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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GENERAL ELECTRIC CAPITAL CORPORATION, et al.,  
  
  Plaintiffs,  
  
  v.  
  
TEN FORWARD DINING, INC., et al.,  
  
  Defendants.

No. 2:09-cv-03296-JAM-AC  
  
**ORDER GRANTING PLAINTIFFS' MOTION FOR ENTRY OF FINAL JUDGMENT, IN PART**

This matter is before the Court on Plaintiffs General Electric Capital Corporation, CEF Funding II, L.L.C., and CEF Funding V, LLC's ("Plaintiffs") Motion for Entry of Final Judgment (Doc. # 155) and Motion for Appointment of a Post-Judgment Receiver to Manage, Maintain and Sell (Doc. # 159).<sup>1</sup> Defendants Kobra Restaurant Properties, LLC and Abolghassem Alizadeh (collectively the "Kobra Defendants") oppose each motion

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<sup>1</sup> The motions were determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing for both motions was originally scheduled for June 19, 2013.

1 (Doc. ## 160-161).

2  
3 I. BACKGROUND

4 This action originated when Plaintiffs filed their Complaint  
5 on November 29, 2009 (Doc. # 1). The Complaint alleges that  
6 defendants Ten Forward Dining; Delightful Dining, Inc.; TGIA  
7 Restaurants, Inc.; Kobra Restaurant Properties, LLC; and  
8 Abolghassem Alizadeh defaulted on or breached seven written loan  
9 contracts made with Plaintiffs. The complaint alleged that the  
10 loans were secured by real and physical property generally  
11 associated with the Kobra Defendants. Plaintiffs' Claims 9-10  
12 concern what is known as the 11726 Kobra Loan and Claims 11-12  
13 concern what is known as the 11794 Kobra Loan. Plaintiffs  
14 successfully moved for summary judgment against the Kobra  
15 Defendants on Claims 9-12 (Doc. # 94). Plaintiffs' twenty-fifth  
16 claim is for declaratory relief against other entities who may  
17 claim an interest in the Kobra Properties. Through the course of  
18 the litigation, Plaintiffs have either obtained summary judgment  
19 against each named entity or voluntarily dismissed outstanding  
20 claims. At this point, Plaintiffs contend that final judgment  
21 should be entered against the Kobra Defendants so that the two  
22 Kobra Properties can be foreclosed and sold in order to satisfy  
23 any outstanding debt.

24  
25 II. OPINION

26 A. Legal Standard for Entry of Final Judgment

27 Pursuant to Federal Rule of Civil Procedure 54(b), "[w]hen  
28 an action presents more than one claim for relief, or when

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

13 B. Discussion

14 1. Entry of Judgment

15 It is undisputed that Plaintiffs have resolved each of their  
16 pending claims against all defendants either by obtaining summary  
17 judgment or voluntarily dismissing outstanding claims. It is  
18 therefore clear that an ultimate disposition of each active claim  
19 in this action has been issued, and there is accordingly no  
20 reason to delay entering a final judgment for the entire action.  
21 The Kobra Defendants, however, dispute what form a final judgment  
22 should take. They argue that Plaintiffs have lost the right to  
23 foreclose on the 11726 and 11794 Kobra Properties at issue in  
24 Claims 9 through 12 and that the proposed judgment exceeds the  
25 scope of the complaint.

26 a. Waiver of Real Property Security Interest

27 The Kobra Defendants argue in opposition to the motion for  
28 judgment that Plaintiffs are improperly seeking both a money

1 judgment for breach of the underlying loan documents and  
2 foreclosure on two properties that secure the loans at issue in  
3 this suit. The opposition is only directed toward the 9th and  
4 11th causes of action where Plaintiffs seek damages for breach of  
5 loans secured by real property and the 10th and 12th causes of  
6 action where Plaintiffs seek to foreclose on the real property  
7 securing the loans.<sup>2</sup> The Kobra Defendants first argue that  
8 entering judgment for damages on those causes of action and  
9 entering judgment for Plaintiffs' foreclosure claims on the 10th  
10 and 12th causes of action violates California Code of Civil  
11 Procedure § 726's ("§ 726") single cause of action rule. The  
12 Kobra Defendants argue that § 726 requires a plaintiff suing to  
13 enforce a debt secured by real property to choose a money  
14 judgment for breach of contract or an action to foreclose on the  
15 property securing the debt, but a plaintiff cannot pursue both  
16 types of actions to judgment. The Kobra Defendants further argue  
17 that Plaintiffs already elected to pursue a money judgment when  
18 they sought and obtained summary judgment, and are now barred  
19 from foreclosing on the real property. Accordingly, the Kobra  
20 Defendants seek to limit Plaintiffs to a money judgment and  
21 prevent entry of judgment on the foreclosure causes of action.

22 In reply, Plaintiffs concede that they cannot obtain both a  
23 personal money judgment and foreclose on the properties, and they  
24 argue that they never intended to seek both forms of relief.

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25  
26 <sup>2</sup> The 10th and 12th causes of action also seek relief related to  
27 personal property collateral. The parties agree that Plaintiffs  
28 are entitled to judgment with respect to the personal property  
collateral, disputing only what relief is available with respect  
to the real property collateral.

1 Plaintiffs agree that insofar as their proposed judgment is  
2 unclear, it should be modified to contain only entry of judgment  
3 on their foreclosure cause of action along with a declaration of  
4 the outstanding debt owed on the loans. Plaintiffs concede that  
5 they cannot obtain a money judgment at this time, but reserve the  
6 right to seek a deficiency judgment in the event that the  
7 foreclosure sale does not net sufficient funds to cover the  
8 outstanding debt. Plaintiffs do oppose the Kobra Defendants'  
9 contention that the prior summary judgment order blocks entry of  
10 judgment on the 10th and 12th causes of action for foreclosure  
11 and replevin. Based on Plaintiffs' reply, it is clear that the  
12 parties agree that Plaintiffs are entitled to either foreclose on  
13 the properties or seek money judgment, not both. The only  
14 remaining question is whether or not Plaintiffs already elected a  
15 money judgment by seeking summary judgment on the 9th and 11th  
16 causes of action for breach of the underlying loan agreements.

17 California Code of Civil Procedure § 726(a) provides, "There  
18 can be but one form of action for the recovery of any debt or the  
19 enforcement of any right secured by mortgage upon real property  
20 or an estate for years therein, which action shall be in  
21 accordance with the provisions of this chapter. . . ." If a  
22 plaintiff pursues an action to enforce a debt secured by real  
23 property outside of the one authorized by CCP § 726, he is deemed  
24 to have waived his right to foreclose on the real property  
25 securing the debt. Walker v. Cmty. Bank, 10 Cal. 3d 729, 733  
26 (1974). "One of the primary purposes of the one-action rule is  
27 to protect the debtor from having to defend against a  
28 multiplicity of actions[, i.e.] ... bringing one to recover the

1 setoff and defending another by the creditor." Sec. Pac. Nat'l  
2 Bank v. Wozab, 51 Cal. 3d 991, 1002 (1990). Although § 726 bars  
3 multiple actions, a creditor is permitted to bring a single  
4 action for both foreclosure and a deficiency judgment. In re  
5 Pajaro Dunes Rental Agency, Inc., 156 B.R. 263, 266 (N.D. Cal.  
6 1993).

7 California courts have analyzed a number of types of  
8 actions in order to determine when the right to foreclose is  
9 deemed waived. For instance, "where the creditor sues . . . and  
10 seeks a personal money judgment against the debtor without  
11 seeking . . . foreclosure . . . , he makes an election of  
12 remedies, electing the single remedy of a personal action, and  
13 thereby waives his right to foreclose . . . ." Walker, 10 Cal.  
14 3d at 733. Obtaining a pre-judgment writ of attachment is also  
15 sufficient to waive the right to foreclose. Shin v. Superior  
16 Court, 26 Cal.App.4th 542, 549 (1994). Obtaining a default  
17 money judgment constitutes waiver. James v. P.C.S. Ginning Co.,  
18 276 Cal.App.2d 19, 23 (1969).

19 In this case, Plaintiffs brought a single action containing  
20 claims for breach of the loan documents and for foreclosure on  
21 the real property securing the loans and they obtained summary  
22 judgment on both types of claims. The Kobra Defendants have not  
23 cited any authority that bars such an action or limits a  
24 plaintiff to a money judgment under these circumstances. It is  
25 notable that § 726 is primarily concerned with preventing a  
26 multiplicity of suits, and Plaintiffs complied with that aspect  
27 of § 726 by filing a single action. The legal authority cited  
28 by the Kobra Defendants only indicates that Plaintiffs cannot

1 bring a separate personal action without first exhausting the  
2 security, but they have not done that. Through the present suit  
3 Plaintiffs seek to foreclose on their real property security  
4 interest and concurrently seek a determination of the  
5 outstanding debt due under the loan agreements for purposes of a  
6 deficiency judgment. This single action is compatible with  
7 § 726 because it seeks to exhaust the security interest first  
8 through the foreclosure causes of action.

9       The Kobra Defendants argument that the grant of summary  
10 judgment on Claims Nine and Eleven bar entry of judgment on  
11 Claims Ten and Twelve fails because all of the claims are  
12 contained in the same suit in accordance with § 726's policy of  
13 preventing a multiplicity of suits. It is true that Plaintiffs'  
14 complaint seems to seek both a personal money judgment and  
15 foreclosure in violation of § 726, but Plaintiffs now elect only  
16 to pursue entry of judgment on Claims 9 and 11 for purposes of a  
17 deficiency judgment. The judgment in this case shall  
18 accordingly give Plaintiffs the right to foreclose on the  
19 properties identified in Claims 10 and 12, but judgment on  
20 Claims 9 and 11 is limited to a declaration of the outstanding  
21 amount due for purposes of a deficiency judgment. Any conflict  
22 with § 726 is therefore resolved.

23                   **b. Proposed Judgment and Scope of Complaint**

24       The Kobra Defendants argue that the judgment proposed by  
25 Plaintiffs exceeds the scope of the complaint because it  
26 references cross-collateralization between all of the loans in  
27 this suit. The Kobra Defendants contend that the cross-  
28 collateralization agreement is not mentioned in the complaint,

1 and that the agreement was never perfected so it is  
2 unenforceable. Plaintiffs point out that paragraph 88 of the  
3 complaint clearly alleges cross-collateralization between all of  
4 the loans in this suit. Plaintiffs also argue that the deeds of  
5 trust associated with the 11726 and 11794 Kobra properties  
6 explicitly secure "all agreements and instruments between, among  
7 or by (a) any of the Borrower Parties, and, or for the benefit  
8 of, (2) any of the Lender Entities, including, without  
9 limitation, promissory notes and guaranties." (Doc. # 159-1 Ex.  
10 H, at 164 and Ex. I, at 194.)

11 Based on paragraph 88 of the complaint, it is clear that  
12 the cross-collateralization agreement was pled by Plaintiffs,  
13 but Plaintiffs never moved for judgment on that issue.  
14 Plaintiffs' motion for summary judgment (Doc. # 85-1) only  
15 sought judgment on each loan as to the corporate entity  
16 associated with it and Alizadeh in his personal capacity. The  
17 motion did not include a claim that the loans were cross-  
18 collateralized. It is also notable that the loan documents  
19 cited by Plaintiffs do not support a finding of cross-  
20 collateralization. For instance, the Kobra Deeds of Trust (Doc. #  
21 159 Exs. H and I) are between Kobra Restaurant Properties,  
22 L.L.C. as Trustor and GE Capital Franchise Financing Corporation  
23 as Beneficiary. The provision relied on by Plaintiffs in the  
24 deeds of trust states that the deed of trust also secures other  
25 agreements between the borrower parties, i.e., Kobra, and the  
26 lending entity, i.e. GE Capital Franchise Financing Corporation.  
27 Kobra is not a party to any of the other loan agreements at  
28 issue in this litigation, however, so the deeds of trust cannot



1 cross-collateralize agreements beyond those involving Kobra  
2 directly. Further, it is improper for Plaintiffs to effectively  
3 seek summary judgment on this issue in a Rule 54(b) motion.  
4 This issue should have been raised in Plaintiffs' original  
5 motion for summary judgment where it could have been fully  
6 briefed by all parties. In summary, the history of this  
7 litigation shows that Plaintiffs are entitled to liquidate the  
8 collateral guaranteeing each loan and, if the sum obtained is  
9 deficient, seek outstanding amounts from Alizadeh personally.  
10 Plaintiffs are not entitled to use the real property collateral  
11 securing the Kobra deeds of trust to satisfy the Ten Forward,  
12 Delightful Dining, or TGIA loans; they are limited to seeking  
13 any deficiency from Alizadeh personally pursuant to the grant of  
14 summary judgment on claims 15-16, 18, 20, 22, and 23.

## 15 2. Appointment of a Receiver

16 The Kobra Defendants contend that the motion to appoint a  
17 receiver should be denied first because Plaintiffs' causes of  
18 action for foreclosure are barred by their causes of action for  
19 damages and second because California law does not permit the  
20 appointment of a receiver who is empowered to sell the real  
21 property collateral. For the reasons discussed in the preceding  
22 section, Plaintiffs are entitled to entry of judgment on their  
23 foreclosure actions so the Kobra Defendants' first argument  
24 fails. Second, California Code of Civil Procedure  
25 § 712.060 explicitly permits courts to "appoint a receiver . . .  
26 to enforce a judgment for possession or sale of property." The  
27 Kobra Defendants rely on Hibernia Sav. & Loan Soc. v. Belcher, 4  
28 Cal. 2d 268, 271 (1935), and California Code of Civil Procedure

1 § 564, but the rule from those authorities applies to pre-  
2 judgment appointments. Plaintiffs' current motion seeks  
3 appointment of a post-judgment receiver, meaning that § 712.060  
4 controls. Additionally, Kobra agreed in the relevant deeds of  
5 trust that it would not oppose the appointment of a post-  
6 judgment receiver. Vangrunsven Decl. (Doc. # 159-1) ¶¶ 24-25.

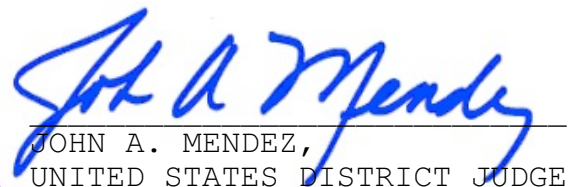
7 It is clear from Plaintiffs' motion on this issue that a  
8 post-judgment receiver will serve the interests of all parties  
9 by maintaining the Kobra properties pending their sale as well  
10 as the collateral associated with all of the loans at issue in  
11 this litigation. The Kobra Defendants have not cited any  
12 authority that limits the Court's authority to appoint a  
13 receiver. Plaintiffs' motion is accordingly granted.

14  
15 III. ORDER

16 Plaintiffs' motions for Entry of Judgment and Appointment  
17 of a Receiver are GRANTED. The Kobra Defendants are ordered to  
18 submit a proposed final judgment that accords with this order  
19 and is approved as to form by Plaintiffs within 10 days.

20 IT IS SO ORDERED.

21 Dated: July 3, 2013

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24 JOHN A. MENDEZ,  
25 UNITED STATES DISTRICT JUDGE