

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

JPMORGAN CHASE BANK, N.A.,)

Plaintiff,)

v.)

CIVIL ACTION NO.: 3:17-cv-105-TCB

STANLEY EARL THOMAS)

and FOURTH QUARTER)

PROPERTIES 156, LLC,)

Defendants.)

**PLAINTIFF JPMORGAN CHASE BANK, N.A.’S COMPLAINT AGAINST
STANLEY EARL THOMAS AND FOURTH QUARTER
PROPERTIES 156, LLC**

Plaintiff JPMorgan Chase Bank, N.A. (“*JPMorgan*”) hereby files this Complaint against Defendants Stanley Earl Thomas (“*Thomas*”) and Fourth Quarter Properties 156, LLC (“*Fourth Quarter*”) and respectfully shows the Court the following:

PARTIES, JURISDICTION, AND VENUE

1.

JPMorgan is a national banking association with its principal office located in Columbus, Ohio. JPMorgan is a citizen of the State of Ohio pursuant to 28 U.S.C. § 1348, since JPMorgan's main office is located in the State of Ohio.

2.

Thomas is a citizen of the State of Georgia who resides and may be served at 544 Johnson Road, Sharpsburg, Georgia 30277-2189.

3.

Fourth Quarter is a limited liability company that is a citizen of Delaware and Georgia. Fourth Quarter is organized under the laws of the State of Delaware. Fourth Quarter's sole member is Beehawk Aviation, Inc. ("**Beehawk**"). Beehawk is incorporated under the laws of the State of Delaware with its principal place of business at 45 Ansley Drive, Newnan, Georgia 30263-7107.

4.

Fourth Quarter may be served with process by delivery to its registered agent for service of process, Paracorp Incorporated, 2140 S. Dupont Highway, Camden, Delaware 19934-1249.

5.

The parties are of diverse citizenship and the amount in controversy in this matter, exclusive of interest and costs exceeds \$75,000.00. Jurisdiction is appropriate under 28 U.S.C. §1332(a).

6.

Venue in the Northern District of Georgia is appropriate under 28 U.S.C. §§ 1391(b)(1) and (b)(2) as Thomas resides in the Northern District of Georgia and a substantial part of the events or alleged omissions giving rise to the claim occurred in the Northern District of Georgia.

FACTUAL BACKGROUND

7.

JPMorgan incorporates paragraphs 1 through 6 as if fully set forth herein.

Defendants' Loan Documents

8.

On or about June 4, 2008, Thomas executed a Promissory Note in favor of Chase Equipment Leasing, Inc. (“CEF”) in connection with a loan in the original principal amount of \$12,500,000.00, in which Thomas promised to pay CEF pursuant to the terms of that Promissory Note (the “Note”). See Exhibit A, Affidavit of Garrett H. Milliken at ¶ 4 at Ex. 1.

9.

On or about June 4, 2008, Fourth Quarter executed a Secured Guaranty (the “Guaranty”) whereby Fourth Quarter unconditionally guaranteed the payment and performance of all debts due to CEF under the Note. See Exhibit A at ¶ 4 at Ex. 3.

10.

Pursuant to the Guaranty, Fourth Quarter absolutely and unconditionally guaranteed to CEF (and now to JPMorgan) the payment and/or performance of all indebtedness, obligations, and liabilities of Thomas at any time owing to CEF in connection with or arising under the Note and the related loan.

11.

Fourth Quarter owns a Gulfstream 150 aircraft, Serial No. 251, United States FAA Registration No. N22ST, including its airframe, engines, avionics, log books, maintenance records and all other personal property associated with the aircraft (the “Aircraft”).

12.

In order to induce CEF to extend the aforementioned loan to Thomas, and to secure Thomas’s repayment obligation under the Note and Fourth Quarter’s Guaranty thereof, Fourth Quarter and CEF entered into an Aircraft Security Agreement (the “Aircraft Security Agreement”) dated June 4, 2008, whereby

Fourth Quarter conveyed to CEF a first-priority security interest in and to the Aircraft. See Exhibit A at ¶ 4 at Ex. 2.

13.

CEF perfected its security interest in the Aircraft on June 4, 2008 at 2:35 P.M., Central Daylight Savings Time, by recording and filing the Aircraft Security Agreement with the Federal Aviation Administration's Federal Aviation Civil Aircraft Registry in Oklahoma City, Oklahoma.

14.

CEF also filed a UCC Financing Statement for the State of Delaware, filing number 20070319656, dated January 25, 2007.

15.

CEF was merged into JPMorgan effective June 1, 2011. All assets of CEF, including the Note, the Guaranty, and the Aircraft Security Agreement (the "Loan Documents"), are now assets of JPMorgan and JPMorgan is now the owner of the Loan Documents, including the security interest in the Aircraft. See Exhibit A at ¶ 5.

16.

On or about June 20, 2013, JPMorgan notified Thomas and Fourth Quarter that Thomas had defaulted under the Note by, *inter alia*, failing to pay all interest and principal as and when due under the Note. See Exhibit A at Ex. 4, p. 1.

Defendants' Forbearance Agreements

17.

On or about February 28, 2014, JPMorgan executed a Forbearance Agreement (the "February 2014 Forbearance") with Thomas and Fourth Quarter, in which JPMorgan forbore from exercising its rights and remedies under the Loan Documents until the earlier of: (i) June 15, 2014; (ii) the date on which Thomas or Fourth Quarter repaid JPMorgan under the Loan Documents, plus any interest, fees, or costs and expenses; or (iii) an event of default as defined under the February 2014 Forbearance. See Exhibit A at ¶ 4 at Ex. 4 at § 6.

18.

On or about September 23, 2014, JPMorgan executed a Forbearance Agreement (the "September 2014 Forbearance") with Thomas and Fourth Quarter, in which JPMorgan forbore from exercising its rights and remedies under the Loan Documents until the earlier of: (i) December 15, 2014; (ii) the date on which Thomas or Fourth Quarter repaid JPMorgan under the Loan Documents, plus any

interest, fees, or costs and expenses; or (iii) an event of default as defined under the September 2014 Forbearance. See Exhibit A at ¶ 4 at Ex. 5 at § 6.

19.

On or about April 19, 2017, JPMorgan executed a Forbearance Agreement (the “April 2017 Forbearance”) with Thomas and Fourth Quarter, in which JPMorgan forbore from exercising its rights and remedies under the Loan Documents until the earlier of: (i) March 31, 2019; (ii) the date on which Thomas or Fourth Quarter repaid JPMorgan under the Loan Documents, plus any interest, fees, or costs and expenses; or (iii) an event of default as defined under the April 2017 Forbearance. See Exhibit A at ¶ 4 at Ex. 6 at § 6.

20.

Pursuant to the April 2017 Forbearance, Thomas and Fourth Quarter acknowledged that the unpaid principal amount on the Loan was \$5,040,000.00 and further agreed to pay to JPMorgan, in immediately available funds, a principal reduction under the Note in the amount of \$1,040,000.00 by April 28, 2017, with additional principal reductions in the amount of \$500,000.00 each by June 30, 2017, September 30, 2017, December 31, 2017, and March 31, 2018, until the principal had been paid in full. Thomas and Fourth Quarter further agreed to pay to JPMorgan all interest accruing under the Note as of April 15, 2017, in the

amount of \$145,014.79, by April 28, 2017, and continue to pay all accrued interest on the fifteenth day of each month thereafter. See Exhibit A at ¶ 4 at Ex. 6 at §§ 5(b), 7(c)-(d).

21.

Thomas and Fourth Quarter failed to make payments due under the Note as required by the April 2017 Forbearance, thereby constituting an event of default under the April 2017 Forbearance.

22.

On or about July 20, 2017, JPMorgan executed the most recent Forbearance Agreement (the “July 2017 Forbearance”) with Thomas and Fourth Quarter, in which JPMorgan forbore from exercising its rights and remedies under the Loan Documents until the earlier of (i) March 31, 2019; (ii) the date on which Thomas or Fourth Quarter repaid JPMorgan under the Loan Documents, plus any interest, fees, or costs and expenses; or (iii) an event of default as defined under the July 2017 Forbearance. See Exhibit A at ¶ 4 at Ex. 7 at § 6.

23.

Pursuant to the July 2017 Forbearance, Thomas and Fourth Quarter acknowledged that the unpaid principal amount on the Loan was \$5,040,000.00 and further agreed to pay to JPMorgan, in immediately available funds, a principal

reduction under the Note in the amount of \$1,040,000.00 by July 20, 2017, with additional principal reductions in the amount of \$500,000.00 each by July 31, 2017, September 30, 2017, December 31, 2017, March 31, 2018, and June 30, 2018, until the principal had been paid in full. Thomas and Fourth Quarter further agreed to pay to JPMorgan all interest accruing under the Note as of July 20, 2017, in the amount of \$175,763.97, by July 20, 2017, and continue to pay all accrued interest on the 15th day of each month thereafter. See Exhibit A at ¶ 4 at Ex. 7 at §§ 5(b), 7(c)-(d).

24.

Thomas and Fourth Quarter failed to make payments due under the Note by July 20, 2017 as required by the July 2017 Forbearance, thereby constituting an event of default under the July 2017 Forbearance. See Exhibit A at ¶ 8 at Ex. 7.

25.

Upon a default under the July 2017 Forbearance, Thomas and Fourth Quarter also agreed to voluntarily deliver to JPMorgan or its representatives: (i) the Aircraft, including any and all property that constitutes JPMorgan's collateral under the Loan Documents; (ii) all log books and other flight and maintenance records associated with the Aircraft; (iii) all avionics and other equipment currently on the Aircraft; and (iv) transfer and conveyance documents necessary to transfer

ownership of the Aircraft to JPMorgan or its designee. See Exhibit A at Ex. 7 at § 9.

Tax Sale of the Aircraft

26.

In July 2017, J. Thomas Ferrell, the Ex-Officio Sheriff, State of Georgia, County of Coweta, published a notice of sheriff's sale in the *Newnan Times-Herald* advertising the sale of the Aircraft scheduled for August 1, 2017, pursuant to a certain tax Fi.Fa. issued by the Tax Commissioner of Coweta County, Georgia, in favor of the State of Georgia and Coweta County, against Thomas and Fourth Quarter. See Exhibit A at ¶ 16.

27.

The Coweta County Ex-Officio Sheriff sent a Final Notice of Personal Property (Airplane) Scheduled for Tax Sale dated July 21, 2017 to CEF, in which the Ex-Officio Sheriff noticed the sale of the Aircraft scheduled for August 1, 2017. See Exhibit A at ¶ 16 at Ex. 10.

28.

Upon information and belief, \$449,531.40 in delinquent ad valorem taxes, interest, and penalties are due and owing on the Aircraft. See Exhibit A at ¶ 16.

Defendants' Final Default Under the Loan Documents

29.

Thomas and Fourth Quarter's failure to make payments due under the Note by July 20, 2017, constituted an event of default under the Note, Guaranty and July 2017 Forbearance.

30.

As a result of this default, the entire indebtedness under the Note is now due and payable in full, which as of July 28, 2017, is \$5,040,000.00 in the acknowledged and agreed-to principal and \$178,537.22 in accrued interest, with interest continuing to accrue in the amount of \$346.66 due per diem (the "Amounts Due"). See Exhibit A at ¶ 12.

31.

The Note provides that JPMorgan shall be entitled to all costs, including reasonable attorneys' fees, incurred by JPMorgan in its enforcement of the Note. See Exhibit A at Ex. 1, p. 2. JPMorgan is entitled to reasonable attorneys' fees under the Note.

32.

The Guaranty provides that JPMorgan shall be entitled to all reasonable attorneys' fees and all other costs and expenses incurred by JPMorgan in its

enforcement the of Guaranty. See Exhibit A at Ex. 3 at § 5. JPMorgan is entitled to reasonable attorneys' fees under the Guaranty.

33.

Under the July 2017 Forbearance, Thomas and Fourth Quarter acknowledged that JPMorgan is entitled to its reasonable attorneys' fees under the terms of the Loan Documents. Any collection of attorneys' fees under the July 2017 Forbearance is not and shall not be construed as a waiver of JPMorgan's right to collect any attorneys' fees to which JPMorgan may separately be entitled to under the Loan Documents. See Exhibit A at Ex. 7 at § 13.

34.

Upon demand, Thomas failed to pay the full amounts due to JPMorgan under the Note and July 2017 Forbearance.

35.

Upon demand, Fourth Quarter failed to comply with the terms of the Guaranty upon Thomas's default under the Note.

36.

Pursuant to the July 2017 Forbearance, and the three preceding forbearance agreements, Thomas and Fourth Quarter:

acknowledge[d] and agree[d] that Thomas and Fourth Quarter are in default under the Loan Documents In addition, Thomas and

Fourth Quarter acknowledge[d] and agree[d] that the full balance due under the Note [wa]s now due and payable. Finally, Thomas and Fourth Quarter acknowledge[d] and agree[d] that satisfactory notice of the Existing Defaults has been duly and properly given to Thomas and Fourth Quarter by JP Morgan, in accordance with the Loan Documents, such that Thomas and Fourth Quarter hereby waive any other notice of such prior defaults.

Exhibit A at Ex. 7 at § 3. See also Exhibit A at Ex. 4 at § 3; Exhibit A at Ex. 5 at § 3; Exhibit A at Ex. 6 at § 3.

37.

Defendants have also defaulted under the Loan documents by failing and refusing to pay the outstanding ad valorem taxes on the Aircraft as required by Section 2.2(g) of the Aircraft Security Agreement. In the event that JPMorgan is required to pay such taxes in order to protect the collateral, it is entitled to reimbursement from Defendants under Section 6.3(c) of the Aircraft Security Agreement.

COUNT I – Breach of Contract (Promissory Note) Against Thomas

38.

JPMorgan incorporates paragraphs 1 through 37 as if fully set forth herein.

39.

Thomas was obligated under the Note and the July 2017 Forbearance to make payments when due.

40.

Thomas failed to pay all amounts due under the Note and the July 2017 Forbearance when due.

41.

Thomas has breached his contractual obligations under the Note and the July 2017 Forbearance.

42.

Thomas received satisfactory notice and acknowledged that he received satisfactory notice of this default, in accordance with the Loan Documents, and waived any other notice of the defaults under the July 2017 Forbearance.

43.

As a result of Thomas's default and breach of the Note, JPMorgan has suffered damages at an amount to be determined at trial, but no less than the Amounts Due.

COUNT II – Breach of Contract (Guaranty) Against Fourth Quarter

44.

JPMorgan incorporates paragraphs 1 through 43 as if fully set forth herein.

45.

Thomas was obligated under the Note and the July 2017 Forbearance to make payments when due.

46.

Fourth Quarter was obligated under the July 2017 Forbearance to make payments under the Note.

47.

Under the Guaranty, Fourth Quarter guaranteed the payment of the Note by Thomas.

48.

Thomas failed to pay all amounts due under the Note and July 2017 Forbearance when due. Fourth Quarter failed to pay all amounts due under the Note and Guaranty when due.

49.

Fourth Quarter has breached its contractual obligations under the Guaranty.

50.

Fourth Quarter received satisfactory notice, and under the July 2017 Forbearance Agreement, Fourth Quarter acknowledged that it received satisfactory

notice of Thomas's default under the Note, in accordance with the Loan Documents, and waived any other notice of the default.

51.

As a result of Fourth Quarter's breach of the Guaranty, JPMorgan has suffered damages in an amount to be determined at trial, but no less than the Amounts Due.

COUNT III – Attorneys' Fees and Expenses Against All Defendants

52.

JPMorgan incorporates paragraphs 1 through 51 as if fully set forth herein.

53.

The Note provides that JPMorgan shall be entitled to all costs, including reasonable attorneys' fees, incurred by JPMorgan in enforcing the Note. See Exhibit A at Ex. 1, p. 2. JPMorgan is entitled to reasonable attorneys' fees under the Note.

54.

The Guaranty provides that JPMorgan shall be entitled to all reasonable attorneys' fees and all other costs and expenses incurred by JPMorgan in its enforcement of the Guaranty. See Exhibit A at Ex. 3 at § 5. JPMorgan is entitled to reasonable attorneys' fees under the Guaranty.

55.

Under the July 2017 Forbearance, Thomas and Fourth Quarter acknowledged that JPMorgan is entitled to its reasonable attorneys' fees under the terms of the Note and the Guaranty. See Exhibit A at Ex. 7 at § 13.

56.

JPMorgan is entitled to an award of its attorneys' fees, costs and expenses incurred in connection with its enforcement of the Note, Guaranty, and July 2017 Forbearance.

COUNT IV – Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction Against All Defendants

57.

JPMorgan incorporates paragraphs 1 through 56 as if fully set forth herein.

58.

JPMorgan is likely to succeed on the merits of its claims on the Note and Guaranty and for a writ of possession against Thomas and Fourth Quarter based on the debt due and owing to JPMorgan pursuant to the Loan Documents, which both Thomas and Fourth Quarter acknowledged in the July 2017 Forbearance.

59.

JPMorgan will suffer immediate and irreparable harm, not completely compensable through an award of monetary damages, if Defendants, their agents, employees, managers, representatives, or others acting in concert with them are not immediately enjoined from damaging, converting, diverting, hiding, secreting, or moving the Aircraft from its current location. Based on the Defendants' prior conduct in (1) failing to pay taxes on the Aircraft, (2) allowing the Aircraft to be noticed for sale by the Tax Commissioner of Coweta County, (3) concealing and failing to disclose these facts from JPMorgan, (4) failing to pay the amounts due on forbearance agreements and under the Note and Guaranty, and (5) failing and refusing to deliver possession of the Aircraft to JPMorgan despite having promised to do so a short time ago in case of default and despite the fact that JPMorgan is now entitled to possession of the Aircraft under the Loan Documents, JPMorgan justifiably and reasonably believes that Defendants can no longer afford to

adequately maintain and care for the Aircraft and may in fact damage, dispose of, or remove the Aircraft outside of the jurisdictional reach of this Court unless they are enjoined from doing so.

60.

Finally, the current value of the Aircraft is substantially less than the Amounts Due under the Loan. Every time the Aircraft is used hereafter, there is the potential that the value of the Aircraft will decline. Without the Aircraft, JPMorgan may well be unable to recover any of the Amounts Due and owed by Defendants on the Loan.

61.

Unless restrained by a Temporary Restraining Order, there is no adequate protection to prevent Defendants from damaging, disposing of, or removing the Aircraft from the jurisdiction of this Court.

62.

The harm JPMorgan will suffer in the absence of an order or injunction outweighs any harm such an order or injunction may cause to Thomas or Fourth Quarter, who still have the option of travelling on commercial air carriers if they need to travel by air.

63.

JPMorgan therefore has no adequate remedy at law for the damage it may suffer if a temporary restraining order is not entered restraining Defendants from damaging, disposing of, or moving the Aircraft from its current location.

64.

The requested relief serves the public interest by maintaining the status quo until a final hearing on the merits and preserving the Court's equitable jurisdiction over the Aircraft.

65.

In order to protect and preserve the Aircraft, and the collateral for the Loan, and in order to allow JPMorgan to exercise its right to take possession of the Aircraft and foreclose its security interest therein, JPMorgan therefore seeks a temporary restraining order enjoining and restraining Defendants and each of their officers, directors, shareholders, employees, and representatives from:

- i. hiding, secreting, moving, transferring, or removing from the jurisdictional limits of this Court and/or from its current location in Coweta County, Georgia any of the Aircraft and/or any of the flight or maintenance logs for each of the airframes and engines in the Aircraft (the "Logs");
and/or

- ii. removing, damaging destroying, hiding or, secreting any of the avionics, or other equipment connected to the Aircraft; and/or
- iii. transferring or delivering possession of the Aircraft, the Logs, the avionics, or other equipment connected to the Aircraft to any other person or entity.

66.

JPMorgan also seeks a preliminary injunction extending the temporary restraining order until a judgment is entered in the cause and further seeks a permanent injunction on terms identical to the temporary restraining order and preliminary injunction.

COUNT V – Immediate Writ of Possession Against All Defendants

67.

JPMorgan incorporates paragraphs 1 through 66 as if fully set forth herein.

68.

JPMorgan holds a first-priority security interest in and to the Aircraft and seeks an immediate writ of possession pursuant to the provisions of Rule 64 of the Federal Rules of Civil Procedure and O.C.G.A. § 44-14-261(1).

69.

The Loan Documents, which relate to the purchase of the Aircraft by a corporate entity, constitute a commercial transaction as defined in O.C.G.A. § 44-14-261(1).

70.

It is within Thomas and Fourth Quarter's power to conceal, waste, encumber, convert, and/or remove the Aircraft from this jurisdiction. Should the Aircraft be removed, any post-judgment remedy provided to JPMorgan would be inadequate.

71.

JPMorgan is entitled to foreclose its security interest in the Aircraft in accordance with the terms of the Aircraft Security Agreement and the other Loan Documents. The indebtedness under the Loan is due and unsatisfied. Plaintiff has made proper demand upon Defendants to deliver possession of the Aircraft, but Defendants have failed and refused to do so. Indeed, Defendants are currently unable to do so because the Aircraft has been seized by the Coweta County Tax Commissioner. JPMorgan justifiably believes that there is immediate danger that the Defendants may remove the Aircraft from the jurisdiction once the taxes are paid and the Defendants once again have the ability to use the Aircraft.

JPMorgan is therefore entitled to an immediate writ of possession to the Aircraft and the Logs pursuant to O.C.G.A. §§ 44-14-261, *et seq.* and JPMorgan prays for an Order of this Court foreclosing its security interest in the Aircraft and granting its immediate writ of possession as to the Aircraft and the Logs.

WHEREFORE, JPMorgan Chase Bank, N.A., respectfully requests that this Court award:

1. Judgment on the Note in its favor and against Thomas in the principal amount of \$5,040,000.00, accrued interest of \$178,537.22, through July 28, 2017, and interest thereafter at the per diem rate of \$346.66;
2. Judgment on the Guaranty in its favor and against Fourth Quarter in the principal amount of \$5,040,000.00, accrued interest of \$ 178,537.22, through July 28, 2017, and interest thereafter at the per diem rate of \$346.66;
3. Temporary, preliminary, and permanent injunctive relief to JPMorgan by ordering the Aircraft grounded and enjoining Thomas and Fourth Quarter from damaging or moving the Aircraft from its current location as more specifically outlined above. This relief is further requested in the Emergency Motion for Temporary Restraining Order and Memorandum in Support respectively attached hereto as Exhibits B and C;

4. Foreclosure of JPMorgan's security interest in and immediate possession of the Aircraft and the Logs;
5. Reasonable attorneys' fees in favor of JPMorgan against Thomas and Fourth Quarter pursuant to the Note and the Guaranty;
6. Reimbursement of the costs of this action in favor of JPMorgan and against Thomas and Fourth Quarter;
7. Reimbursement of any taxes paid by JPMorgan in relation to the Aircraft; and
8. Such other and further relief to JPMorgan as this Court deems just and proper.

Respectfully submitted this 31st day of July, 2017.

/s/ William V. Custer
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Bank, N.A.*

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STANLEY EARL THOMAS))	
and FOURTH QUARTER))	
PROPERTIES 156, LLC,))	
)	
Defendants.)	

LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE

I hereby certify this 31st day of July, 2017 that the foregoing pleading has been prepared with Times New Roman font, 14 point, one of the font and point selections approved by the Court in L.R. 5.1C, N.D. Ga.

/s/ William V. Custer
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