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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENERAL ELECTRIC CAPITAL CORPORATION; CEF FUNDING II, LLC; and CEF FUNDING V, LLC,)	Case No. 2:09-CV-03296-JAM-EFB
)	
Plaintiffs,)	<u>ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL OF CLAIMS AGAINST EQUITY LENDERS AND TO SEVER EQUITY LENDERS' S COUNTER-CLAIMS, OR IN THE ALTERNATIVE ENTRY OF FINAL JUDGMENT</u>
v.)	
TEN FORWARD DINING, INC.; et al.;)	
)	
Defendants.)	
)	

This matter is before the Court on Plaintiffs General Electric Capital Corporation; CEF Funding II, L.L.C.; and CEF Funding V, LLC's (collectively "Plaintiffs") Motion For Voluntary Dismissal and to Sever Equity Lenders' Counterclaims, or in the Alternative For Entry of Final Judgment (Doc. # 134).¹ Plaintiffs are all citizens of Delaware. Defendant Equity Lenders, an Indiana Corporation, opposes the motion in part (Doc. #136). Plaintiffs filed a reply (Doc. # 137).

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¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled on May 16, 2012.

1 I. FACTUAL ALLEGATIONS & PROCEDURAL BACKGROUND

2 This action originated when Plaintiffs filed their Complaint
3 on November 29, 2009 (Doc. # 1). The Complaint alleges that
4 defendants Ten Forward Dining; Delightful Dining, Inc.; TGIA
5 Restaurants, Inc.; Kobra Restaurant Properties, LLC; and
6 Abolghassem Alizadeh (collectively the "Kobra Defendants"), but not
7 including Equity Lenders, defaulted on or breached seven written
8 loan contracts made with Plaintiffs. The loans were allegedly
9 secured by real and personal property generally associated with
10 restaurants (the "Kobra Properties"). Plaintiffs' complaint also
11 seeks declaratory relief against Equity Lenders because Equity
12 Lenders may have liens against a subset of the Kobra Properties
13 known as the "19373 Kobra Properties" and Plaintiffs seek to
14 establish the superiority of their own liens to Equity Lenders'.

15 Equity Lenders alleges that the owners of the 19373 Kobra
16 Properties defaulted on their obligations to Equity Lenders in
17 2009, and Equity Lenders foreclosed on November 19 or 20, 2009. In
18 early 2010, Equity Lenders alleges that it negotiated a pay-off
19 amount for Plaintiffs' remaining interest in the 19373 Kobra
20 Properties, but that there was a dispute as to the final pay-off
21 amount. Equity Lenders paid the pay-off amount demanded by
22 Plaintiffs under protest. The payoff resolved Plaintiffs' claim to
23 the 19373 Kobra Properties, but gave rise to Equity Lenders'
24 counter-claims.

25 Upon Equity Lenders' motion, the Court granted leave (Doc. #
26 126) to supplement its existing counterclaims with three new
27 counterclaims: 1) a counter-claim for an accounting of the actual
28 amount due to Plaintiffs after the default on the 19373 Kobra

1 Properties, 2) a counter-claim for declaratory relief as to the
2 parties' interests in the 19373 Kobra Properties, and 3) a counter-
3 claim for restitution of any overpayments made by Equity Lenders to
4 Plaintiffs in relation to the 19373 Kobra Properties. Equity
5 Lenders alleges in its counter-claims that \$338,800 in default
6 interest was overpaid to Plaintiffs and \$49,225.12 in attorney fees
7 were also paid, but the fees were not specifically attributed by
8 Plaintiffs to matters actually involving the 19373 Kobra
9 Properties.

10 Plaintiffs moved for summary judgment on claims 1-24 against
11 the Kobra Defendants (Doc. # 85). Summary judgment was granted
12 against those defendants by order on October 3, 2011 (Doc. # 94).
13 Plaintiffs then resolved claims against or received judgment
14 against defendants County of Placer (Doc. # 100); City of Elk Grove
15 (Doc. # 101); County of Sacramento, County of Nevada, and County of
16 Shasta (Doc. # 102); Apex Property Advisors Inc. (Doc. # 109);
17 State of California Employment Development Department (Doc. # 110);
18 and Mechanics Bank and the United States of America (Doc. # 128).

19 Now Plaintiffs move to voluntarily dismiss their remaining
20 claims against Equity Lenders and to sever Equity Lenders' counter-
21 claims from this action.² If the Court declines to sever the
22 counter-claims, Plaintiffs seek entry of final judgment as to all
23 other defendants.

24 This Court has jurisdiction pursuant to 28 U.S.C. § 1332

25
26 ² Plaintiffs originally moved to voluntarily dismiss only claim 25,
27 which is expressly pled against Defendant. In their reply,
28 Plaintiffs clarified that they seek to voluntarily dismiss all
claims against Equity Lenders' interests including claims 13 and
14.

1 because the lawsuit is between citizens of different states and the
2 amount in controversy exceeds \$75,000.

3
4 II. OPINION

5 A. Legal Standard

6 1. Voluntary Dismissal

7 Federal Rule of Civil Procedure 41(a)(2) permits a party, upon
8 order of the court, to voluntarily dismiss a claim without
9 prejudice. Westlands Water Dist. v. United States, 100 F.3d 94, 96
10 (9th Cir. 1996). When ruling on a motion for voluntary dismissal,
11 the court must consider whether the defendant will suffer any
12 prejudice resulting from dismissal. Id. If the defendant has also
13 pled a counter-claim against the party seeking voluntary dismissal,
14 the dismissal should only be granted over the defendant's
15 objections when the counter-claim "can remain pending for
16 independent adjudication." Fed. R. Civ. P. 41(a)(2).

17 2. Motion to Sever

18 Federal Rule of Civil Procedure 21 provides that "[a]ny claim
19 against a party may be severed and proceeded with separately."
20 Fed. R. Civ. P. 21. "[Rule 21] authorizes the severance of any
21 claim, even without a finding of improper joinder, where there are
22 sufficient other reasons" Khanna v. State Bar of Cal., No.
23 C-07-2587 EMC, 2007 WL 2288116, at *2 (N.D. Cal. Aug. 7, 2007)
24 (citing Wyndham Assocs. v. Bintliff, 398 F.2d 614, 618 (2d
25 Cir.1968)) (alterations in original). Claims may be severed if
26 they arise from different factual situations, involve different
27 legal questions, or if doing so would be more efficient. Id.
28 (citations omitted).

1 3. Entry of Final Judgment

2 Pursuant to Federal Rule of Civil Procedure 54(b), “[w]hen an
3 action presents more than one claim for relief, or when multiple
4 parties are involved, the court may direct entry of a final
5 judgment as to . . . fewer than all claims . . . if the court
6 expressly determine that there is no just reason for delay.” Fed.
7 R. Civ. P. 54(b). In order to make such a finding, “[a] district
8 court must first determine that it has rendered a ‘final judgment,’
9 that is, a judgment that is ‘an ultimate disposition of an
10 individual claim entered in the course of a multiple claims
11 action.’” Wood v. GCC Bend, LLC, 422 F.3d 873, 878 (9th Cir. 2005)
12 (quoting Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 7
13 (1980)). Then the district court must determine if there is a just
14 reason for delay before entering final judgment. Id.

15 B. Discussion

16 1. Motion for Voluntary Dismissal

17 Plaintiffs move for voluntary dismissal of all claims against
18 Equity Lenders. Plaintiffs indicate that since Equity Lenders
19 satisfied the outstanding debt against the 19373 Kobra Properties,
20 the claims against Equity Lenders related to those properties are
21 resolved. Equity Lenders does not oppose dismissal of the claims
22 against it so long as none of Equity Lenders’ claims or defenses
23 are prejudiced. In light of Equity Lenders’ non-opposition,
24 Plaintiffs’ motion to voluntarily dismiss all claims against Equity
25 Lenders is granted.

26 2. Motion to Sever

27 Plaintiffs seek to sever Equity Lenders’ counter-claims from
28 the present action. Plaintiffs argue that doing so will permit

1 them to foreclose on the other properties involved in this
2 litigation that do not involve Equity Lenders. Equity Lenders
3 opposes severance on the grounds that its counter-claims are more
4 efficiently resolved in the present action because discovery is
5 already underway.

6 In the Court's prior order (Doc. # 83) granting leave for
7 Equity Lenders to supplement its answer with additional counter-
8 claims related to the 19373 Kobra Properties, the Court analyzed
9 the relatedness of the counter-claims to Plaintiffs' original
10 claims as well as the judicial efficiency of allowing the counter-
11 claims to proceed in this action. The Court held that Equity
12 Lenders' counter-claims are related to the factual issues raised by
13 Plaintiffs' original claims, and that judicial economy is served by
14 permitting all of the claims to proceed in one action.

15 The Court hereby reaffirms its prior holding and notes that
16 discovery related to Equity Lenders' counter-claims is underway,
17 making severance less efficient than proceeding with the present
18 action. Having found that Equity Lenders' counter-claims are
19 related to Plaintiffs' original claims and that judicial efficiency
20 is served by adjudicating all of the claims related to the 19373
21 Kobra Properties in one action, the Court declines to sever Equity
22 Lenders' counter-claims and Plaintiffs' motion is denied.

23 3. Motion for Entry of Final Judgment

24 Plaintiffs also move for entry of final judgment with respect
25 to the non-Equity Lenders defendants pursuant to Rule 54(b).
26 Equity Lenders does not oppose entry of final judgment with respect
27 to the other defendants.

28 Plaintiffs' motion fails to identify the parties as to which

1 final judgment is sought. Plaintiffs note that the Court granted
2 summary judgment with respect to the claims against the Kobra
3 Defendants (Doc. # 94). However, the Court has not entered a
4 judgment with respect to all of the non-Equity Lenders defendants.
5 The Court notes that the City of Grass Valley was served with the
6 Complaint, but it has not appeared in this action. Further, the
7 City of Redding filed a single stipulation establishing the
8 superiority of its lien to Plaintiffs' (Doc. # 107). It is not
9 clear as to which defendants entry of final judgment is sought or
10 why entry of final judgment is proper as to particular defendants
11 or claims. Further, at least some defendants have no judgment
12 against them in this action, which is a prerequisite for entry of
13 final judgment. Therefore, the Court finds that entering final
14 judgment on the basis of Plaintiffs' motion is improper and the
15 motion is denied. In order for the Court to enter final judgment,
16 Plaintiffs must indicate each defendant against which entry of
17 final judgment is sought, the claim upon which final judgment
18 should be entered, and why entry of final judgment is proper as to
19 that defendant and claim.

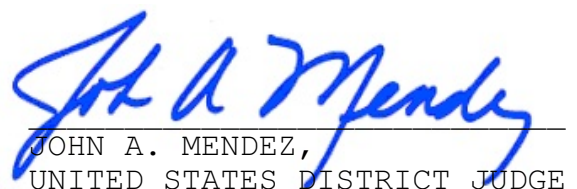
20 III. ORDER

21 For the reasons stated above:

- 22 1. Plaintiffs' motion for voluntarily dismissal is
23 GRANTED and all claims against Equity Lenders are
24 dismissed;
25 2. Plaintiffs' motions for severance and entry of final
26 judgment are DENIED.

27 IT IS SO ORDERED.

28 Dated: May 24, 2012


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE