

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
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**COUNTY OF OSWEGO INDUSTRIAL  
DEVELOPMENT AGENCY,**

**Plaintiff,**

**-v-**

**5:05-CV-926**

**FULTON COGENERATION ASSOCIATES, LP.,  
LIONS CAPITAL MANAGEMENT, LLC, aka  
LION CAPITAL MANAGEMENT, LLC, FIMAB,  
PROMENEUR & HAUSMANN, INC., EL PASO  
MERCHANT ENERGY-PETROLEUM COMPANY.,  
and ANR VENTURE FULTON COMPANY,**

**Defendants.**

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**APPEARANCES:**

Hiscock & Barclay, LLP  
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Attorneys for Plaintiff

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Attorneys for El Paso Merchant Energy-Petroleum  
Company and ANR Venture Fulton Company

**Hon. Norman A. Mordue, Chief U.S. District Judge:**

**MEMORANDUM-DECISION AND ORDER**

There are two motions pending in this case: plaintiff’s motion for summary judgment against all defendants (Dkt. No. 136), and a cross motion for summary judgment by defendants El Paso Merchant Energy-Petroleum Company (“El Paso”) and ANR Venture Fulton Company (“ANR”) (Dkt. No. 142).

Plaintiff has demonstrated its entitlement to summary judgment against defendants Fulton

Cogeneration Associates, LP. ("FCA"), Lions Capital Management, LLC, a/k/a Lion Capital Management, LLC ("Lions"), and Fimab, Promeneur & Hausmann, Inc. ("Fimab"). These defendants have not opposed the summary judgment motion; indeed, they have been in default in defending this action since their lawyer was granted leave to withdraw on March 30, 2007 (Dkt. No. 88). The remaining two defendants, El Paso and ANR, do not oppose summary judgment against FCA, Lions, and Fimab. Accordingly, summary judgment is granted against defendants FCA, Lions, and Fimab.

El Paso and ANR seek dismissal of plaintiff's claims against them. They contend that they owe no direct obligation to plaintiff, nor are they liable for any debt FCA, Lions, or Fimab may owe plaintiff. In the near future, the Court will issue a decision on plaintiff's summary judgment motion insofar as it seeks summary judgment against defendants El Paso and ANR. At that time, the Court will also address the cross motion (Dkt. No. 142).

It is therefore

ORDERED that plaintiff's motion for summary judgment (Dkt. No. 136) is granted as against defendants Fulton Cogeneration Associates, LP., Lions Capital Management, LLC, a/k/a Lion Capital Management, LLC, and Fimab, Promeneur & Hausmann, Inc.; and it is further

ORDERED that the Court reserves decision on plaintiff's motion for summary judgment (Dkt. No. 136) as against the remaining two defendants, El Paso Merchant Energy- Petroleum Company, and ANR Venture Fulton Company.

IT IS SO ORDERED.

Date: April 3, 2009  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge