

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**LEASING INNOVATIONS, INC., et al.,**

**Plaintiffs,**

v.

**Case No. 2:08-CV-1190  
JUDGE SMITH  
MAGISTRATE JUDGE KING**

**TARTAN FIELDS GOLF CLUB, LTD., et al.,**

**Defendants.**

**OPINION AND ORDER**

This matter is before the Court for consideration of the *Suggestion of Stay*, filed on behalf of the Receiver for Defendant Tartan Fields Golf Club, Doc. No. 40, and Plaintiffs' *Motion to Substitute Parties and Counsel*, Doc. No. 43. For the reasons that follow, both motions are granted.

**I.**

Plaintiffs, Leasing Innovations, Ed Falkowitz and Mary Ann Reifsnyder ["Plaintiffs"], commenced this action against Tartan Fields Golf Club, Ltd., Thomas D. Anderson and Timothy J. Herman, to enforce an alleged guaranty in connection with Plaintiffs' extension of credit to the Tartan Development Company ("Corazon"), LLC.

In March and May 2007, Plaintiff Leasing Innovations entered into a Master Lease Agreement and eight separate Rental Schedules with Corazon, upon which Corazon allegedly defaulted. *Complaint*, Doc. No. 1, at ¶¶ 9-15. In October 2008, Corazon was placed in receivership by the Court of Common Pleas for Union County, Ohio. *Id.*, at ¶ 18; Exhibit 8,

attached to *Complaint*. According to Plaintiffs, Corazon's alleged failure to make payments under the Master Lease Agreement and the Order of Receivership constitute a default under the Master Lease Agreement. *Id.*, at ¶¶ 21-22. Defendants allegedly executed guaranties of Corazon's performance, and those guaranties form the basis of the instant action. *Id.*, at ¶¶ 16-17. Specifically, Count I of the *Complaint* alleges breach of guaranty against Defendant Tartan Fields Golf Club, Count II alleges breach of guaranty against Defendant Anderson and Count III alleges breach of guaranty against Defendant Herman.

In May 2009, Defendant Anderson filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code and Defendant Tartan Fields was placed in receivership by the Court of Common Pleas for Delaware County, Ohio in *General Electric Capital Corp. v. Tartan Fields Golf Club, Ltd., et al.*, 2009 CVE 050709. On January 13, 2010, the District Judge stayed proceedings in this case. *Order*, Doc. No. 30. On February 22, 2011, Plaintiffs dismissed their claims against Defendant Herman, with prejudice, and against Defendant Anderson, without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(I). Doc. Nos. 41 and 42. Thus, Tartan Fields Golf Club is the only remaining defendant.

With this background in mind, the Court proceeds to consider the merits of the motions presently before the Court.

## **II.**

### **A. Motion to Substitute Parties and Counsel**

On February 22, 2011, Plaintiffs filed a *Motion to Substitute Parties and Counsel*, Doc. No. 43. In support of the motion, Plaintiffs represent that, pursuant to an agreement with nonparty The Gerb, LLC ["The Gerb"], "all of Plaintiffs' interest in and to the underlying lease

documents and related documents and claims in this action” have been acquired by The Gerb. *Motion to Substitute*, at 1. Thus, Plaintiffs request that The Gerb and its counsel be substituted as Plaintiff and Plaintiff’s counsel, pursuant to Fed. R. Civ. P. 25(c). The motion is unopposed.

Fed. R. Civ. P. 25 addresses the substitution of parties. In particular, subsection (c) provides:

**(c) Transfer of Interest.** If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Under the circumstances presented, the Court concludes that substitution of The Gerb as Plaintiff in this action is warranted.

## **B. Suggestion of Stay**

On February 8, 2011, Reg Martin of Martin Management Services, Inc., the Receiver of Defendant Tartan Fields Golf Club, filed a *Suggestion of Stay*. Doc. No. 40. According to Martin, a stay of this case as against Tartan Fields Golf Club is warranted pursuant to paragraph 29 of the *Revised Entry and Order* issued by the Delaware County Common Pleas Court on June 12, 2009.

All creditors, claimants, bodies public, parties in interest, and all sheriffs, marshals, and other officers, and their respective attorneys, servants, agents, and employees and all other firms, persons and corporations be, and they hereby are, jointly and severally enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity to foreclose any lien or enforce any claim against said Mortgaged Property or its business operations, or against the Receiver, in any court. Without further order from this Court, all such entities or individuals are further stayed from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon said

Mortgaged Property in the possession of the Receiver, and from doing any and all things whatsoever to interfere with the Receiver in the discharge of his duties in this proceeding or with the exclusive jurisdiction of this Court over said Mortgaged Property and the Receiver.

Exhibit A, attached to *Suggestion of Stay*, Doc. No. 40, ¶29.

Plaintiff The Gerb argues that this state court order does not address its prosecution of this action because this action “does not involve or pertain to the real property [of Tartan Fields Golf Club] or the Receiver therefor.” *Memorandum contra Suggestion of Stay*, Doc. No. 46, at 1. Rather, this action simply seeks to determine Tartan Fields’ obligation under the Cross-Corporate Lease Guaranty and “[n]either the Receiver nor the Mortgaged Property [are] in any way involved or implicated in this claim.” *Id.*, at 2.

The Receiver disagrees and argues that, should this action proceed, the state court foreclosure action would be disrupted. “Unless [The Gerb] can establish that its claim of guarant[y] is entitled to a secured position higher than that of General Electric Credit Corporation, the prosecution of this matter appears to be a waste of client money and judicial time.” *Reply Memorandum*, Doc. No. 47, at 2.

Although this action, which addresses the guaranty allegedly executed by Defendant Tartan Fields Golf Club, does not specifically involve the mortgaged property that is the subject of the action in state court, the claim asserted in this Court can nevertheless reasonably be construed as a claim against the “business operations” of Tartan Fields Golf Club, within the meaning of ¶ 29 of the state court’s *Revised Entry and Order*. At a minimum, this Court concludes that its discretion is better exercised in staying the prosecution of this action pending resolution of the state court action.

**III.**

**WHEREUPON**, Plaintiffs' *Motion to Substitute Parties and Counsel*, **Doc. No. 43**, is **GRANTED**. The Gerb, LLC, is **ORDERED SUBSTITUTED** as Plaintiff in this action. The Receiver's *Suggestion of Stay*, **Doc. No. 40**, is **GRANTED**. This action is **STAYED** as to Defendant Tartan Fields Golf Club, Ltd.

The Receiver is **ORDERED** to report on the status of the Delaware County state court action no later than August 31, 2011.

**June 6, 2011**  
**DATE**

*s/ Norah McCann King*  
**NORAH McCANN KING**  
**UNITED STATES MAGISTRATE JUDGE**

