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Order and Judgment Granting Plaintiff's Renewed Motion for Summary Judgment
After Prove-Up; and Order Granting Defendants' Motion to Set Aside Judgment

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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 GENERAL ELECTRIC CAPITAL) Case No. A-09-600431-C
CORPORATION, a foreign corporation,)
11 Plaintiff,) Dept. No. XXI

12 vs.

13 TRITON GRADING EQUIPMENT)
14 LEASING COMPANY, INC., a domestic) Date: April 25, 2012
Nevada corporation; TRITON GRADING)
15 & PAVING, LLC, a domestic Nevada) Time: 9:30am
company, MICHAEL LEAVITT, an)
16 individual; LUCAS LEAVITT, an)
individual; MARCUS LEAVITT, an)
17 individual; TYLER LEAVITT, an)
18 individual,)

19 Defendants.

20 **ORDER AND JUDGMENT GRANTING PLAINTIFF'S RENEWED MOTION**
21 **FOR SUMMARY JUDGMENT AFTER PROVE-UP; AND ORDER GRANTING**
22 **DEFENDANTS' MOTION TO SET ASIDE JUDGMENT**

23 GENERAL ELECTRIC CAPITAL CORPORATION ("Plaintiff" or "GE Capital")
24 by and through its counsel of record, Peter Dubowsky of the DUBOWSKY LAW OFFICE,
25 CHTD. having filed a Renewed Motion for Summary Judgment (the "Renewed Motion")

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1 on October 31, 2011 on the remaining issue of the exact amount of contractual damages¹
2 for which all Defendants are liable, and the Renewed Motion having been heard on March
3 14, 2012; and this Court having granted Plaintiff's Renewed Motion and having set a
4 hearing regarding proof of damages for the above date and time; and the Prove-Up Hearing
5 having been held at the above date and time; and attorney Peter Dubowsky, Esq. appearing
6 for Plaintiff, and attorneys Scott A. Knight, Esq. and Brent D. Huntley, Esq. appearing for
7 Defendants; and based upon the Motion for Summary Judgment, the Renewed Motion,
8 Defendants' Opposition briefs, and all the papers and proceedings had herein, and the live
9 testimony of William Wilson, Team Lead of Litigation for GE Capital, and the live
10 testimony of Defendant Michael Leavitt, and with good cause appearing therefore, and
11 pursuant to N.R.C.P. 56(c), this Court finds the following material facts undisputed:

12 **UNDISPUTED MATERIAL FACTS**

13 I. **BOMAG Pad Foot Roller**

14 1. On December 18, 2006, Defendant Triton Grading Equipment Leasing, Inc.
15 ("Triton Leasing") executed a Lease for a BOMAG Pad Foot Roller (the "Roller") and
16 Promissory Note (the "Roller Note") for the principal balance of \$33,730.06.

17 2. The Roller Note accrued interest at the default rate of 18% per annum in the
18 event of default on the Roller Note.

19 3. Defendant Triton Leasing defaulted on the Roller Note. The contractual
20 balance due was \$16,115.02 in unpaid monthly installments.
21

22
23 ¹ On November 7, 2011, this Court entered the ORDER RE: PLAINTIFF'S MOTION
24 FOR SUMMARY JUDGMENT WITH PREJUDICE ON ALL COUNTS ALL IN THE
25 ALTERNATIVE FOR MOTION FOR JUDGMENT ON THE ISSUE OF LIABILITY,
which granted summary judgment in favor of Plaintiff as to all parties and claims, but
denied without prejudice summary judgment as to the exact amount of damages.



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4. Plaintiff repossessed the Roller and incurred \$4,250.00 in expenses and commissions in order to sell the Roller in a commercially reasonable manner.

5. The Plaintiff sold the Roller in a commercially reasonable manner for \$11,500.00.

6. Defendant Triton Leasing is liable to Plaintiff for the contractual balance of \$16,115.02, minus the sale proceeds of \$11,500.00, plus expenses and commissions of \$4,250.00, plus late fees and property tax of \$1,008.92, plus default interest of \$5,970.19.

7. The Defendants are liable to Plaintiff on the Roller Note in the principal amount of \$15,844.13 plus 18% interest.

II. Ford 2007 F650 Truck and Stellar T2-11 Crane

1. On March 21, 2007, Defendant Triton Leasing executed a Lease for a Ford 2007 F650 Truck and Stellar T2-11 Crane (the "Crane Truck") and Promissory Note (the "Crane Truck Note") for the principal balance of \$89,700.00.

2. The Crane Truck Note accrued interest at the default rate of 18% per annum in the event of default on the Crane Truck Note.

3. Defendant Triton Leasing defaulted on the Crane Truck Note. The contractual balance due was \$72,245.93 in unpaid monthly installments.

4. Plaintiff repossessed the Crane Truck and incurred \$6,865.00 in expenses and commissions in order to sell the Crane Truck in a commercially reasonable manner.

5. The Plaintiff sold the Crane Truck in a commercially reasonable manner for \$49,650.00.

6. Defendant Triton Leasing is liable to Plaintiff for the contractual balance of \$72,245.93, minus the sale proceeds of \$49,650.00, plus expenses and commissions of

1 \$6,865.00, plus late fees and property tax of \$1,996.02, plus default interest of
2 \$25,974.47.

3 7. The Defendants are liable to Plaintiff on the Crane Truck Note in the
4 principal amount of \$57,431.42 plus 18% interest.

5 **III. Lull 634 Reach Lift**

6 1. On July 19, 2007, Defendant Triton Leasing executed a Lease for a Lull
7 634 Reach Lift ("Lift") and Promissory Note (the "Lift Note") for the principal balance
8 of \$21,476.75.

9 2. The Lift Note accrued interest at the default rate of 18% per annum in the
10 event of default on the Lift Note.

11 3. Defendant Triton Leasing defaulted on the Lift Note. The contractual
12 balance due was \$12,502.44.

13 4. Plaintiff repossessed the Lift and incurred \$2,450.55 in expenses and
14 commissions in order to sell the Lift in a commercially reasonable manner.

15 5. The Plaintiff sold the Lift in a commercially reasonable manner for
16 \$9,000.00.

17 6. Defendant Triton Leasing is liable to Plaintiff for the contractual balance
18 of \$12,502.44, minus the sale proceeds of \$9,000.00, plus expenses and commissions of
19 \$2,450.00, plus late fees and property tax of \$849.65.

20 7. The Defendants are liable to Plaintiff on the Lift Note in the principal
21 amount of \$6,802.64 plus 18% interest.

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IV. 2003 International 4200 Water Truck

1. On August 2, 2007, Defendant Triton Leasing executed a Lease for a 2003 International 4200 Water Truck (the "Water Truck") and Promissory Note (the "Water Truck Note") for the principal balance of \$30,000.00.

2. The Water Truck Note accrued interest at the default rate of 18% per annum in the event of default on the Water Truck Note.

3. Defendant Triton Leasing defaulted on the Water Truck Note. The contractual balance due was \$23,718.82 in unpaid monthly installments.

4. Plaintiff repossessed the Water Truck and incurred \$4,330.00 in expenses and commissions in order to sell the Water Truck in a commercially reasonable manner.

5. The Plaintiff sold the Water Truck in a commercially reasonable manner for \$12,150.00.

6. Defendant Triton Leasing is liable to Plaintiff for the contractual balance of \$23,718.82, minus the sale proceeds of \$12,150.00, plus expenses and commissions of \$4,330.00, plus late fees and property tax of \$1,116.13, plus default interest of \$9,627.82.

7. The Defendants are liable to Plaintiff on the Water Truck Note in the principal amount of \$26,642.77 plus 18% interest.

V. Lippmann Portable Electric Jaw Crusher

1. On August 23, 2007, Defendant Triton Leasing executed a Master Lease for a 2007 Lippmann Jaw Crusher (the "Crusher") for the Lessor's Cost of \$1,212,000.00.

2. The Crusher Lease accrued interest at the default rate of 18% per annum in the event of default on the Lease.

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3. Defendant Triton Leasing defaulted on the Crusher Lease. The contractual balance due was \$1,035,532.17 in the stipulated loss amount.

4. Plaintiff repossessed the Crusher and incurred \$110,655.00 in expenses and commissions in order to sell the Crusher in a commercially reasonable manner.

5. The Plaintiff sold the Crusher in a commercially reasonable manner for \$727,000.00.

6. Defendant Triton Leasing is liable to Plaintiff for the contractual balance of \$1,035,532.17, minus the sale proceeds of \$727,000.00, plus expenses and commissions of \$110,655.00, plus late fees and property tax of \$48,725.34.

7. The Defendants are liable to Plaintiff on the Crusher in the principal amount of \$467,912.51 plus 18% interest.

VI. 2005 Ingersoll Rand Model VR642C

1. On April 28, 2008, Defendant Triton Leasing executed a Master Note and Security Agreement for a 2005 Ingersoll Rand Model VR642C (the "Rand Lift") for the principal balance of \$49,815.00.

2. The Rand Lift accrued interest at the default rate of 18% per annum in the event of default on the Lease.

3. Defendant Triton Leasing defaulted on the Rand Lift Lease. The contractual balance due was \$48,794.38 in unpaid monthly installments.

4. Plaintiff repossessed the Rand Lift and incurred \$3,169.93 in expenses and commissions in order to sell the Rand Lift in a commercially reasonable manner.

5. The Plaintiff sold the Rand Lift in a commercially reasonable manner for \$20,000.00.



1 6. Defendant Triton Leasing is liable to Plaintiff for the contractual balance of
2 \$48,794.28, minus the sale proceeds of \$20,000.00, plus expenses and commissions of
3 \$3,169.93, plus late fees and property tax of \$2,007.64.

4 7. The Defendants are liable to Plaintiff on the Crusher in the principal
5 amount of \$33,971.85 plus 18% interest.

6 VII. Terex TA40 Articulated Trucks

7 1. On March 8, 2007, Defendant Triton Leasing executed a Note and Security
8 Agreement ("Terex Note") with TFS Capital Funding ("TFS") for three (3) Terex TA40
9 Articulated Trucks ("Terex Trucks") for the principal balance of \$1,299,465.00.
10

11 2. The accrued interest at the default rate of 18% per annum in the event of
12 default on the Terex Note.

13 3. On March 8, 2007, Defendant Triton Grading & Paving, LLC ("Triton
14 Grading") executed a Corporate Guaranty in favor of TFS, or any assignee of TFS, to
15 guaranty the performance of Triton Leasing on the Terex Note.

16 4. On or around August 2008, TFS Capital Funding assigned the Terex Note
17 to Plaintiff.

18 5. Defendant Triton Leasing defaulted on the Terex Note. The contractual
19 balance due was \$984,767.23 in unpaid monthly installments.
20

21 6. Plaintiff repossessed the Terex Trucks and incurred \$25,956.75 in expenses
22 and commissions in order to sell the Terex Trucks in a commercially reasonable manner.

23 7. The Plaintiff sold the Terex Trucks in a commercially reasonable manner
24 for \$297,500.00.
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8. Defendant Triton Leasing is liable to Plaintiff for the contractual balance of \$984,767.23, minus the sale proceeds of \$297,500.00, plus expenses and commissions of \$25,956.75, plus late fees and property tax of \$54,800.08, plus default interest of \$486,919.79.

9. Defendants Triton Leasing and Triton Grading are liable to Plaintiff for the Terex Note in the principal amount of \$1,254,943.85 plus 18% interest.

VIII. Guaranties

1. On December 12, 2006, Defendant Triton Grading executed a Guaranty in favor of Plaintiff to guaranty the performance of Triton Leasing.

2. On December 12, 2006, Defendants Michael Leavitt, Lucas Leavitt, Marcus Leavitt, and Tyler Leavitt (the "Leavitts") each executed an Individual Guaranty in favor of Plaintiff to guaranty the performance of Triton Leasing.

IX. Damages

Defendants Triton Leasing, Triton Grading, and the Leavitts are liable to Plaintiff on the Roller Note, the Crane Truck Note, the Lift Note, the Water Truck Note, the Crusher Note and the Rand Lift Note in the principal amount of \$608,605.32.

Defendants Triton Leasing and Triton Grading are liable to Plaintiff for the Terex Notes in the principal amount of \$1,254,943.85.

LEGAL DETERMINATIONS

The Court makes the following legal determinations pursuant to N.R.C.P. 56(c).

The Plaintiff's Motion for Summary Judgment and Renewed Motion were properly supported as required by Rule 56, and that William Wilson, as the Team Lead of Litigation for GE Capital, was personally knowledgeable with regard to all matters and business

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1 records to which he testified and that he properly authenticated Plaintiff's Exhibits 1
2 through 17 (GE00001-GE00042), which the Court admitted into evidence.

3 All of the Leases, Notes and Contracts into which the Defendants entered into were
4 valid and enforceable.

5 All of the collateral was sold in a commercially reasonable manner.

6 The Defendants failed to sustain their burden of proving that the Plaintiff allegedly
7 failed to mitigate damages.
8

9 The Plaintiff's Renewed Motion for Summary Judgment is GRANTED IN PART
10 and Judgment shall be awarded accordingly as set forth below.

11 **DEFENDANTS' MOTION TO SET ASIDE JUDGMENT**

12 On April 20, 2012, the Defendants filed a Motion to Set Aside Judgment on Order
13 Shortening Time, which was heard on shortened time at the above date and time, to set
14 aside that portion of the November 7, 2011 Order and this Court's April 4, 2012 Decision
15 that found the Leavitts personally liable on the Terex Note. Therefore, it is

16 ORDERED that Defendants' Motion to Set Aside Judgment is GRANTED as to
17 the Leavitts' personal guaranties on the Terex Note. This Court finds that there is an issue
18 as to whether the scope of the personal guaranties with Plaintiff covers unrelated
19 transactions with third parties when Plaintiff has acquired the debt. The Court re-affirms
20 that the Plaintiff's Motion for Summary Judgment is GRANTED as to the liability of
21 Triton Leasing and Triton Grading Terex Note.
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JUDGMENT

Therefore it is hereby ORDERED that Plaintiff shall be awarded judgment against Defendants TRITON GRADING EQUIPMENT LEASING COMPANY, INC. and TRITON GRADING & PAVING, LLC in the principal amount of \$1,863,549.17; and it is further hereby

ORDERED that Plaintiff shall be awarded judgment against Defendants MICHAEL LEAVITT, LUCAS LEAVITT, MARCUS LEAVITT, and TYLER LEAVITT, each individually, jointly and severally, in the amount of \$608,605.30; and it is further hereby

ORDERED that 18% interest shall accrue on the total foregoing until this Judgment is satisfied.

Dated: July 5th, 2012

Valerie Aida
DISTRICT COURT JUDGE J.V.

Respectfully submitted,
DUBOWSKY LAW OFFICE, CHTD.

By: [Signature]
Peter Dubowsky, Esq.
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