UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

ICS CYBERNETICS, INC.,	CASE NO. 88-00478
Debtor	Chapter 11

ICS CYBERNETICS, INC. and THE OFFICIAL COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS OF ICS CYBERNETICS, INC.,	
Plaintiffs	
vs.	ADV. PRO. NO. 89-0036
LEFAC INTERNATIONAL, S.A.,	
Defendant	

APPEARANCES:

GRASS, BALANOFF, COSTA & WHITELAW, P.C. Attorneys for Debtor 247 West Fayette Street Syracuse, New York l3202	TIMOTHY MULVEY, ESQ. MARY LANNON FANGIO, ESQ. Of Counsel
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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

By Order To Show Cause filed March 21, 1989, ICS Cybernetics, Inc. ("Debtor") has requested, pending the resolution of an adversary proceeding it commenced the same day against Lefac International, S.A. ("LISA"), an order preliminarily enjoining LISA from disposing of sale or lease proceeds from certain enumerated IBM computer equipment to a location outside of the continental United States pursuant to Bankruptcy Rule ("Bankr.R.") 7065. In the alternative, the Debtor seeks an order of attachment of those proceeds pursuant to Bankr.R. 7064 and Article 62 of the New York Civil Practice Law and Rules (McKinney 1980) ("NYCPLR"). After an evidentiary hearing was conducted in Utica, New York on April 7, 1989, the Court reserved decision and provided the parties with the opportunity to submit memoranda of law.

For the reasons set forth below, the Court denies in part and grants in part the Debtor's application.

FACTS

On or about November 25, 1987, the Debtor as Seller, ICS Cybernetics AG ("ICS-AG") as Guarantor and LISA entered into an agreement entitled Purchase Agreement. See Plaintiff's Exhibit 1. LISA allegedly paid the Debtor $5.7 million in consideration of the assignment of a certain lease - Equipment Schedule 6 executed in September 1987 under a Master Lease between the Debtor as lessor and Ciba-Geigy Corporation as lessee and generating forty-eight payments of $140,000.00 per month until September 30, 1991 - and the conveyance of title in the used IBM computer equipment

comprising the lease. Id. The contract price was reached by adding the sum of the present value of the forty-eight lease payments, calculated at a discount rate of ten and one-half percent, and an agreed "residual value" of the equipment set at $279,722.00, which ICS-AG agreed to guarantee and adjust if necessary. Id. at ¶5.01.

The Debtor and ICS-AG also agreed, inter alia, to indemnify LISA "against all obligations, liabilities, costs and expenses" arising at any time in connection with the agreement, the lease or the equipment. See id. at ¶7.03. ICS-AG additionally possessed a purchase option during the lease term, which was subject to Ciba-Geigy's purchase option and separate from its obligation to purchase the equipment at the agreed "residual value" at the end of the lease term. See id. at ¶6.01. The Purchase Agreement described LISA as "a corporation organized under the laws of the Duchy of Luxembourg with offices at 41, Avenue de la Gare, Centre Mercure L-2011 Luxembourg" and provided for it to receive from the Debtor a "transaction fee" of .125 percent of the contract price upon the signing of the Purchase Agreement. See id. at p.1 & ¶7.01. The Purchase Agreement was governed by New York law. See id. at ¶7.02.

The Debtor filed for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C.A. §§101-1330 (West 1979 & Supp. 1989) ("Code"), on March 31, 1988. On March 21, 1989, as indicated, it filed an adversary proceeding naming LISA as defendant to determine the ownership rights to the IBM computer equipment subject to the

alleged Purchase Agreement and the Ciba-Geigy lease, as well as the assignment of that lease.[1]

Reduced to its essentials, the Debtor claims that the Purchase Agreement was really a disguised financing transaction and since LISA never perfected its interest in the equipment or the lease stream by possession or filing as required under Article 9 of the N.Y. Uniform Commercial Code (McKinney 1964 & Supp. 1989) ("NYUCC"), the Debtor is entitled to all lease payments from Ciba-Geigy from the ninety-day period prior to its filing and any sale monies generated by a sale of the equipment. On April 5, 1989, LISA served a notice of a motion to dismiss the complaint, which it also styled as seeking summary judgment pursuant to Bankr.R. 7012 and Federal Rule of Civil Procedure ("Fed.R.Civ.P.") 12(b), on the Debtor, the Committee and the United States Trustee. Its position is that the Purchase Agreement constituted a non-recourse sale governed by Article 2 of the NYUCC and, in any event, if Article 9 controlled, it was perfected through constructive possession of the equipment and actual possession of the necessary chattel paper. This motion, along with cross-motions for summary judgment by the Debtor and the Official Committee of Creditors Holding Unsecured Claims for ICS Cybernetics, Inc. ("Committee"), was submitted for decision on May 16, 1989 after oral argument on

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[1] By notice of cross-motion filed April 6, 1989 and made returnable at the April 7, 1989 hearing, the Committee moved to intervene as a party plaintiff pursuant to Bankr.R. 7024. The Court granted the motion upon the consents of the Debtor and LISA and an Order was entered April 24, 1989.

ICS-AG, allegedly a Swiss corporation, has neither been served nor appeared in the instant motion nor does it appear in the caption of the adversary proceeding within which the instant contested matter is being made.

April 25, 1989.

In an affirmation by its counsel, the Debtor states that a preliminary injunction or an attachment is necessary to prevent LISA from disposing of the assets obtained by the sale or lease of the equipment or lease stream under the Purchase Agreement because LISA is in the process of liquidating its assets. The affirmation further declares that LISA is the subsidiary of a foreign banking corporation, Christiana Bank, neither are authorized to do business in New York, and "that it is unclear whether Christiana Bank has sufficient assets to cover any potential judgment of LISA ... [or] whether those assets would be available to satisfy any potential judgment of LISA." Affirmation of Mary Lannon Fangio, Esq. para. 8 (Mar. 20, 1989) ("Fangio Affirmation").

The Debtor states that LISA contacted counsel for its Committee by letter to ascertain if the Debtor had any interest in the equipment or lease stream because LISA intended to sell both as part of its liquidation. It maintains that it has no objection to LISA's sale or collection of the lease stream or equipment as long as the monies collected will not move beyond the Court's jurisdiction. The Debtor claims that it will be irreparably harmed if the monies are unavailable to satisfy a judgment in its favor in the underlying adversary proceeding because of LISA's liquidation.

In a responding affidavit, LISA contends that the transaction between it and the Debtor was a good-faith, arms-length purchase for value of title to the IBM equipment and that it is entitled to the lease payments without restraint, noting its filing of U.C.C.

financing statements with the Secretary of State of the State of New York and the County Clerk of Westchester County, the site of the equipment, for notice and informational purposes. See Plaintiff's Exhibit 3 (Affidavit of Lawrence Rutkowski, Esq. ("Rutkowski") In Support Of Defendant's Cross-Motion To Dismiss And For Summary Judgment And In Opposition To Plaintiff's Motion For a Preliminary Injunction (Apr. 5, 1989)).

Rutkowski states upon information and belief that "LISA is a wholly owned subsidiary of Christiana Bank of Luxembourg, S.A." which has chosen to gradually assume LISA's operations. Id. at paras. 11-12. He also declares upon information and belief that Christiana Bank of Luxembourg, S.A. ("CBL") is a wholly owned subsidiary of Christiana Bank og Kreditcasse ("CBK") which has a branch office in New York City and is authorized to do business in New York State. Id.

LISA claims that no provisional remedy is necessary since the Debtor is only seeking monetary relief and cannot establish irreparable harm and due to LISA's status as an indirect wholly owned subsidiary of CBK, which maintains an office and is licensed to do business in New York State.

At the hearing on April 7, 1989, the Debtor called by subpoena Rutkowski as its sole witness and LISA conducted a cross-examination in defense. LISA also stipulated for the record that it was in the process of liquidating.

The parties stipulated into evidence three exhibits: 1) copies of two U.C.C.-1 statements bearing illegible, but apparently county and secretary of state filing stamps which identified Ciba-

Geigy as Debtor, ICS as secured party and LISA as assignee, signed November 25, 1987 by Ciba-Geigy and the Debtor, and bearing notation of "only intended to make the lease a matter of public record," and referencing an Annex A attached enumerating names and addresses of parties, location of equipment and specific equipment covered by the filing, as Defendant's Exhibit A; 2) copies of Master Agreement of Lease between the Debtor and Ciba-Geigy, Equipment Schedule No. 6, Annex 1 (Description of Equipment), Annex II (Casualty Values), Annex III (Termination and Casualty Values), Annex IV (Purchase Price and Rental Payment Formula), Annex V (Purchase Option), Equipment Acceptance Form, Purchase Agreement, Schedule A, Notice of Assignments and Lessee's Acknowledgement, Bill of Sale, collectively identified as Plaintiff's Exhibit 1; and 3) copy of Rutkowski's Affidavit, as Plaintiff's Exhibit 3.

The Notice of Assignments and Lessee's Acknowledgement was addressed to Ciba-Geigy by the Debtor and instructed Ciba-Geigy to remit all rents and any other amounts payable under the Schedule, other than New York State sales and use tax, directly to LISA through a check made payable to "Christiana Bank Luxembourg S.A., Account #100552-20230, Favor of Lefac International S.A., Reference: I.C.S." through the Paying and Receiving Department at the Northern Trust International Banking Corp., Suite 3941, 1 World Trade Center, New York, New York 10048.

Rutkowski testified that to his knowledge LISA did not maintain offices in New York and that it was a wholly owned subsidiary of CBL where it now maintained its offices. He also stated that

Hill, Betts & Nash was counsel to CBL and CBK, and that he understood CBK to directly or indirectly own 100 percent of the stock of CBL and that it did maintain an office in New York.

Rutkowski recalled drafting the Purchase Agreement for LISA and its acquisition of equipment which did occur. He explained that while the agreement was non-recourse, the indemnity provision in ¶7.03 provided LISA with limited recourse against the Debtor who was to pay for the preparation of the agreement and any costs of defending the title should it turn out to be defective. He was aware that the payments were to be made to CBK's account with Northern Trust of New York for the further account of LISA.

Rutkowski stated that he had contacted the Committee to obtain their consent to avoid disputes. When questioned about the transaction fee in ¶7.01, Rutkowski stated that in his practice there were no points, only transaction fees and that in this case it was paid by the Debtor. He also testified that to his knowledge the equipment had not been sold nor were there any existing sale agreements.

On cross-examination, Rutkowski testified that he prepared the two U.C.C.-1 financing statements, which were filed in Westchester County and with the Secretary of New York State, with the intention of putting the world on notice that the owner of the equipment was LISA and not Ciba-Geigy. He also stated that he intended the Purchase Agreement to be a non-recourse sale where the seller had no long term liability, as distinguished from a financing transaction, and that the Debtor had no long term agreement here.

Rutkowski stated that he knew the Debtor's offices were in Onondaga County but that he did not file anything in that county, although he did cause a search to be made subsequent to the execution of the Purchase Agreement which resulted in not finding the equipment in Schedule 6 on any filings. He stated that his client took possession of an "original" of Schedule 6.

In a memorandum of law submitted subsequent to the hearing, the Debtor stated that the Purchase Agreement, as drafted by LISA's counsel, contained six specific indicia of a financing arrangement and, at best, reflected an attempt to reap the inconsistent benefits of both a loan and an absolute sale. It also noted Rutkowski's restrictive reading of the Purchase Agreement's indemnity provision, which is plainly in contradiction of that clause's broad language and one of the substantial linchpins of its argument that the parties did not intend a sale.

While conceding that LISA held a perfected security interest in the equipment located in Westchester County, Debtor maintains that its interest in the lease stream was chattel paper and, under NYUCC §§9-105(1)(b) and 9-305, required possession of all relevant documents evidencing a monetary obligation and security interest in specific goods, regardless of whether a sale or financing transaction occurred.[2] Since LISA admitted holding only an original of the Schedule 6 and not an original of the Master Lease, and did not file financing statements in Onondaga County pursuant to NYUCC 9-401(c), the Debtor maintains that its interest

[2] The Debtor acknowledged the assistance of the Committee on the issue of the perfection by possession of chattel paper.

in the lease stream is unperfected.

The Debtor stated that it has met the standard of proving the necessity for a preliminary injunction and notes that the irreparable harm lies in the record's absence of Christiana Bank's liability on any judgment Debtor would obtain against LISA since Rutkowski was unable to clarify LISA's relationship with Christiana Bank because of the attorney-client privilege. The Debtor further stated that it would discontinue the present application if Christiana Bank guaranteed payment of a judgment against LISA and represents that it will retain sufficient assets within the Court's jurisdiction to do so.[3]

The Debtor also argued that it has satisfied the grounds for an attachment and addresses the Court's discretion to grant such an order because the fact that LISA's assets and liabilities may eventually become part of its parent company or that it may eventually recover the lease stream from Ciba-Geigy are essentially only probabilities and not realities.

In addition to enlarging upon the chattel paper perfection issue and lack thereof by LISA, the Committee also points out that, even assuming LISA is perfected, it should not be able to liquidate its collateral without first obtaining relief from the automatic stay, which LISA has not done.

In its supplemental memorandum of law, LISA states that the Debtor did not introduce any probative evidence at the hearing to rebut Rutkowski's testimony that the parties contemplated and executed a sale or to show that it seeks anything other than a

[3] The Debtor has not distinguished between CBL and CBK.

money judgment. Thus, it calls for the Court to deny the preliminary injunction. On the request for attachment, LISA asserts that two standards for this drastic remedy have not been met: 1) the Debtor's need for such an order of attachment given LISA'S good faith and status as a subsidiary of CBK which has a local presence, and 2) the Debtor's inability to establish probable success on the merits in the adversary proceeding.

JURISDICTIONAL STATEMENT

The Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C.A. §§1334 and 157 (West Supp. 1989). This is a core proceeding, 28 U.S.C. A. §157(b)(1) and (2)(E,F,K, O), governed by Bankr.R. 7001(2), 7065, 7064, 7052 and 9017.

DISCUSSION

In a prior proceeding in this bankruptcy case, the Court held that it had the authority to grant provisional relief in the form of a preliminary injunction or an order of attachment to prevent the dissipation of potential assets and maintain the status quo during the pendency of an action to adjudicate ownership rights in those same assets. See The Official Creditors Committee of Creditors Holding Unsecured Claims Of ICS Cybernetics, Inc. and ICS Cybernetics, Inc. v. Independent Finance, Inc. (In re ICS

Cybernetics, Inc.), Case No. 88-00478, Adv.Pro. No. 88-0119 (Bankr. N.D.N.Y. Feb. 2, 1989). Accord Balanoff v. Glazier (In re Steffan), 97 B.R. 741, 746 (discussing Court's traditional and inherent ability to issue injunctions in Fed.R.Civ.P. 65(d) context). The instant action presents a similar scenario, and, accordingly, the Court turns to the merits herein.

Pursuant to Fed.R.Civ.P. 65(a), as incorporated by Bankr.R. 7065, a preliminary injunction should be granted "if the moving party establishes (1) irreparable harm and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party." Plaza Health Laboratories, Inc. v. Perales, ___ F.2d ___, No. 89-7146 (2d Cir. June 21, 1989) (slip op. at 7-8) (citing to Sperry International Trade, Inc. v. Government of Israel, 670 F.2d 8, 11 (2d Cir. 1982) and Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979)). Moreover, injunctive relief will generally not lie where the movant claims a loss that can be adequately remedied by an award of money damages. See Green v. Drexler (In re Feit & Drexler, Inc.), 760 F.2d 406, 416 (2d Cir. 1985) (citations omitted). See also National Farmers Union Insurance Cos v. Crow Tribe of Indians, 471 U.S. 845, 856 n.22 (1985) (citations omitted); 9 L.P.King COLLIER ON BANKRUPTCY ¶7065.04 at 7065-6 (15th ed. 1989).

In the case at bar, the threshold inquiry must focus on whether the Debtor has established irreparable harm. Since the record

discloses the Debtor's concern herein to hinge on the unavailability of the monies LISA is receiving from Ciba-Geigy pursuant to the Purchase Agreement, the Court concludes that its alleged loss is economic which, if proven, can be adequately remedied by an award of money damages. See Fangio Affirmation, supra, at para. 8. Therefore, because the Debtor has admitted that it seeks a money judgment, see Memorandum of Law, supra, at 10 (rec'd Apr. 21, 1989), it has not made the requisite showing for a preliminary injunction under Fed.R.Civ.P. 65(a).[4]

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[4] The Court would also observe that Fed.R.Civ.P. 64 encompasses "all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action." This includes the remedy of a preliminary injunction under New York law, pursuant to NYCPLR §§6301 and 6312, where a standard less stringent than that under the Federal Rules is employed. NYCPLR §6312 authorizes a preliminary injunction to issue upon the plaintiff's showing that "there is a cause of action and either that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff."

Indeed, NYCPLR §§6301 and 6313 direct that immediate and irreparable injury is a prerequisite only to a temporary restraining order and while germane, it is not essential to the granting of a preliminary injunction, unlike under the Second Circuit standard for granting a preliminary injunction under Fed.R.Civ.P. 65(a). See Plaza Health Laboratories, Inc. v. Perales, supra, ____ F.2d at ____ (slip op. at 7-8) (citations omitted).

However, attachment, rather than injunction, is the more appropriate remedy to prevent the removal, transfer or disposition of property in an action for a money judgment, as is sought here. See First National Bank of Downsville v. Highland Hardwoods, Inc., 98 A.D.2d 924, 926, 471 N.Y.S.2d 360, ____ (3d Dep't 1983); Glotzer v. Glotzer, 111 Misc.2d 171, 173, 443 N.Y.S.2d 812, ____ (Sup. Ct. 1981). Accord Elton Leather Corp. v. First General Resources Co., 138 A.D.2d 132, 136, __ N.Y.S.2d _, ____ (1st Dep't 1988) (nonresident attachment statute has two independent

The Court now turns its attention to the Debtor's request for an attachment order, acknowledging that its harsh and extraordinary nature demands a strict construction in favor of LISA. See Interpetrol Bermuda Ltd. v. Trinidad & Tobago Oil Co., 135 Misc.2d 160, 166-67, ____ N.Y.S.2d ____, ____ (Sup.Ct. 1987) (citation omitted); First National Bank of Downsville v. Highland Hardwoods, Inc., supra, 98 A.D.2d at 926, 471 N.Y.S.2d at ___. See also City of New York v. Citisource, Inc., 676 F.Supp. 546, 549, modified on rehearing, 679 F.Supp. 393 (S.D.N.Y. 1988); cf. Filmtrucks, Inc. v. Earls, 635 F.Supp. 1158, 1164 (S.D.N.Y. 1986) (where only purpose for pre-attachment is security and jurisdiction already exists, attachment should issue only upon showing that drastic action required). Additionally, the Court must consider whether LISA will be likely to satisfy the potential judgment and, in the exercise of its discretion of this equitable remedy, the doctrine of clean hands. See Merrill Lynch Futures Inc. v. Kelly, 585 F.Supp. 1245, 1259 (S.D.N.Y. 1986).

As pertinent here, NYCPLR §§6201(1) and 6212(a) require the Debtor to establish, by affidavit and other written evidence, that 1) LISA is a non-domiciliary residing without the state, 2) its complaint states a cause of action against LISA, 3) it will probably succeed on the merits, and 4) the amount it demands from LISA exceeds all known counterclaims.[5] See ITC Entertainment, Ltd.

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functions: jurisdictional and security). The Court would also note that the Debtor has specifically requested a preliminary injunction under Bankr.R. 7065 or attachment under NYCPLR 6201.

[5] The Court would note that since NYCPLR §6201 provides for four alternative grounds to be read in conjunction with the three

v. Nelson Film Partners, 714 F.2d 217, 223 (2d. Cir. 1983). The Court, having observed the demeanor and candor of the one witness, and carefully reviewed the written evidence submitted and received, concludes that an order of attachment must issue for purposes of jurisdiction and security. See id. at 220-223, cited in Cargill, Inc. v. Sabine Trading & Shipping Co., Inc., 756 F.2d 224, 227 (2d Cir. 1985); Elton Leather Corp. v. First General Resources Co., supra, 138 A.D.2d at 132, ___ N.Y.S.2d at ___.

First, page one of the Purchase Agreement in evidence as Plaintiff's Exhibit 1, describes LISA as a Luxembourg corporation with offices in that country's capital and demonstrates it to be a non-domiciliary residing without the state. There is no dispute among the parties as to this fact.

Second, the Court finds that while the complaint was not admitted into evidence at the evidentiary hearing, the three sets of documents in evidence demonstrate that the Debtor has valid causes of action under Code §§544, 547, 549 and 550 and the NYUCC in the underlying adversary proceeding.

With respect to the third element - probable success on the merits in said adversary proceeding - given the Debtor's concession on LISA's perfected interest in the equipment, the remaining issue would appear to be that of the perfection of

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requirements in NYCPLR §6212(a), a defendant who is not found to have assigned, disposed of, encumbered or secreted property or removed it from the state - or was about to commit any of these acts - with the intent to defraud his creditors or frustrate the enforcement of a judgment is not necessarily immune from an order of attachment should one of the other three grounds in §6201 be satisfied. See, e.g., Filmtrucks, Inc. v. Earls, supra, 635 F.Supp. at 1161-64.

LISA's interest in the lease stream, which both the Debtor and LISA have acknowledged to be chattel paper and hence governed by Article 9, assuming the transfer of the equipment and the transfer of the lease constituted two separate transactions. Following this analysis, the Court would note that an integrated reading of NYUCC §§9-105(1)(b) and 305, notwithstanding purported industry wide practice, would appear to support the necessity of possessing all the documents evincing the monetary obligation and the security interest which in this case would include the Master Lease and Equipment Schedule No. 6. However, if the Purchase Agreement memorialized a sale of equipment complete with existing lease, it would appear that Article 2 would control and render the tests for the perfection of chattel paper under Article 9 irrelevant.

Thus, it would seem that the characterization of the transfer that occurred between the Debtor, ICS-AG and LISA is crucial to the final resolution of the underlying adversary. Indeed, the Purchase Agreement discloses a hybrid transaction bearing both sale and loan characteristics unilluminated by Rutkowski's testimony, his or Fangio's affidavits and the other submitted written evidence. A decision here and now on the likelihood of the Debtor prevailing on its characterization of the transfer would be premature and inappropriate on the instant motion since it would, in effect, resolve the underlying adversary proceeding.

Nonetheless, because the Court is troubled by the convenient absence of LISA's identification therein as "buyer" in the face of its role as drafter and in contrast to the identification of the

Debtor and ICS-AG as "seller" and "guarantor," respectively, it finds the balance of probable success on the merits to be tipped, at this juncture, in the Debtor's favor. The Court would emphasize that it does not find the Debtor to have an entitlement to judgment in the adversary proceeding. Rather, it reaches this conclusion in the exercise of its discretion for the limited purpose of determining the instant pre-judgment application for provisional relief. See In re General Am. Comm. Corp., 63 B.R. 534, 548-49 (Bankr. S.D.N.Y. 1986), rev'd on other grounds, 73 B.R. 887 (S.D.N.Y. 1987) (critical determination in ruling on application for an order of attachment lies within NYCPLR §6201 and court need only find that plaintiff "might" be entitled to judgment with regard to its ultimate right to recovery).

Fourth, the pleadings at this early stage do not disclose any counterclaims, inasmuch as LISA has not filed an answer, but instead has responded by way of a motion to dismiss that is now a submitted motion for summary judgment. Thus, the amount demanded by the Debtor exceeds any presently known counterclaims.

Based upon this showing by affidavit and written evidence, the Court concludes that the Debtor is entitled to an order of attachment pending an outcome in the underlying adversary proceeding. Even given the absence in the record of LISA's "unclean hands" and its punctilious notification of the Committee, and strictly construing the attachment remedy in its favor, the Court cannot be certain that it will be able to satisfy the potential judgment in light of its admitted, rather than intended, liquidation posture. See Nolan v. Louis Workman Co., 146 Misc.

99, 261 N.Y.S. 534 (Sup.Ct. 1932). That the satisfaction of a potential judgment against LISA might be enforceable upon the assets of CBK, a foreign corporation licensed to do business in the State of New York that allegedly controls LISA's alleged parent corporation, presents far too attenuated a basis for this Court to deny the requested relief and, in any event, contemplates further affirmative action by the Debtor which would frustrate the "security" function served by the attachment remedy, notwithstanding the jurisdictional ground also necessitated herein.[6]

Thus, to secure the satisfaction of the judgment likely to be recovered by the Debtor, the Court directs the immediate attachment of 1) all future monthly proceeds from Ciba-Geigy under the Master Lease and Equipment Schedule No. 6 made in favor of LISA into account #100552-20230 at The Northern Trust International Banking Corporation, Suite 3941, 1 World Trade Center, New York, New York 10048, 2) all monies presently in said account #100552-20230 at said Northern Trust International Banking Corporation that are traceable to payments received from Ciba-Geigy in favor of LISA from December 31, 1987 under the said Master Lease and Equipment Schedule No. 6, and 3) any other monies generated by the equipment specified in Defendant's Exhibit A at Annex A in favor of LISA to the Northern International Banking Corporation from whatever source. Monies from these three

[6] While LISA has since unequivocally stated in its supplemental memorandum of law that LISA is a subsidiary of CBK, this assertion still stops short of an assurance of payment of a judgment should the Debtor prevail.

enumerated categories will be sequestered in a new interest-bearing account in favor of LISA with a reference to ICS: Case No. 88-00478 at the Northern Trust International Banking Corporation. Accord Halpert v. Engine Air Serv., Inc., 212 F.2d 860 (2d Cir. 1954). In this manner, the monies will also be preserved for LISA's use should it prevail in the underlying adversary proceeding.

By reason of the foregoing, it is hereby

ORDERED:

1. That the Debtor's request for a preliminary injunction is denied;

2. That the Debtor's request for an order of attachment is granted;

3. That LISA shall forthwith open up a new account at The Northern Trust International Banking Corporation in its favor with a reference of ICS-Case No. 88-00478 and deposit all future payments received from Ciba-Geigy, all past payments traceable from Ciba-Geigy dating back from December 31, 1987 presently in account #100552-20230, and any other monies generated from the equipment described specified in Defendant's Exhibit A at Annex A;

4. That the Debtor shall submit a proposed Order consistent with this Memorandum-Decision and upon its entry by the Court serve it by first class mail on The Northern Trust International Banking Corporation, Paying and Receiving Department, for informational purposes.

Dated at Utica, New York
this day of July, l989

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STEPHEN D. GERLING
U.S. Bankruptcy Judge