

ISRAEL DECLARATION EXHIBIT 5

38 of 223 DOCUMENTS

**GENERAL RE FINANCIAL PRODUCTS CORPORATION, Plaintiff, -v-
SOUTHERN CALIFORNIA EDISON COMPANY, Defendant.**

01 Civ. 0348 (RO)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

2001 U.S. Dist. LEXIS 1117

**February 8, 2001, Decided
February 9, 2001, Filed**

DISPOSITION: [*1] Plaintiff's motion to confirm order of attachment denied and defendant's motion to vacate granted.

COUNSEL: For GENERAL RE FINANCIAL PRODUCTS CORPORATION, plaintiff: Mark G. Hanchet, Zeichner, Ellman & Krause, L.L.P., New York, NY.

For SOUTHERN CALIFORNIA EDISON COMPANY, defendant: Peter N. Wang, Friedman, Wang & Bleiberg, P.C., New York, NY.

JUDGES: Richard Owen, United States District Judge.

OPINION BY: Richard Owen

OPINION

MEMORANDUM AND ORDER

OWEN, District Judge:

Plaintiff General Re Financial Products Corporation ("GRFPC") seeks confirmation of an *ex parte* order of attachment entered on January 18, 2001. Defendant Southern California Edison Company ("SCE") appears, opposes, and moves to vacate.

Article 62 of the New York CPLR governs orders of attachment. Plaintiff bears the burden of establishing grounds sufficient for the order; plaintiff also bears the burden on the motion to confirm it. To determine whether the order of attachment should be confirmed, plaintiff must show that such order fulfills one of the purposes of an order of attachment, i.e., that it allows plaintiff to obtain jurisdiction over a nonresident defendant, or that it secures a potential judgment against [*2]

a nondomiciliary residing outside the state. *See ITC Entertainment, Ltd. v. Nelson Film Partners*, 714 F.2d 217, 220 (2d. Cir. 1983). Confirmation of the January 18, 2001 order would serve neither function.

Jurisdiction is not at issue here because in the swap agreement at issue the parties consented to jurisdiction in the Southern District of New York. Where defendant is subject to the jurisdiction of this Court, attachment is only justified "upon a showing that the defendant is attempting to dispose of his assets in order to frustrate the ability of the plaintiff to collect any judgment that might ultimately be obtained." *Ames v. Clifford*, 863 F. Supp. 175, 177 (S.D.N.Y. 1994). Plaintiff contends that the current energy crisis in California, and SCE's most recent financial statements suggest that SCE is on the verge of bankruptcy, therefore warranting the attachment.¹ Such a showing is insufficient to support an attachment. Rather, plaintiff must present evidence that defendant is deliberately trying to remove assets from the state with the purpose of frustrating plaintiff's future judgment. *See id.* at 178. While GRFPC asserts [*3] that SCE "will likely remove assets from the State of New York" (Aff. of Mark Hanchet, Jan. 18, 2001, P 15), it does not have evidence to support this contention beyond its repeated assertion that because of the current energy crisis, SCE is experiencing financial difficulties in timely satisfaction of various creditors. *See Reading & Bates Corp. v. Nat'l Iranian Oil Co.*, 478 F. Supp. 724, 727 (S.D.N.Y. 1979) ("When jurisdiction already exists, attachment should issue only upon a showing that drastic action is required for security purposes...plaintiffs' contention that there is no way of saying [certain] events will not happen does not satisfy their burden pursuant to *Section 6223(b)*").

¹ Disregarded is SCE's assertion that as of February 5, 2001, it has cash reserves of about \$ 1.36

billion. *See* Form 8-K, Current Report (Exhibit A to Aff. of Mark Hanchet, Feb. 7, 2001).

Accordingly, plaintiff's motion to confirm the order of attachment is denied, and defendant's motion to vacate is granted.

[*4] Submit order on notice.

Dated: New York, New York

February 8, 2001

Richard Owen

United States District Judge