SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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LEGO SUMMIT COMPANY LTD. and LEGO SUMMIT HOLDING, LLC,

Plaintiffs,

- v -

YWA-AMSTERDAM LLC, AMSTERDAM MANAGING MEMBER LLC, AGBCW 85 TENTH L.P., BCEG AMSTERDAM PARTNERS, LLC, BCEG AMSTERDAM CAPITAL, INC., AMSTERDAM CAPITAL, INC., AMSTERDAM BCEGI MANAGER, LLC, BCEG INTERNATIONAL INVESTMENT-US, INC., BCEGI, LLC, AMSTERDAM YWA MANAGER, LLC, YOUNG WOO, and MARGARETTE LEE,

Defendants.

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INDEX NO. 654004/2025

MOTION DATE _____

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

10/3/25

AMENDED OCTOBER 3, 2025

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 21, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 84, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 108, 109, 111, 130

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

In motion sequence 002, Plaintiffs LEGO Summit Company Limited (Lego Member 1) and LEGO Summit Holding, LLC (Lego Member 2) (collectively Lego) move pursuant to (1) CPLR 6201 for an order of attachment of a fund defined as the "Refund Amount" in §15 of the February 6, 2020 Second Amended and Restated Limited Liability Company Agreement (LLCA2); (2) CPLR 6301 and 6311 to enjoin defendants YWA-Amsterdam, LLC (Company), Amsterdam Managing Member LLC (Managing Member), AGBCW 85 Tenth L.P. (YWA Investor Member),[1] BCEG Amsterdam

[1] Since defendants AGBCW, YWA Manager, Woo, and Lee transferred their Refund Amounts to the Company in May 2025, there is no basis to enjoin them or attach their funds and thus the motion is denied as to them. (NYSCEF Doc. No. [NYSCEF] 41, Young Woo aff ¶¶10, 11; NYSCEF 40, Lee aff ¶¶9, 10.)

Partners, LLC (BCEGI Investor Member 1), BCEG Amsterdam Capital, Inc. (BCEGI Investor Member 2), Amsterdam Capital, Inc. (ACI), Amsterdam BCEGI Manager, LLC (BCEGI Amsterdam), BCEG International Investment-US, Inc. (BCEG International), BCEGI, LLC (BCEGI, LLC), Amsterdam YWA Manager, LLC (YWA Manger), Young Woo, and Margarette Lee[2] from spending, conveying, taking, removing, pledging, encumbering, dissipating, or taking any action in connection with any of those certain Funds; and (3) CPLR 2601, to direct defendants to pay the Funds into Court pending the outcome of this litigation. (NYSCEF 9, July 7, 2025 OSC.)

Pending this decision, the court issued a TRO directing "that the funds defined as the 'Refund Amount' in Section 15 of the Second Amended and Restated Limited Liability Company Agreement of defendant YWA-Amsterdam, LLC dated February 6, 2020 shall be held in the escrow account maintained by Kasowitz LLP." (NYSCEF 130, September 19, 2025 TRO; NYSCEF 21, July 8, 2025 OSC.)

This action concerns the 2018 development of the Radio Tower, a 22-story mixed-use building at 2420-2430 Amsterdam Avenue in Washington Heights, which incudes commercial space, parking, retail and a 221-room hotel. (NYSCEF 1, Complaint ¶24; NYSCEF 18, Bryan Woo[3] aff ¶1.) In February 2020, Lego agreed to invest $33 million in the Company in exchange for "a preferred return on its investment"

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[2] The owners of the Company are (1) the Common Members: Managing Member; YWA Investor Member; BCEGI Investor Member 1; and BCEGI Investor Member 2; and (2) Lego Member 1 (preferred equity investor member) and Lego Member 2 (profit sharing member). (NYSCEF 13, Complaint fn 1 at 9.) The other defendants are owners of the Common Members to whom the Brownfield Tax Credits are allocated for tax purposes (Member Taxpayers). (NYSCEF 43, LLCA2 § 15.3.)

[3] Bryan Woo is an executive at Amsterdam YWA Manager LLC. (NYSCEF 18, Woo aff ¶1.)

by monetizing Brownfield tax credits paid to the Common Members of the Company until Lego is repaid. (NYSCEF 1, Complaint ¶¶40, 43-44.)[4] Authority for this transaction is found in the LLCA2[5] §15.2(a) which provides:

> "If a Member or Member Taxpayer is allocated or receives Brownfield Credits with respect to a taxable year of the Company, the Member shall (and shall cause the applicable Member Taxpayer[6] to remit to such Member for such purpose) contribute to the Company an amount equal to (a) the amount of the Brownfield Credit, minus (b) [NY State and Federal taxes liabilities], minus (c) . . . (the 'Refund Amount'), for distribution by the Company to the CDH Investor Member 1 pursuant to Section 7.1 to the extent of the outstanding amount of Unpaid CDH Distributions." (NYSCEF 65, LLCA2.)

On May 9, 2025, the Company informed Lego that it

> "is aware that the Company is [redacted] and also has pending obligations to tenants and unsecured creditors. It would be unlawful, as well as contrary to the LLC Agreement, for the Company to make distributions to equity investors such as [Lego] at this time." (NYSCEF 68, Letter.)

The issue here is whether the Company can use the funds instead of transferring them to Lego.

In its June 30, 2025 complaint, Lego asserts the following causes of action: (1) permanent injunction; (2) declaratory judgment that "(i) the LLCA[2] obligates the Common Members, including Managing Member, and the Member Taxpayers to turnover the Refund Amounts to the Company; (ii) the LLCA[2] obligates the Managing Member and the Company to collect and turnover to CDH Investor Member 1 the

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[4] Filing documents under seal does not excuse a party from citing the record using NYSCEF numbers. (NYSCEF 84, YWA-Amsterdam LLC and Amsterdam Managing Member LLC MOL at fn 1.) For extra security, the citation need not be hyperlinked.
[5] The LLCA2 is executed by the Common Members of the Company except ACI. (NYSCEF 12, Mei Wang, Lego corporate representative aff ¶11; NYSCEF 53, Jim Huang, Officer and Director of ACI, aff ¶6.)
[6] The Member Taxpayers are defendants Woo, Lee, BCEGI, ACI, and BCEG International. (NYSCEF 13, Complaint ¶¶10, 11, 13, 14, 16.)

Refund Amounts until CDH has been paid in full all of its investment, interest and exit fee; (iii) CDH Investor Member 1 has superior possessory and property rights to the Refund Amounts, as compared to the Company, Managing Member, Common Members, or Member Taxpayers, until CDH Investor Member 1 is repaid its financial rights under the LLCA[2]; and (iv) until such repayment, the Refund Amounts cannot be treated as property of the Company with respect to any other creditor, including without limitation Lender or NY Cancer & Blood Specialists;" (3) "Breach of Contract - Refund Amounts / Mandatory Quarterly Interest Payments (Specific Performance) (Against Company, Common Members, Including Managing Member, and Member Taxpayers);" (4) "Breach of Contract - Refund Amounts / Mandatory Quarterly Interest Payments (Money Damages as Alternate Remedy) (Against Company, Common Members, Including Managing Member, Member Taxpayers, YWA Investor Member, BCEGI Amsterdam, BCEGI International, BCEGI, LLC, YWA Manger, Woo and Lee);" (5) "Conversion / Replevin - Refund Amounts (Against Company, Common Members, Including Managing Member, and Member Taxpayers);" (6) "Unjust Enrichment & Quasi Contract - Refund Amounts & Mandatory Contributions To Interest Payments (Defendants);" (7) "Breach of Contract – Information Rights (Specific Performance) (Against Company and Managing Member);" (8) "Breach of the Implied Covenant of Good Faith and Fair Dealing (Against Company, Common Members, Including Managing Member, Member Taxpayers, YWA Investor Member, BCEGI Amsterdam, BCEG International, BCEGI, LLC, YWA Manger, Woo and Lee);" (9) "Accounting (Against Company, Common Members, Including Managing Member, and Member Taxpayers);" (10) "Constructive Trust (Against Company, Common Members, Including

Managing Member, and Member Taxpayers);" (11) "Breach of Fiduciary Duty (Against Managing Member and Common Members);" and (12) "Tortious Interference with Contract (Against Guarantors)." (*See* NYSCEF 1, Complaint.)

Preliminary Injunction

> "A preliminary injunction may be granted in any action where it appears 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." (CPLR 6301.)

To obtain a preliminary injunction, a movant must establish: "(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor." (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].)

While Lego may be able to establish a breach of contract claim against defendants[7] because, as between the parties to the contract, Lego is entitled to the Refund Amount, Limited Liability Company Law §508 supersedes that contractual obligation. Section 508 provides:

> "Limitations on distributions. (a) A limited liability company shall not make a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their membership interests and liabilities for which recourse of creditors is limited to specified property of the limited liability company, exceed the fair market value of the assets of the limited liability

[7] Lego cannot establish likelihood of success for breach of contract against ACI which did not sign the LLCA2. ACI paid the Refund Amount in 2022 but objected in 2024. (NYSCEF 56, email at 6/12 [NYSCEF pagination].) Lego's new theory on reply is ratification. Whether the 2022 payment constitutes ratification is an issue of fact that cannot be assessed on this record. ACI counters that the LLCA2 was not signed on behalf of ACI, but BCEGI Investor Member 1 promised to cause ACI to pay Lego the Refund Amount. (*See Centennial Energy Holdings, Inc. v Colo. Energy Mgt., LLC*, 2011 NY Slip Op 51290[U], *3, 7 [Sup Ct, NY County 2011] [contractual undertaking to "provide or cause [affiliate] to provide an irrevocable standby letter of credit" did not bind the affiliate].) The motion is denied as to ACI.

> company . . . . (b) A member who receives a distribution in violation of subdivision (a) of this section, and who knew at the time of distribution that the distribution violated subdivision (a) of this section, shall be liable to the limited liability company for the amount of the distribution." (Limited Liability Company Law § 508 [a]-[b].)

Likewise, if the Company paid the Refund Amount to Lego now, it would potentially violate Debtor and Creditor Law §§273 and 275, which provides that conveyances that render a transferor, here the Company, insolvent and made without fair consideration are fraudulent. (Debtor and Creditor Law §§ 273, 275.) The court rejects Lego's argument that only a creditor may assert the Debtor and Creditor Law; the Company can assert the Debtor and Creditor Law prophylactically to avoid such a claim. The parties are required to comply with the law. Indeed, LLCA2 §7.2 prohibits violation of law, including the Limited Liability Company Law and the Debtor and Creditor Law. (*See* NYSCEF 2, LLCA2 § 7.2.)

Admittedly, the Company is in financial distress. (NYSCEF 14, Lego's MOL at 4; NYSCEF 13, Complaint ¶35.) The loans are outstanding and past due. (NYSCEF 18, Woo aff ¶7.) Investors paid while the Company is in financial distress could constitute an impermissible favoring of investors over lenders. Moreover, such payment to Lego would violate the December 21, 2018 loan agreements, which would in turn also be a violation of the LLCA2 §7.2. (NYSCEF 59, Senior Loan Agreement § 4.2.12; NYSCEF 60, Building Loan Agreement § 4.2.12; NYSCEF 61, Project Loan Agreement § 4.2.12; NYSCEF 62, 63, and 64, Security Instruments at 6.) Therefore, Lego cannot establish likelihood of success.[8]

[8] The court cannot find likelihood of success based on Lego's other claims. For example, unjust enrichment and constructive trust are precluded by the contract. (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d 382, 388 [1987].)

As between the parties, an issue of fact exists as to whom the funds paid by the Member Taxpayers to the Company belong. LLCA2 §15.2(a) states that the Member contributes the Refund amount to the Company. (NYSCEF 2, LLCA2 § 15.2.) Lego relies on LLCA2 §15.1[9] which provides that such funds are not the property of the Company. (*Id.* §15.1.) However, the parties treated prior Refund Amounts as if they belong to the Company. In 2022, the Refund Amount was recorded as a contribution to capital by the Member Taxpayers' accounts and a debit to Lego's capital account. (NYSCEF 67, Sched. K-1.) Moreover, the parties' declaration in §15.1 does not make it so. Payment of the Refund Amount to Lego appears to be a distribution of company assets. (*See Mostel v Petrycki,* 25 Misc 3d 929, 931-32 [Sup Ct, NY County 2009] [the court concluded that the $300,000 payment to defendants was a distribution because "the typical nature of a distribution is the distribution of profits or *the return of capital*" and "plaintiff alleges that defendant's withdrawal was a return of his capital investment."] [internal quotation marks and citation omitted].)

Further, Lego cannot establish irreparable harm. This is a case for money damages. Where the "ultimate objective is attaining an enforceable money judgment,"

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[9] Section 15.1 of the LLCA2 provides:

> "Although pursuant to the tax laws of the State of New York, Brownfield Credits are tax attributes granted to the Members (or Member Taxpayers) and not the Company, it is the intention of the Members, that (i) the amount of such Brownfield Credits be remitted to the Company to the extent of the Refund Amount as determined pursuant to Section 15.2, and (ii) the Brownfield Credits available to each of the Members (excluding the Refund Amount) be treated as Cash Available for Distribution to be made to the Common Members. Notwithstanding the foregoing, such Brownfield Credits shall not be treated as property of the Company with respect to any other creditor of the Company." (NYSCEF 43, LLCA2.)

there is no entitlement to a preliminary injunction restraining a defendant's assets because there is no irreparable harm. (*Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 545, 548 [2000].) Lego asserts an exception to this rule "where the monies at issue are identifiable proceeds that are supposed to be held for the party seeking injunctive relief." (*AQ Asset Mgt. LLC v Levine*, 111 AD3d 245, 259 [1st Dept 2013].) To constitute "identifiable proceeds," there must be a "specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question." (*Manufacturers Hanover Trust Co. v Chemical Bank*, 160 AD2d 113, 124 [1st Dept 1990].) The Refund Amount to which Lego is entitled does not fit this exception; it is fungible and not an identifiable discrete amount. While the Brownfield tax credits allocated to the Member Taxpayers may satisfy the exception because they are discrete and identifiable, those credits are monetized, after a deduction for taxes, when they are paid in cash, not credits, to the Company and before they are paid to Lego. There is no specific, identifiable fund here. (*See e.g. Amity Loans, Inc. v Sterling Natl. Bank & Trust Co.*, 177 AD2d 277, 279 [1st Dept 1991] [accounts receivable are identifiable]; *Punwaney v Punwaney*, 148 AD3d 489, 490 [1st Dept 2017] [foreign bank accounts sufficiently discrete].) Rather, Lego makes the mistake of confusing "funds that can be identified . . . with identifiable funds that carry with them some requirement to be treated in a certain manner." (*Seeking Valhalla Trust v Deane*, 2018 NY Slip Op 31920[U], *6 [Sup Ct, NY County 2018] [proceeds from the sale not exceptional].) A sum certain is not sufficient. (*Benefit St. Partners Realty Operating Partnership, L.P. v Zhang*, 2022 NY Slip Op 34466[U], *5 [Sup Ct, NY County 2023] [exception inapplicable to sum certain of $5 million because funds were "not specifically segregated" but held in personal accounts and "commingled

multiple times."].) Finally, contrary to cases Lego relies upon, Lego does not have a security interest in the Refund Amounts. Therefore, Lego has not established irreparable harm.

Finally, the balance of the equities favors the Company when the court weighs "the harm to plaintiff from denial of the injunction as against the harm to defendant from granting it." (*Edgeworth Food Corp. v Stephenson*, 53 AD2d 588, 588 [1st Dept 1976].) Lego may incur money damages while the Company may lose the project. (*Nassau Roofing & Sheet Metal Co. v Facilities Dev. Corp.*, 70 AD2d 1021, 1022 [3d Dept 1979] [finding equities favored non-moving party where it was "probable" that entry of injunction would result in "[s]ubstantial harm to the operation of" non-movant].) The Company's ability to meet its critical leasing objectives could be thwarted. (NYSCEF 58, Woo aff ¶20.)

Attachment

Lego's request for an attachment is also denied. The defendant relevant to the attachment is the Company since Lego is asking the court to order it to pay the Refund Amounts. Admittedly, the Company is a New York LLC to which CPLR 6201(1) does not apply. (NYSEF 13, Complaint ¶6.) Likewise, CPLR 6201(3) does not apply since Lego alleges a breach of contract, not fraud. There is

> "no reason why plaintiffs, under the circumstances herein, should receive a preference over any other unsecured creditor of [the defendant]. If such injunctive relief is granted on a simple showing that a defendant may at some future date be unable to pay a judgment, it would amount to a de facto judicial amendment of the requirements set forth in CPLR 6201 for attachment of assets." (*Rosenthal v Rochester Button Co.*, 148 AD2d 375, 377 [1st Dept 1989].)

The court has considered the parties' remaining arguments and finds them unavailing without merit or otherwise not requiring an alternate result.

Accordingly, it is

ORDERED that plaintiffs' motion is denied; and it is further

ORDERED that the TRO is vacated and the escrow fund directed by the OSC shall be paid to the Company not before 5 business days of the date of the prior order (NYSCEF 137, September 30, 2025 Decision and Order); and it is further

ORDERED that ACI's funds held in the escrow account shall be returned to ACI not before 5 business days of the date of this order.

10/3/25

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DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE