequence 018 is consolidated with motion sequence 017 and resolved in accordance with the memorandum decision attached to the grey sheet for Motion Sequence 017.

Dated: 11/21/08

WALTER B. TOLUB, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: JAS PART 15

-----x
CDR CRÉANCES S.A.S., as Successor to
Société de Banque Occidentale

Plaintiff,

Index No. 109565/03
Mtn Seq. 017, 018

-against-

MAURICE COHEN, SUMMERSON INTERNATIONAL
ESTABLISHMENT, BLUE OCEAN FINANCE, LTD.,
WORLD BUSINESS CENTER, INC., and
IDERVAL HOLDING, LTD.,

Defendants.

FILED

NOV 24 2008

COUNTY CLERK'S OFFICE
NEW YORK

-----x
WALTER B. TOLUB, J.:

Motion sequence 017 and 018 are consolidated and resolved in the following memorandum decision.

This action and its companion, CDR Créances S.A.S., as Successor to Société de Banque Occidentale v. Leon Cohen, et al.

(Index No. 600448/2006) ("the 2006 Action"), arise out of a series of very complicated business transactions and two allegedly breached Pledge Agreements issued in 1991 (the "Pledge Agreements").¹

By motion sequence 017, plaintiff moves pursuant to CPLR 5228 for an order appointing a receiver of the assets and interests of defendant-judgment debtor World Business Center, Inc. ("World Business") Plaintiff obtained a default judgment

¹ A complete history of these transactions and information about the remaining defendants may be found in this court's prior decisions issued in this action (see, decision for motion sequence 009 and 010 (detailing remaining defendants) and sequence 012 and 013 (detailing background history).

against defendant World Business on September 24, 2008 in the amount of \$264,479,826.13 plus interest from August 1, 2008. By motion sequence 018, plaintiff moves for an order appointing a receiver of the assets and interests of defendant judgment debtor Iderval Holding, Ltd. ("Iderval").² Plaintiff obtained a default judgment against defendant Iderval on September 24, 2008 in the amount of \$264,479,826.13 plus interest from August 1, 2008.

Discussion

CPLR 5228 gives the court the discretion to appoint a receiver to facilitate the enforcement of a money judgment. The statute is specifically designed to allow a receiver to "get at" any property belonging to the judgment debtor in order to produce the income necessary to satisfy the judgment (see, CPLR 5228, Practice Commentary 5228.4 [McKinney's 2008]). The appointment of a receiver, contrary to the argument advanced by counsel for World Business, does not, as a prerequisite, require a showing that the judgment debtor has property which may be used to satisfy that judgement (Ryan v. Wagner, 143 AD 176 [2nd Dept 1911]).

The judgment in this action, awarded after multiple motions for relief, five years of voluntary and involuntary discovery delays and numerous violations of court orders, stems from an

²The court notes that there is no opposition to motion sequence 018.

action where the primary allegations against the defendants include claims of breach of contract and fraud. The actions and inactions of defendants World Business and Iderval make it quite clear to this court that any further court-ordered discovery would be futile. As such, it is this court's determination that the appointment of a receiver is not only appropriate, but necessary.

The court further notes that plaintiff has agreed to assume all of the costs of the receivership, thereby eliminating any concern over the dissipation of any available funds which may exist (see, Oppel v. Di Gangi, 84 AD2d 549 [2nd Dept 1981]). Upon successfully untangling and identifying any property which may be used to satisfy the outstanding judgment, this court will, upon presentation, authorize any orders necessary to complete the satisfaction of the judgment. Accordingly, it is

ORDERED that motion sequences 017 and 018, both of which seek the appointment of a receiver over the assets and interests of defendant judgment debtors World Business Center, Inc. (sequence 017) and Iderval Holding, Ltd. (sequence 018) are granted. Motion sequence 018 is granted without opposition; and it is further

ORDERED that Charles E. Boulbol, Esq, whose address is 26 Broadway, Suite 17H, New York, New York, 10004, telephone number 212-825-9457, is hereby appointed receiver for the purpose of

locating and marshaling all of the assets and interest of both aforementioned judgment debtors, in whatever form, tangible or intangible, including without limitation, all personal and real property, all accounts, cash securities, receivables, claims of any kind (liquidated or unliquidated, direct or derivative), any right to receive rent, any right to receive license fees, any right to receive royalties, any right to receive franchise fees, and the right to receive any other type of payment or consideration in any form, all causes of action, all fo the right, title and interest in and to any trade name, all of the right title and interest in and to any good will, books, and records of the judgment debtors, including books, records, or communications with any attorney or accountant acting for or providing advice to the judgment debtors, and including any tax returns filed with the taxing authority of any jurisdiction, any and all intellectual property, and the right title and interest to any and all additions accessions, replacements, substitutions, and renewals of or to any of the foregoing; and it is further

ORDERED that before undertaking any duties, the Receiver shall file an oath that he will faithfully perform his duties along with an undertaking in the amount of \$5,000 conditioned upon the faithful performance of the receiver's duties; and it is further

ORDERED that the aforementioned judgment debtors and each of

their respective directors, officers, employees, agents, representatives, attorneys, accountants, successors and assigns, and all other persons acting under their direction and control or in active concert or participation with them, be and are hereby ordered to turn over to the receiver any and all of the property described above and shall make available to the receiver any other books, records, or documents of the respective judgment-debtor; and it is further

ORDERED that the receiver shall take possession of all property described above now in the possession of any other person or entity, and shall receive all payments, in whatever form, now due or to become due to the above-named defendant judgment debtors up to the amount of any unsatisfied judgment against the judgment debtors; and it is further

ORDERED that the receiver shall not sell or dispose of any property turned over to him without further order of the Court; and it is further

ORDERED that the receiver may employ legal counsel or other professionals by approval of the Court upon letter application to the Court showing the consent of the attorneys for plaintiff-judgment creditor; and it is further

ORDERED that the receiver is authorized and directed to administer, collect, improve, maintain, operate, lease or repair any or all of the property coming into his or her possession for

the purpose of realizing the largest return from such property; to this end the receiver is authorized and directed to take such reasonable steps as may be in the ordinary course of business, but shall not expend more than \$10,000 for any discretionary expenditure or capital improvement without written approval of the judgment creditor; and it is further

ORDERED that the receiver is authorized, but not required, to obtain insurance as may be appropriate to insure against losses arising from fire, liability, theft, employee dishonesty, or other such casualties; and it is further

ORDERED that the receiver is authorized to institute, defend and carry on all legal proceedings in the State of New York, the United States, or any foreign jurisdiction which the receiver deems necessary or appropriate to protect or recover possession of any or all property of the judgment debtor, including to recover any of the books and records of judgment debtors or their respective directors, officers, employees, agents, representatives, attorneys accountants and all other persons acting under their direction and control or in active concert or participation with them, and to institute and prosecute suits to collect revenue due to the respective judgment debtors, to assert any claims belonging to them, and summary and other proceedings for the removal of any occupant of the judgment debtors' property; and it is further

ORDERED that the receiver shall deposit all funds at the time he receives them in his or her own name as receiver in such bank in the County of New York as the receiver shall select. The bank shall provide monthly statements to the receiver and to the attorneys for the judgment creditor; and it is further

ORDERED that no withdrawals shall be made from the receiver's account except as directed by the Court; and it is further

ORDERED that the receiver shall report at least monthly to the attorneys for the judgment creditors showing the assets in possession of the receiver, and all receipts and disbursements to and to report on any pending litigation and other activities of the receiver; and it is further

ORDERED that defendant judgment debtor Iderval Holding, Ltd., and each of its directors, officers, employees, agents, representatives, attorneys, accountants, successors and assigns, and all other persons acting under their direction and control or in active concert or participation with them, be and are hereby restrained from selling, assigning, transferring, encumbering, mortgaging, pledging, disposing of, or otherwise relinquishing to any person(s) or entity(ies) ownership, possession, custody or control of any interest in any property, real or intangible, and shall cooperate with the receiver to effectuate the purposes of this order to provide for the liquidation of the assets of

judgment debtor to satisfy the outstanding judgment; and it is further

ORDERED that defendant judgment debtor World Business Center, Inc. and each of its directors, officers, employees, agents, representatives, attorneys, accountants, successors and assigns, and all other persons acting under their direction and control or in active concert or participation with them, be and are hereby restrained from selling, assigning, transferring, encumbering, mortgaging, pledging, disposing of, or otherwise relinquishing to any person(s) or entity(ies) ownership, possession, custody or control of any interest in any property, real or intangible, and shall cooperate with the receiver to effectuate the purposes of this order to provide for the liquidation of the assets of judgment debtor to satisfy the outstanding judgment.

FILED
NOV 24 2008
COUNTY CLERK'S OFFICE
NEW YORK

This memorandum opinion constitutes the decision and order of the Court.

Dated: 11/24/08



HON. WALTER B. TOLUB, J.S.C.