

IN THE CIRCUIT COURT OF THE 15 TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ELWOOD GARY BAKER,

CASE NO.: 502005CA001771XXXXMB AE

Plaintiff,

vs.

NITV, LLC,

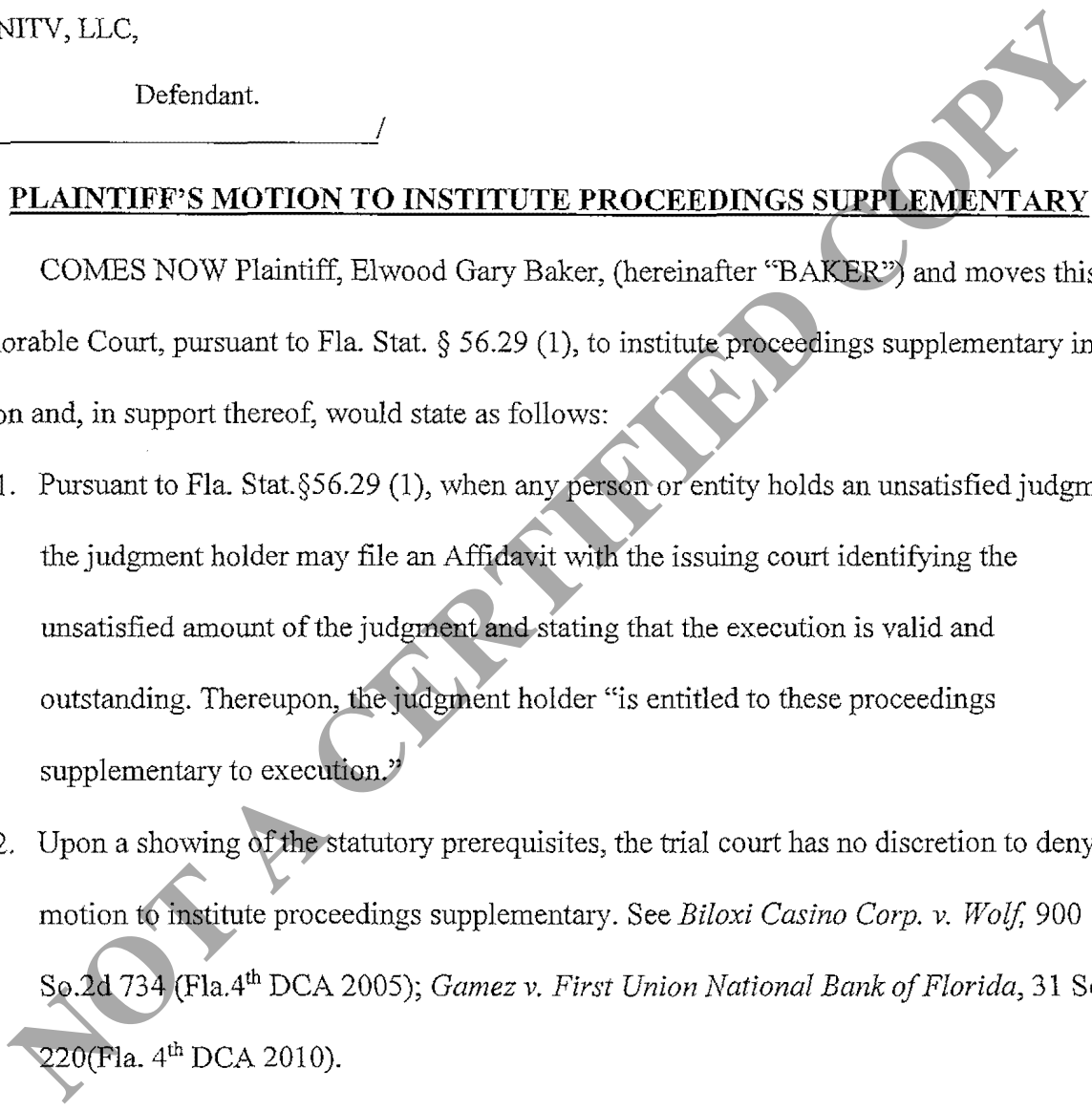
Defendant.

PLAINTIFF'S MOTION TO INSTITUTE PROCEEDINGS SUPPLEMENTARY

COMES NOW Plaintiff, Elwood Gary Baker, (hereinafter "BAKER") and moves this Honorable Court, pursuant to Fla. Stat. § 56.29 (1), to institute proceedings supplementary in this action and, in support thereof, would state as follows:

1. Pursuant to Fla. Stat. § 56.29 (1), when any person or entity holds an unsatisfied judgment, the judgment holder may file an Affidavit with the issuing court identifying the unsatisfied amount of the judgment and stating that the execution is valid and outstanding. Thereupon, the judgment holder "is entitled to these proceedings supplementary to execution."
2. Upon a showing of the statutory prerequisites, the trial court has no discretion to deny a motion to institute proceedings supplementary. See *Biloxi Casino Corp. v. Wolf*, 900 So.2d 734 (Fla. 4th DCA 2005); *Gamez v. First Union National Bank of Florida*, 31 So.3d 220 (Fla. 4th DCA 2010).
3. On May 23, 2013, the trial court entered an Amended Final Judgment against the above-named Defendant, NITV. A copy of said Final Judgment is attached hereto and marked **Exhibit "A"**.

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***




4. The Defendant, NITV owes the Plaintiff \$250,000.00, with interest as indicated by the terms of the aforesaid Amended Final Judgment. The Defendant has failed to pay any money whatsoever towards satisfaction of said Final Judgment. A Writ of Execution has been issued by the Clerk of the Circuit Court and said Writ of Execution remains valid, outstanding and unsatisfied. Attached hereto and marked **Exhibit "B"** is a Certification of the Plaintiff in support of these proceedings supplementary.
5. The Third Party Individuals Lourdes Irimia , James Kane and Charles Humble, are officers and/or directors and/or Shareholders of Third Party Defendant, NITV FEDERAL SERVICES,LLC and Third Party Defendant, Charles Humble is the Managing Member of Judgment Debtor, NITV, or related to them. They are insiders under Florida law.
6. The Third Party(s) have incurred liability for the Judgment Debtor, NITV's debt by virtue of any or all of the following:
 - a. The fraudulent transfer of money, or other assets from the Judgment Debtor and/or a conspiracy to do so, at the time when Judgment Debtor was insolvent and/or previously indebted to Plaintiff, or,
 - b. Third Party failure to comply with the statutory obligations imposed upon them by Florida Statutes §607. et seq., regarding "wind down" procedures for dissolving corporations, or,
 - c. Third Party(s) were directors of the Judgment Debtor who either aided and abetted in the fraudulent transfer of corporate assets, and/or failed to account for the corporate assets or who knew or should have known of improper corporate conduct and did nothing to prevent it, or

- d. The corporate Third Party is either a successor Corporation, business continuation, or the surviving Corporation of a Merger with the Judgment Debtor.
7. Annexed hereto as **Exhibit "C"** is a copy of Plaintiff's Proposed Third Party Complaint.
8. All conditions precedent to instituting these proceedings have occurred.

WHEREFORE, Plaintiff, Elwood Gary Baker , request this Honorable Court to enter an Order granting this Motion and institution proceedings supplementary in this action.

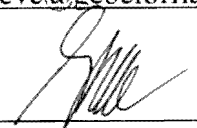
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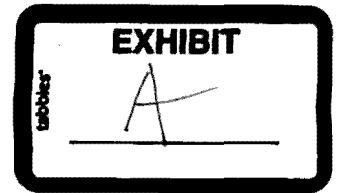

STEPHEN B. GEBELOFF, ESQUIRE
FL BAR NO.: 0695947

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Mail on this 5th day of May , 2014 to Jeffrey George Farwell, Esq., jfarwell@zappolofarwell.com and Alexander John Kranz, Esq.; ajkranz@msn.com

5255 N. Federal Hwy.
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Boca Raton, FL 33487
(561)953-4600
steve@gebelofflaw.com


STEPHEN B. GEBELOFF, ESQUIRE
FL BAR NO.: 0695947



IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO.: 502005CA001771XXXXMB AE

ELWOOD GARY BAKER,

Plaintiff(s),

vs.

NITV, LLC,

Defendant(s),

AMENDED FINAL JUDGMENT

Pursuant to the Final Judgment previously entered in this case, and the opinion and mandate issued by the Fourth District Court of Appeal, the prior Final Judgment in this case is amended nunc pro tunc to December 10, 2009 (the date of the original judgment) and it is,

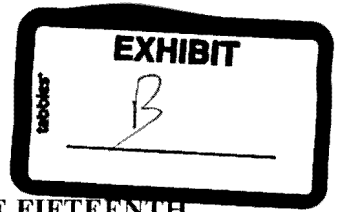
Adjudged that Plaintiff, ELWOOD GARY BAKER, whose address is PO Box 191, Cape Canaveral, FL 32930, shall recover from Defendant NITV, LLC, whose address is 9999 Collins Ave., 12-A, Bal Harbour, FL 33154 and whose EIN Number is [REDACTED], the sum of \$250,000.00 that shall bear interest at the rate of 8% per year as of December 10, 2009, for which let execution issue forthwith.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this
day of May, 2013.

THE HONORABLE EDWARD FINE

Copies Furnished:
Zappolo & Farwell, P.A., 7108 Fairway Drive, Suite 150, Palm Beach Gardens, FL 33418
Alexander Kranz, Esq., 6650 West Indiantown Road, Suite 200, Jupiter, FL 33458

SIGNED & DATED
MAY 23 2013
JUDGE EDWARD FINE



IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

Circuit Civil Division

CASE NO. 50 2005CA001771XXXXMB AE

ELWOOD GARY BAKER
Plaintiff(s)

v.

NITV, LLC
Defendant(s)

EXECUTION

FILED
2014 APR -8 AM 10:09
JUDICIAL CIRCUIT CIVIL 5
PALM BEACH COUNTY, FL

THE STATE OF FLORIDA:

To Each Sheriff of the State:
YOU ARE COMMANDED to levy on the property of subject to execution of
NITV, LLC
(name of person against whom judgment was entered)

in the sum of \$250,000.00
with interest at 8 %* from May 23, 2013 nunc pro tunc December 10, 2009 until paid, and to
have this writ before the Court when satisfied.

DATED on APRIL 8, _____, 2014.

SHARON R. BOCK
As CLERK OF COURT

By: *Debra Redmond*

Debra Redmond as Deputy Clerk

Cc
Stephen B. Gebeloff Esq.
5255 N. Federal Highway, Third Floor,
Boca Raton, FL 33487

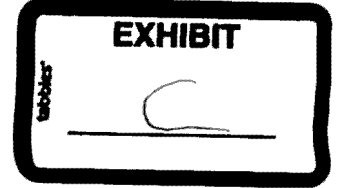
*Subject to interest rate adjustments pursuant to Florida Statute 55.03.

NOTE: Rates of interest set by comptroller are as follows:

- | | |
|-------------------------|--------------------------------------|
| 1994 - 12% | 2006 - 09% |
| 1995 - 08% | 2007 through 2008 - 11% |
| 1996 through 2000 - 10% | 2009 - 08% |
| 2001 - 11% | 2010 - 06% |
| 2002 - 09% | 01/01/2011 through 09/30/2011 - 06% |
| 2003 - 06% | 10/01/2011 - 04.75% |
| 2004 through 2005 - 07% | 01/01/2012 through 12/01/12 - 04.75% |
| | 01/01/2013 - 04.75% |

Plaintiff under the ACT since on or before May 23, 2013 (the "DATE"). Plaintiff has been a present creditor under the ACT since the DATE.

4. Plaintiff, Baker resides in Brevard County, Florida and is otherwise sui juris.
5. Defendant, NITV FED, is Florida Limited Liability Company with a Principal Address in West Palm Beach, Palm Beach County Florida. ("SUCCESSOR/ ALTER EGO")
6. Defendant, LOURDES, is a Co-Conspirator and Managing Member of Defendant, NITV FED, with an Address in West Palm Beach, Palm Beach County Florida.
7. Defendant, HUMBLE, is a Co-Conspirator and Managing Member of Defendant, NITV FED, with an Address in West Palm Beach, Palm Beach County Florida.
8. Defendant, KANE, is a Co-Conspirator and Manager of Defendant, NITV FED, with an Address in West Palm Beach, Palm Beach County Florida.
9. The Plaintiff was required to pay the undersigned a reasonable attorneys' fee for the prosecution of this action.
10. Plaintiff would request taxation of attorneys fees against the JUDGMENT DEBTOR pursuant to F.S. 57.115 (2) and, to the extent the value of any fraudulently transferred assets to any THIRD PARTY(s) exceeds the debt, that a Cross-Over Judgment for attorney fees be entered against such THIRD PARTY(s) up to the difference between the value of the fraudulently transferred assets and the JUDGMENT.
11. Plaintiff has performed all conditions precedent to the maintenance of this action and/or same have been waived.



IN THE CIRCUIT COURT OF THE 15 TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ELWOOD GARY BAKER,
Plaintiff,

CASE NO.: 502005CA001771XXXXMB AE

vs.

NITV, LLC,
Defendant.

ELWOOD GARY BAKER,
Third Party Plaintiff,

vs.

NITV FEDERAL SERVICES, LLC,
LOURDES IRIMIA, JAMES KANE
and CHARLES HUMBLE,
Third Party Defendants

PLAINTIFF'S THIRD PARTY COMPLAINT IN EXECUTION

COMES NOW Plaintiff, Elwood Gary Baker, (hereinafter "BAKER") in execution by way of Third-Party Complaint against Third-Party Defendants, NITV FEDERAL SERVICES, LLC, ("NITV FED"), Lourdes Irimia ("IRIMIA"), James Kane ("KANE") and Charles Humble ("HUMBLE") by way of complaint alleges and states that:

1. This Court has subject matter jurisdiction because the amount in controversy is more than \$15,000.00, exclusive of costs, interest and attorneys' fees, and because this proceeding is ancillary to the primary action in which the Judgment was entered.
2. These are proceedings supplementary pursuant to inter alia, F.S. 56.29 and F.S.726, the Florida Uniform Fraudulent Transfer Act ("the ACT").
3. This Court previously entered an Amended Final Judgment against Defendant, NITV, LLC ("JUDGMENT DEBTOR") on a debt (the "DEBT") which has been due

COUNT I
(FRAUDULENT TRANSFERS UNDER THE ACT
NITV FED, IRIMIA, HUMBLE and KANE)

Plaintiff incorporates the General Allegations in paragraphs 1-11 as set forth above.

12. Third Party Defendants, NITV FED, IRIMIA, HUMBLE and KANE

are liable under the ACT for the DEBT by virtue of any or all of the following:

- a. The fraudulent transfer of money, or other assets from the JUDGMENT DEBTOR to the INSIDERS and/or **SUCCESSOR/ ALTER EGO** after the DATE, at a time when the JUDGMENT DEBTOR was insolvent under the ACT, without the JUDGMENT DEBTOR'S receipt of reasonably equivalent value for the transfer; or
- b. The fraudulent transfer of money, or other assets from the JUDGMENT DEBTOR to the INSIDERS and **SUCCESSOR/ ALTER EGO** after the DATE, without the JUDGMENT DEBTOR'S receipt of reasonably equivalent value for the transfer, which transfer caused the JUDGMENT DEBTOR to become insolvent under the ACT, and the INSIDERS knew the transfer would make the JUDGMENT DEBTOR insolvent; or
- c. Further, the insiders conspired amongst themselves to fraudulently transfer JUDGMENT DEBTOR assets either to themselves or to **SUCCESSOR/ ALTER EGO** to carry on the JUDGMENT DEBTOR's business.

13. The foregoing conduct violates either F.S. 726.105 and/or F.S. 726.106, subjecting the insiders to liability.

WHEREFORE Plaintiff, BAKER, request judgment plus interest, costs and such fees as are allowable against the Third Party Defendants, NITV FED, IRIMIA, HUMBLE and KANE, and

such other relief as the Court deems equitable and just.

COUNT II
PIERCING THE CORPORATE VEIL
(HUMBLE)

14. Plaintiff incorporates the General Allegations in paragraphs 1-11 as set forth above.
15. This is an action to pierce the JUDGMENT DEBTOR's corporate veil.
16. The INSIDER either set up or used the JUDGMENT DEBTOR for an improper purpose, to wit, to perpetrate a fraud on Plaintiff.
17. At all time material, the JUDGMENT DEBTOR, operated as the alter ego of the INSIDER, HUMBLE . The INSIDER is liable by virtue of the following conduct which is grounds to pierce the corporate veil:
 - a. Shortly after the DATE, the INSIDER, caused the JUDGMENT DEBTOR to cease operations or otherwise become a defunct corporation, and
 - b. Both before and after the DATE, the INSIDER fraudulently transferred JUDGMENT DEBTOR's assets either to himself or to the SUCCESSOR/ALTER EGO, without the JUDGMENT DEBTOR's receipt of reasonably equivalent value.
 - c. The INSIDER used the JUDGMENT DEBTOR to incur the DEBT at the time when the JUDGMENT DEBTOR was insolvent under the ACT and incapable of repaying the DEBT.
 - d. The INSIDER, HUMBLE as Managing Member of an insolvent JUDGMENT DEBTOR, had a duty to Plaintiff, an existing creditor under the ACT, to preserve the JUDGMENT DEBTOR'S assets which constitute a trust fund for its creditors and not allow same to be fraudulently transferred to or wasted by other

INSIDERS. The INSIDER, HUMBLE, breached his duty to Plaintiff by allowing the misappropriation of the assets.

- e. The INSIDER, HUMBLE, had an affirmative duty to acquire knowledge and experience to perform his director duties, and a continuing obligation to keep informed about the JUDGMENT DEBTOR'S business activities and not ignore the illegal conduct of other INSIDERS.
- f. The INSIDER, HUMBLE failed to properly capitalize the JUDGMENT DEBTOR.

WHEREFORE Plaintiff, BAKER, request judgment plus interest, costs and such fees are allowable against the Third Party Defendant, HUMBLE, and such other relief as the Court deems equitable and just.

COUNT III
BUSINESS CONTINUATION
(NITV FED)

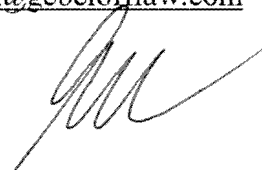
- 18. Plaintiff incorporates the General Allegations in paragraphs 1-11 as set forth above.
- 19. The SUCCESSOR/ALTER EGO was set up by the INSIDERS, IRIMIA, HUMBLE and KANE, for the purpose of engaging in substantially the same business activities as the JUDGMENT DEBTOR.
- 20. The SUCCESSOR/ALTER EGO was capitalized with the assets fraudulently transferred from the JUDGMENT DEBTOR.
- 21. The SUCCESSOR/ALTER EGO reflects a continuity of JUDGMENT DEBTOR ownership, business operations, personnel, officers and directors, and of product sold or service rendered.

22. By virtue of the foregoing, the SUCCESSOR/ALTER EGO is either a business continuation, a successor corporation, or the surviving corporation of a de factor merger between SUCCESSOR/ALTER EGO and the JUDGMNET DEBTOR, and is liable for the JUDGMENT DEBT.

WHEREFORE Plaintiff, BAKER, request judgment plus interest, costs and such fees are allowable against the Third Party Defendant, IRIMIA, HUMBLE and KANE and for such other relief as the Court deems equitable and just.

Dated: May 5, 2014

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