

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GENERAL ELECTRIC CAPITAL)
CORPORATION, a Delaware corporation,)
)
Plaintiff,)

v.)

Case No. 12-10380-GAO

TESTA CORPORATION, a Massachusetts)
corporation, in personam, TESTA LEASING)
CORPORATION, a Massachusetts corporation, in)
personam, MRP SITE DEVELOPMENT)
BUSINESS TRUST, a Massachusetts trust, in)
personam, DEMO, INC., a Massachusetts)
corporation, in personam, STEVEN D. TESTA, a)
individual resident and citizen of Massachusetts,)
in personam, the vessel "SHANA LEE" (Official)
Number 1078928), in rem, and the vessel "M/V)
ANNA" (Official Number 1085991), in rem,)
)
Defendants.)

PRELIMINARY INJUNCTION AND ORDER OF REPLEVIN

This matter comes before the Court on the Motion of Plaintiff, General Electric Capital Corporation ("GE Capital"), for an Order of Replevin, Temporary Restraining Order, and Preliminary Injunction (the "Motion"). Due and proper notice having been given to Defendants, Testa Corporation ("Testa Corp."), Testa Leasing Corporation ("Testa Leasing Corp." and together with Testa Corp., the "Debtors"), MRP Site Development Business Trust (the "Trust"), Demo, Inc. ("Demo"), and Steven D. Testa ("Testa," and together with the Trust and Demo, the "Guarantors", and together with the Debtors, the "Defendants"); the Court having subject matter and personal jurisdiction over the Defendants and the matters set forth in the Verified Complaint; the Court having considered the Verified Complaint and the exhibits attached thereto, the

Motion, the Affidavit of William A. Eynon (the "Eynon Affidavit"), and Plaintiff's Memorandum in support of the Motion:

IT IS HEREBY PROVISIONALLY FOUND THAT:

1. The Defendants are in payment default under the Agreements.¹
2. GE Capital possesses a first priority security interest in the equipment listed in "Exhibit U" to the Verified Complaint, and a list of that equipment (the "Equipment") is attached to this Order as "Exhibit A."
3. The Agreements entitle GE Capital to repossess and remove the Equipment in the event of a payment default by the Defendants.
4. To date, the GE Capital has not reclaimed, and Defendants have not returned, the Equipment.
5. The inability of Defendants to satisfy its arrearages to GE Capital indicates that Defendants likely would be unable to pay any substantial money judgment entered against them.
6. Defendants have or should have mechanisms which enable them to identify the location and operational status of the Equipment.
7. GE Capital will suffer irreparable injury for which no adequate remedy at law exists unless Defendants and other persons and firms having knowledge of this injunction are:
(a) enjoined from continuing to use the Equipment; (b) prevented from utilizing the Equipment;
(c) ordered to advise GE Capital of the precise location of each and every item of the Equipment;
and (d) ordered to surrender the Equipment to GE Capital.

¹ All capitalized terms not otherwise defined herein shall have the same meaning given to them in the Motion.

Based on these provisional findings, the Verified Complaint and exhibits attached thereto, IT IS HEREBY ORDERED THAT, effective immediately:

(a) The Motion (dkt. no. 2) is hereby granted.

(b) Defendants, and any of their responsible managing agents, officers, directors, or employees (acting within the scope of his or her office or employment), and any other person or entity in active concert or participation with them having actual notice of this Order by personal service or otherwise, are hereby enjoined and restrained as follows:

A. from using, leasing, encumbrancing, hypothecating, liening, assigning, pledging, selling, transferring, or disposing of the Equipment either in the operation of the business of Debtors or otherwise, except as may be necessary to move or transport the Equipment in order to comply with this Order; and

B. restricting, limiting or conditioning either the access of GE Capital to the Equipment, or GE Capital's ability to take possession of the Equipment.

(c) Defendants, and any of their responsible managing agents, officers, directors, or employees (acting within the scope of his or her office or employment), and any other person or entity in active concert or participation with them having actual notice of this Order by personal service or otherwise, are hereby required to:

A. contact GE Capital's representative, as set forth in Paragraph "(e)" below, by the end of the next business day following entry of this order, and at that time disclose the precise location of each and every item of Equipment; and

B. by the end of the second business day following entry of this order, surrender the Equipment in their possession, custody, or control to GE Capital at one or more locations to be designated by GE Capital's representative and take all actions necessary to allow

GE Capital to obtain access to and possession of the Equipment, including terminating sub-leases, if any, and obtaining the Equipment from any third parties who may have possession, custody, or control over the Equipment, including but not limited to third party sub-lessors.

C. if the Defendants fail to surrender the Equipment as ordered herein, GE Capital may employ the United States Marshals' Office to assist it in obtaining the Equipment, and the United States Marshals' Office is hereby authorized to use whatever reasonable means necessary in order to allow GE Capital to obtain access to and remove the Equipment from wherever the Equipment is located including, if necessary, employing a locksmith to gain entry onto any land or premises.

(d) Defendants shall immediately notify all responsible managing agents, officers, directors, and employees of Testa Corp., Testa Leasing Corp., the Trust, and Demo of the entry of this Order and the terms hereof.

(e) Plaintiffs' representative for purposes of this order is:

William A. Eynon
Phone: 1 203-749-6621
e-mail address: william.a.eynon@ge.com

(f) To the extent Paragraphs "(b)" through "(d)" are not satisfied, GE Capital is entitled to take discovery with respect to those issues on an expedited basis. Defendants shall respond to interrogatories, requests to produce documents and request for admissions within 3 business days after service. Service of such discovery requests may be by overnight delivery directed to the party's last known address, unless the Defendants notify GE Capital of other addresses to be used for this purpose. GE Capital may take depositions of the Defendants and non-party witnesses upon 48 hour notice to the other parties.

(g) Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, GE Capital shall post a bond in the amount of Twenty Five Thousand Dollars (\$25,000) as security for any costs and damages as may be incurred or suffered by the Defendants should any court later determine (i) that the injunction hereby was inappropriately granted or (ii) that such costs and damages incurred were caused to the physical property of the Defendants by GE Capital or those acting on its behalf in obtaining or removing the Equipment through unreasonable methods or means.

/s/ George A. O'Toole, Jr.
United States District Judge

Dated: March 22, 2012

EXHIBIT A

Make	Description	Model	Serial Number	location
Gradall	Gradall Excavator	XL 5200	5200000740	Plaistow, NH yard
Komatsu	Komatsu excavator	PC1250LC-7	20304	Schenectady, NY site
Brokk	Brokk excavator	180	941409	Plaistow, NH yard
	center console steel boat		CCSB-0001	Plaistow, NH yard
Weldcraft	aluminum workboat	1648VCDS	WKGG6115B696	Plaistow, NH yard
Weldcraft	aluminum workboat	1648VCDS		Plaistow, NH yard
	aluminum skiff			Saugus, MA job site
Robells	20' Aluminum Jon Boat		LOA118E606	Saugus, MA job site
Bobcat	open sweeper	BA18		
Atlas Copco	hydraulic hammer	SBC850	KAL000405 (33566)	Plaistow, NH yard
Atlas Copco	hydraulic hammer	SBC850	33723	Randolph, MA job
Caterpillar	Cat wheel loader	988G	CAT0988GHBNH00804	Slidell, LA job site
Caterpillar	skidsteer loader	226	MJH06885	Plaistow, NH yard
Caterpillar	skidsteer loader	226	CAT0226BPMJH7096	Plaistow, NH yard
Caterpillar	forklift attachment	226	65SSFP011858	Plaistow, NH yard
Caterpillar	Skidsteer loader	226	CAT022622668TMJH11356	Middleton, MA job
Caterpillar	skidsteer loader	262	CED01963	Newark, NJ yard
Caterpillar	mini excavator	302.5	4AZ00682	Plaistow, NH yard
Caterpillar	mini excavator	304.5	WAK01138	Plaistow, NH yard
Caterpillar	forklift attachment	980		
Caterpillar	forklift attachment	BF988F	7PW00433	Plaistow, NH yard
Caterpillar	forklift attachment	992		Slidell, LA job site
Caterpillar	hydraulic hammer	H-12X	41582	Milford, MA shop
Caterpillar	Cat excavator	235D	8KJ00311	Plaistow, NH yard
Caterpillar	skidsteer loader	257B	CAT0257BLSLK05454	Plaistow, NH yard
Caterpillar	Cat crawler tractor	977L	11K06494	Plaistow, NH yard
Caterpillar	Cat loader	980B	42H769	Plaistow, NH yard
Caterpillar	grapple bucket	988G	7KW00889	Slidell, LA job site
Caterpillar	boom	MHA988G	8AW00315	Plaistow, NH yard

Equipment Description and Location

Caterpillar	stone bucket	988G	7NW2127	Plaistow, NH yard
Caterpillar	forklift attachment	988G	7PW1270	Slidell, LA job site
Caterpillar	Cat water truck	D350D	9RF00440	Plaistow, NH yard
Caterpillar	Cat truck	D350D	9RF00441	Plaistow, NH yard
Caterpillar	hydraulic hammer	H50	5MZ00201	Milford, MA shop
Caterpillar	hydraulic hammer	H63		Plaistow, NH yard
Caterpillar	sweeper attachment	BA18	AZN00156	Plaistow, NH yard
Caterpillar	sweeper attachment	BA18		
	stacker with magnet			Newark, NJ yard
	cleats	13 CLEATS		Plaistow, NH yard
	ramp		F-67	Plaistow, NH yard
	ramp		F-45	Plaistow, NH yard
	ramp		F-185	Plaistow, NH yard
	ramp		M-62	Plaistow, NH yard
	ramp		M-68	Plaistow, NH yard
	ramp			Plaistow, NH yard
Flexifloat	Series 50 flexiboat		Connected to make barge	Everett, MA job site
Flexifloat	Series 50 flexiboat			Everett, MA job site
Flexifloat	Series 50 flexiboat			Everett, MA job site
	spud well			Plaistow, NH yard
Fuchs-Bagger	rubber tire excavator w/magnet	MHL350	22550200074	Haverhill, MA site
Genie	light tower	TML-4000N	TML02-640	Plaistow, NH yard
Genie	light tower	TML-4000N	TML02-641	Plaistow, NH yard
Hawco	hyd. clam bucket			Plaistow, NH yard
Komatsu	Komatsu excavator	PC 750 LC-6	10182	Chelsea, MA job site
Komatsu	Komatsu excavator	PC 1000 SE-1	10293	Newark, NJ yard
LaBounty	grapple	170HDR	17314	Plaistow, NH yard
LaBounty	shear	MSD175R	175910	Morrisville, PA job
LaBounty	shear	MSD200R	200107	Newark, NJ yard
LaBounty	shear	MSD200R	200108	Plaistow, NH yard
LaBounty	UP 90		UP9052	Plaistow, NH yard

LaBounty	Universal processor		90CP105	Plaistow, NH yard
LaBounty	cracker		90CC23	Plaistow, NH yard
LaBounty	grapple	170HDR	17229	
LaBounty	grapple	170HDR	17218	
LaBounty	grapple	140HDR	14606	Plaistow, NH yard
LaBounty	grapple	140HDR	14607	Plaistow, NH yard
LaBounty	grapple	140HDR	14608	Plaistow, NH yard
LaBounty	grapple	160HDR	16634	Plaistow, NH yard
LaBounty	grapple	160HDR	16637	Plaistow, NH yard
LaBounty	grapple	160HDR	16638	Plaistow, NH yard
LaBounty	grapple	160HDR	16478	
LaBounty	grapple	160HDR	16479	
LaBounty	grapple	160HDR	16480	
LaBounty	grapple	160HDR	16598	Plaistow, NH yard
LaBounty	grapple	160HDR	16633	
LaBounty	grapple	160HDR	16636	Plaistow, NH yard
LaBounty	grapple	170HDR	17315	Slidell. LA job site
LaBounty	grapple	170HDR	17306	Plaistow, NH yard
LaBounty	grapple	170HDR	17275	Newark, NJ yard
LaBounty	grapple	170HDRSA	17232	
LaBounty	Concrete pulverizer	CP100	100318	Plaistow, NH yard
LaBounty	Concrete pulverizer	CP120	CP120227	Plaistow, NH yard
LaBounty	shear	MSD105R	105508	Plaistow, NH yard
LaBounty	shear	MSD112	112582	Plaistow, NH yard
LaBounty	concrete pulverizer	UP20	20CP106	Plaistow, NH yard
LaBounty	shear jaw	UP20	20SH89	Plaistow, NH yard
LaBounty	Universal processor	UP20	UP20116	Plaistow, NH yard
LaBounty	Add A Boot		4398	Plaistow, NH yard
LaBounty	Add A Boot		4298	Plaistow, NH yard
LaBounty	Add A Boot		650-01	Plaistow, NH yard

Testa Leasing Corp.

Equipment Description and Location

Mantis	50 Ton crane	14010	100107	Plaistow, NH yard
Mantis	Transporter	MT60	8030	Plaistow, NH yard
Multiquip	Generator set w/trailer	Whisper	84000007	Plaistow, NH yard
NPK	hydraulic hammer	H-3X-A	33198	
NPK	hydraulic hammer	H-4XE	57439	Milford, MA shop
NPK	hydraulic hammer	H-8X	47054	Plaistow, NH yard
NPK	hydraulic hammer	E-208	72472	Plaistow, NH yard
NPK	hydraulic hammer	16X	54634	Plaistow, NH yard
NPK	hydraulic hammer	GH-15	82219	Middleton, MA job
NPK	grapple			
NPK	grapple		8604	Plaistow, NH yard
NPK	grapple		8605	Plaistow, NH yard
Read	screener	CV-150D	617	Chesapeake, VA
	Steel skiff workboat		CCSB-0002	Plaistow, NH yard
	barge			Chelsea, MA job site
Link Belt	125 ton truck crane	HC238	22G2-529A	Middleton, MA job
Multiquip	Generator with trailer	85 KV	8400021	Plaistow, NH yard
LaBounty	shear	MSD100R	100956	Middleton, MA job site
LaBounty	shear	MSD100R	100957	Auburn, ME job site
LaBounty	shear	MSD200	100945	Everett, MA job site
LaBounty	shear	MSD200	100946	Plaistow, NH yard
LaBounty	shear		200110	Newark, NJ yard
Elgin	Three Wheel Sweeper	Pelican SE	S-9260-D	
Impact	Single drum compactor	3000H	KG04R08812	Plaistow, NH yard
Impact	Single drum compactor	3000H	KG00R0978	Plaistow, NH yard
Caterpillar	Caterpillar Wheel Loader	992C	49Z00194	Slidell, LA job site
Komatsu	Komatsu Loader	WA450	A364467	Plaistow, NH yard
St. Paul Marine	Truckable Push Boat	25X14x4	1078929	Boston, MA job site
St. Paul Marine	Truckable Push Boat	25X14x4	995509	Slidell, LA job site
St. Paul Marine	Truckable Push Boat	25X14x4	1085991	Chelsea, MA job site

Testa Leasing Corp.

Equipment Description and Location

LaBounty	MSD Mobile Shear	3000R	630149	Madbury, NH job
LaBounty	MSD Mobile Shear	2000R	620095	Middleton, MA job
Kruz	Kruz dump trailer	Semi	1K9SD342X9K226789	Plaistow, NH yard
Kruz	Kruz dump trailer	Semi	1K9SD34269K226787	Plaistow, NH yard
Caterpillar	Cat water truck	D25D	1HK00719	Slidell, LA job site
Caterpillar	Cat Wheel Loader	IT62G	AKP00535	Newark, NJ yard
Caterpillar	Cat excavator	375L	1JM00433	Newark, NJ job site
Caterpillar	Cat Crawler Tractor	D6RIIXL	AAX01228	Plaistow, NH yard
Peterbilt	Peterbilt Tractor	379	2XP5DB0X44M825274	Plaistow, NH yard
Peterbilt	Peterbilt Tractor	379	2XP5DB0X44M825273	Plaistow, NH yard
Peterbilt	Peterbilt Tractor	379	2XP5DB0X84M825276	Newark, NJ yard
Peterbilt	Peterbilt Tractor	379	2XP5DB0X64M825275	Plaistow, NH yard
Peterbilt	Peterbilt Fuel Truck	330	2NPNHD7X44M813965	Plaistow, NH yard