

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

DANNY BENSUSAN, )  
)  
Plaintiff and Counter-Defendant, )  
)  
v. ) CASE NO.: 09 CV 00130  
)  
JOSEPH PREBUL, )  
PREBUL ENTERPRISES, LLC, )  
PREBUL CHRYSLER JEEP DODGE, LLC, )  
PREBUL CHEVORLET, LLC, )  
CAROLEX, LLC, )  
CAROLEX AIR, LLC, )  
CAROLEX PROPERTIES, LLC, AND )  
CAROLEX MANAGEMENT, INC. )  
)  
Defendants, Counter-Plaintiffs and )  
Third Party Plaintiffs, )  
)  
v. )  
)  
STEVEN BENSUSAN, )  
ALLIANCE INVESTMENT GROUP, LLC, )  
a/k/a ALLIANCE INVESTMENTS, INC., )  
117 7<sup>TH</sup> AVENUE, LP, )  
a/k/a 117 7<sup>TH</sup> AVNUE SOUTH,LP, )  
117 7 AVE S PROP CO., LP, )  
117 SEVENTH AVNUE SOUTH PROPERTY )  
CO., L.P., and TSE GROUP, LLC )  
)  
Third Party Defendants )

MOTION FOR DEFAULT

Comes Joseph Prebul as Counter-Plaintiff and hereby moves the Court to enter a default against the Counter-Defendant, Danny Bensusan, pursuant to Rule 55 of the Federal Rules of Civil Procedure and would respectfully show by Affidavit of counsel that the time for answer has expired and that Counter-Defendant, Danny Bensusan, has failed to plead or otherwise defend this cause. This action was removed on May 18, 2009, by the Third Party

Defendants. The Counter-Defendant, Danny Bensusan, was served on May 1, 2009, with the Counterclaim. Pursuant to Rule 81 of the Federal Rules of Civil Procedure the time for Danny Bensusan to answer or otherwise plead to the Amended Counterclaim/ Complaint/ Third Party Complaint has expired.

WHEREFORE the Counter-Plaintiff, Joseph Prebul, hereby prays that the Court enter a default against the Counter-Defendant, Danny Bensusan.

Respectfully submitted,

**SAMPLES, JENNINGS, RAY & CLEM, PLLC**

BY: “s/Thomas E. Ray”

Thomas E. Ray, TN BPR 001211

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2009, I electronically filed the foregoing Motion For Default with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

[No manual recipients].

and I hereby certify that I have mailed by United States Postal Service the motion to the following non-ECF participants:

Bradley Arant Bolt Cummings, LLP  
Attorneys for Danny Bensusan  
1600 Division Street, Suite 700  
PO Box 340025  
Nashville, TN 37203

Wayne Peters  
Gearhiser Peters Lockaby Cavett & Elliott, PLLC  
320 McCallie Avenue  
Chattanooga, TN 37402

SAMPLES, JENNINGS, RAY & CLEM,  
PLLC

BY: “s/Thomas E. Ray”



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

FILED  
2009  
JULY 18 A 11:24  
U.S. DISTRICT COURT  
EASTERN DIST. TENN.  
CLERK

DANNY BENSUSAN, )  
 )  
Plaintiff and Counter-Defendant, )

v. )

JOSEPH PREBUL, )  
PREBUL ENTERPRISES, LLC, )  
PREBUL CHRYSLER JEEP DODGE, LLC, )  
CAROLEX, LLC )  
CAROLEX AIR, LLC, )  
CAROLEX PROPERTIES, LLC, and )  
CAROLEX MANAGEMENT, INC., )

Defendants, Counter-Plaintiffs and )  
Third-Party Plaintiffs, )

No. 1:09-cv-130

*Matice/Lee*

v. )

STEVEN BENSUSAN, )  
ALLIANCE INVESTMENT GROUP, LLC, )  
a/k/a ALLIANCE INVESTMENTS, INC., )  
117 7th AVENUE, LP, )  
a/k/a 117 7th AVENUE SOUTH, LP, )  
117 7 AVE S PROP CO., LP, and )  
117 SEVENTH AVENUE SOUTH )  
PROPERTY CO., L.P., )  
and TSE GROUP, LLC, )

Third-Party Defendants. )

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441 et seq., Third-Party Defendants, Steven Bensusan, Alliance Investment Group, LLC, a/k/a Alliance Investments, Inc., 117 7th Avenue, LP, a/k/a 117 7th Avenue South, LP, 117 7 Ave S Prop Co., LP and 117 Seventh Avenue South Property Co., L.P. and TSE Group, LLC ("Third-Party Defendants"), hereby remove the action currently pending in the Circuit Court for Hamilton County, Tennessee, case number 09C239, to the United States

District Court for the Eastern District of Tennessee. Removal is based upon diversity of citizenship as set forth below.

1. Plaintiff, Danny Bensusan (“Plaintiff”), filed an action (the “State Court Action”) against the Defendants, Joseph Prebul, Prebul Enterprises, LLC, Prebul Chrysler Jeep Dodge, LLC, Prebul Chevrolet, LLC, Carolex, LLC, Carolex Air, LLC, Carolex Properties, LLC, Carolex Management, Inc., David Dalton and Deana M. Johnston, in the Circuit Court for Hamilton County, Tennessee, case number 09C239.

2. Defendant Prebul Chrysler Jeep Dodge, LLC thereafter filed an Answer and Counterclaim that included a counterclaim against the Plaintiff. Plaintiff later filed a notice of voluntary nonsuit.

3. Defendants Prebul Enterprises, LLC, Prebul Chevrolet, LLC, Carolex, LLC, Carolex Properties, LLC and Carolex Management, Inc. (“Third-Party Plaintiffs”) then filed a motion for leave to amend its Answer and Counterclaim to include a third-party complaint against the Third-Party Defendants. That motion was granted.

4. The Third-Party Defendants have not been served with any summons or the Third-Party Complaint that has been filed by the Third-Party Plaintiffs.

5. Pursuant to 28 U.S.C. § 1446(a), the Third-Party Defendants state that they have not been served with any process, pleadings or orders in the State Court Action.

6. Removal is proper because this Court has original diversity jurisdiction over this matter pursuant to 28 U.S.C § 1332 because this is a civil action where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different States. Specifically, according to the Third-Party Complaint, each of the Third-Party Plaintiffs is a corporation or limited liability company organized and existing under the laws of the State of Tennessee with its principal place of business in the State of Tennessee, whereas each of the Third-Party

Defendants is a citizen of the State of New York or a limited partnership or limited liability company organized and existing under the laws of the State of New York with its principal place of business in the State of New York. Upon due consideration of the true interests of the parties and the real and necessary parties to the dispute, diversity of citizenship exists.

7. Under 28 U.S.C. § 1441(a), this is the proper Court to which to remove this action because the Third-Party Plaintiffs brought their claims against the Third-Party Defendants in a state court of which this District Court has original jurisdiction.

8. A copy of this notice of removal is being simultaneously filed in the Circuit Court for Hamilton County, Tennessee.

WHEREFORE, Third-Party Defendants, Steven Bensusan, Alliance Investment Group, LLC, a/k/a Alliance Investments, Inc., 117 7th Avenue, LP, a/k/a 117 7th Avenue South, LP, 117 7 Ave S Prop Co., LP and 117 Seventh Avenue South Property Co., L.P. and TSE Group, LLC, hereby remove case number 09C239 from the Circuit Court for Hamilton County, Tennessee, to the United States District Court for the Eastern District of Tennessee.

Dated: May 14, 2009.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: /s/ Austin L. McMullen

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Austin L. McMullen (No. 20877)

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*Attorneys for Third-Party Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded via U.S. Mail, postage prepaid, to:

Christopher T. Varner  
Gearhiser, Peters, Lockaby, Cavett  
& Elliott, PLLC  
320 McCallie Avenue  
Chattanooga, TN 37402

Thomas E. Ray  
Samples, Jennings, Ray & Clem  
130 Jordan Drive  
Chattanooga, TN 37421

Jerrold D. Farinash  
Kennedy, Koontz & Farinash  
320 N. Holtzclaw Avenue  
Chattanooga, TN 37404

on this the 14th day of May, 2009.

/s/ Austin L. McMullen

Austin L. McMullen