

**General Elec. Capital Bus. Asset Funding
Corp. v Global Dev. Enters., Inc.**

2008 NY Slip Op 33378(U)

December 16, 2008

Supreme Court, New York County

Docket Number: 602021/08

Judge: Barbara R. Kapnick

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

PRESENT: Kapnick
Justice

PART 3am

General Electric Capital

INDEX NO. 602021 108

MOTION DATE _____

MOTION SEQ. NO. 001

Global Development Ent etal

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

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION

FILED
DEC 17 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 12/16/08

[Signature]
BARBARA R. KAPNICK J.S.C.
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):

* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IA PART 39

-----X
GENERAL ELECTRIC CAPITAL BUSINESS ASSET
FUNDING CORPORATION,

Plaintiff,

- against -

GLOBAL DEVELOPMENT ENTERPRISES, INC.,
JERICHO PANCAKE HOUSE, INC. and DAVID
CHEN,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER

Index No. 602021/08
Motion Seq. No. 001

FILED

DEC 17 2008

COUNTY CLERK'S OFFICE
NEW YORK

In this action, plaintiff General Electric Capital Business Asset Funding Corp. claims that defendants Global Development Enterprises, Inc. ("Global"), Jericho Pancake House, Inc. ("Jericho"), and David Chen ("Chen"), have failed to repay an indebtedness of \$1,128,337.34 due to plaintiff under a Forbearance Agreement dated February 18, 2008, as amended on March 27, 2008 (the "Forbearance Agreement") and related Loan Documents.

Plaintiff's Complaint alleges that pursuant to the Loan Documents, plaintiff loaned \$2,315,000.00 to Global to purchase restaurant equipment for use at Ground Round restaurant locations in New York. Global's obligations to plaintiff are secured by: (i) plaintiff's perfected security interest in the restaurant equipment, together with other specified furniture and fixtures (the "Collateral"); and (ii) guaranties executed by defendants Jericho and Chen, the Chief Executive Officer and President of both Global and Jericho.

Plaintiff claims that as of February 18, 2008, defendant Global had defaulted on its obligations under the Loan Documents, and defendants Jericho and Chen had each defaulted under their respective guaranty obligations.

Plaintiff further alleges in his Complaint that pursuant to the Forbearance Agreement, defendants confessed and admitted their unpaid debt and liability to plaintiff, and plaintiff agreed to forbear from exercising its rights and remedies against the defendants provided that defendants comply with the terms of the Forbearance Agreement and Loan Documents including the timely and complete payment of certain monthly installments and other specified amounts.

Plaintiff claims that defendants have consistently failed to make payments as required under the terms of the Forbearance Agreement.

The Complaint seeks to recover damages in the amount of \$1,128,337.34, the outstanding loan balance plus contractual fees in connection therewith, plus interest, costs and attorneys' fees for breach of the Forbearance Agreement And Loan Documents (first cause of action) and breach of the guarantees (second cause of action).

The Complaint also seeks: (i) a declaratory judgment declaring and adjudging that plaintiff is entitled to the immediate possession of the Collateral, including, but not limited to, the Collateral located at (a) Ground Round # 999862, 4959 Nesconset Highway, Port Jefferson, New York and (b) Ground Round #99837, 479 Montauk Highway, Bayshore, New York, which plaintiff may sell, hold, render unusable in place or otherwise dispose of in plaintiff's sole discretion, in accordance with its rights under the parties' agreements and as a secured party under the Uniform Commercial Code ("UCC"); and (ii) an injunction requiring that defendants forthwith deliver and relinquish the Collateral, at defendants' sole expense, to plaintiff or its representative (third cause of action).

Plaintiff now moves by Order to Show Cause for an order:

(1) granting plaintiff summary judgment pursuant to CPLR § 3212 and awarding plaintiff a money judgment in the principal amount of \$1,128,337.34, plus interest, costs and expenses, including attorneys' fees, against all the defendants;

(2) granting plaintiff a declaratory judgment stating that plaintiff is entitled to: (i) immediate possession of the Collateral and directing that defendants immediately deliver said Collateral to plaintiff; and (ii) hold, remove, maintain, render unusable, possess, sell or otherwise dispose of said Collateral, at the defendants' sole cost; and

(3) granting plaintiff an Order of Attachment pursuant to CPLR § 6201(3), attaching and securing the assets of defendant Chen in an amount not less than \$1,128,337.34, so as to enable satisfaction of any judgment in this action.

In signing the Order to Show Cause on October 24, 2008, this Court granted a temporary restraining order (TRO), pending the hearing of this motion, prohibiting Chen "from disposing of or transferring his assets up to \$1,300,000 out of New York State".

The Order to Show Cause was originally made returnable on November 6, 2008.

Defendants initially submitted an Affirmation from counsel in opposition to the Order to Show Cause dated October 31, 2008, and asked for more time to submit additional papers from David Chen, which was granted by the Court, and the Order to Show Cause was adjourned to December 9, 2008.

Prior to the second return date, counsel for defendant indicated that he would not be submitting any additional papers in opposition to the motion, and he reiterated this on the record on December 9, 2008.

Accordingly, based on the papers submitted and the oral argument held on the record on November 6, 2008 and December 9, 2008, plaintiff's motion for summary judgment is granted.

The Clerk may enter judgment in favor of plaintiff General Electric Capital Business Asset Funding Corporation and against defendants Global Development Enterprises, Inc., Jericho Pancake House, Inc. and David Chen in the sum of \$1,128,337.34, together with interest to be calculated by the Clerk from February 18, 2008, and costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

It is further ORDERED and DECLARED that plaintiff is entitled to immediate possession of the Collateral to the extent that it has not already been disposed of.

That portion of the motion seeking a pre-judgment order of attachment pursuant to CPLR § 6201 is, therefore, denied as moot.

Plaintiff's claim for attorneys' fees is severed and continued and an assessment thereof is hereby directed.

Upon filing of a note of issue, the payment of the proper fees, if any, and service of a copy of this order with notice of entry, the Clerk of the Trial Support Office shall place this

matter on the appropriate trial calendar for the above-directed assessment.

This constitutes the decision and order of this Court.

Dated: December 16, 2008



BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C

FILED
DEC 17 2008
COUNTY CLERK'S OFFICE
NEW YORK