

**EdgePWR LLC v EdgePWR Holdings LLC**

2023 NY Slip Op 31893(U)

June 5, 2023

Supreme Court, New York County

Docket Number: Index No. 651697/2023

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. MARGARET A. CHAN PART 49M**

*Justice*

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EdgePWR LLC

Petitioner,

- v -

EdgePWR Holdings LLC and Yaniv Blumenfeld,

Respondents.

-----X

INDEX NO. 651697/2023

MOTION DATE 04/06/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15, 16, 17, 24, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

Petitioner EdgePWR LLC seeks by Order to Show Cause (OSC), a preliminary injunction in aid of arbitration under CPLR 7502(c) to restrain respondents EdgePWR Holdings LLC (Holdings) and Yaniv Blumenfeld from engaging in any activity with regard to an upcoming transaction with non-party Serverfarm (the Serverfarm Transaction). Respondents oppose the OSC arguing that a preliminary injunction is inappropriate to quash petitioner’s fear of not receiving its share of the proceeds from the upcoming Serverfarm Transaction.

The parties have commenced the arbitration process, although an arbitrator has been selected as of May 9, 2023. Petitioner claims that a preliminary injunction is needed, otherwise, the arbitral award would be ineffectual. The parties also seek to seal certain documents filed in conjunction with this OSC (NYSCEF #s 8, 68).

**BACKGROUND**

Petitioner and non-party GGP EdgePWR LLC (GGP) each hold 50% of Holdings’ membership interests (NYSCEF # 1 – Petition, ¶ 21). Holdings was formed to invest indirectly in certain businesses. Blumenfeld is GGP’s principal and manager who controls GGP’s interest in Holdings (*id.*, ¶ 15). Petitioner has a “difficult relationship” with Blumenfeld. To wit, Blumenfeld revoked petitioner’s access to Holdings’ joint data and document repository, without explanation, and there had been disputes about distribution of funds to Holdings’ members. This is why petitioner believes that Blumenfeld will short-change it with the Serverfarm Transaction (*id.*, ¶’s 49-51)

As to the upcoming Serverfarm Transaction, petitioner states that Blumenfeld did not provide petitioner with information or ask for its consent, as required by the parties' Operation Agreement (OA) (*id.* ¶ 24). Upon learning of the Serverfarm Transaction, petitioner offered to provide its consent under the condition that any proceeds from this transaction are to be placed in escrow pending an agreement with Blumenfeld as to distribution (*id.*, ¶ 34). Petitioner believes that Blumenfeld intends on amending organization documents of Holdings' subsidiaries in an effort to redirect the funds from the Serverfarm Transaction. Notably, petitioner believes that Blumenfeld will close on the Serverfarm Transaction without petitioner's consent and divert the proceeds abroad – an easy task for Blumenfeld because he is a dual citizen of the United States and Israel (*id.*, ¶'s 43-46, 11; NYSCEF # 12 at 9).

Thus, petitioner argues that a preliminary injunction is warranted because it will likely succeed on the merits on the relief it seeks in the arbitration -- a declaratory judgment stating that "Holdings and its subsidiaries may not enter into the Serverfarm Transaction, or any similar transaction, or cause Holdings to make any distributions without first obtained (sic) EdgePWR's consent." (NYSCEF # 12 at 7). Petitioner proffers that the consent requirement in the OA is clear as are the facts in this case that defendants are in violation of the OA (*id.*). Citing and quoting excerpts from the OA, petitioner's Managing Partner, Matthew Chapdelaine, avers that under the "Major Decisions" provisions of the OA, a member must consent within five business days to a proposed Major Decision, such as the Serverfarm Transaction, otherwise that member is deemed to have disapproved the decision (NYSCEF # 71 – Chapdelaine Aff at 2-3).

Petitioner also claims that it has shown that it will suffer irreparable harm because Blumenfeld's dual citizenship makes it easy for him to move the funds to accounts outside the United States and the reach of the arbitrators and courts of the United States, which renders any award in petitioner's favor to be ineffectual (Petition at 9, 10). Petitioner further argues that "Blumenfeld could reorganize Holdings" such that petitioner's contractual right to receive proceeds will be diluted or eliminated. Petitioner explains that these allegations are "vague" because respondents have excluded petitioner from any discussions regarding the Serverfarm Transaction. Finally, as petitioner is not seeking to enjoin the Serverfarm Transaction but merely to have the proceeds put in escrow pending a resolution from arbitration, the balance of equities are in its favor as respondents will not suffer any hardship (*id.* at 11, 12).

In contrast, respondents argue that petitioner's arguments are all hypothetical and without support. As to petitioner's claim of being excluded from the Serverfarm Transaction, respondents attach emails and letters showing petitioner's involvement (NYSCEF # 55 - MOL at 4-5; NYSCEF #s 58-63). Indeed,

petitioner is in favor of the sale and price in the Serverfarm Transaction (Blumenfeld aff, ¶ 11).

Respondents explain that petitioner's formal consent is not needed for the Serverfarm Transaction, which essentially is the sale of Nash DC, LLC (Nash DC), the owner of a data center in El Segundo, California. The entities involved in the Serverfarm Transaction are: Serverfarm, an 80% capital member of Nash DC; EdgePWR Acquisitions LLC (Acquisitions), a member of Nash DC; and Holdings, which has a non-capital interest in Acquisitions. Serverfarm, together with Acquisitions, proposed to sell their interests in Nash DC. The proceeds from this sale would be distributed to their respective members, which includes Holdings as a member of Acquisitions. Blumenfeld explains that under the OA, the Manager of Holdings has "exclusive control over the business, property and affairs of the Company" (NYSCEF # 56 – Blumenfeld aff, ¶ 3 quoting § 5.1 of the OA). Thus, Blumenfeld, as the sole Manager of Holdings asserts that he has exclusive control of Holdings and does not need petitioner's formal consent (*id.*: NYSCEF # 55 – MOL in Opp at 2).

Respondents deny that Blumenfeld has any reorganization plans for Holdings so to deprive petitioner of its right to the Serverfarm proceeds or to secrete the proceeds abroad. Pointedly, respondents claim that the allegations of Blumenfeld's ill-intent are all unsupported and speculative. Respondents add that the relief petitioner seeks is monetary in nature, as petitioner's claim of irreparable harm. Respondents argue that granting petitioner's motion for a preliminary injunction and ordering that the proceeds from the Serverfarm Transaction be placed in escrow would grant petitioner its ultimate relief and would alter the parties' rights under the OA. This, respondents claim, tips the balance of equity in respondents' favor (NYSCEF # 55 at 15; # 56, ¶'s 16-18).

## DISCUSSION

In determining whether petitioner has made out a prima facie showing that it would likely succeed on the merit, this court would have to look at whether respondents violated the OA, as petitioner asserts. But this is also the ultimate question that will be before the arbitrator. And, however petitioner frames its rights under the OA as provided in petitioner's Managing Partner's affirmation, a review of the excerpts of the OA in light of respondent's counterarguments, dims petitioner's showing of a prima facie showing of likelihood of success on the merit. Petitioner attaches an order of attachment by a supreme court justice of this court, *Herr v Medalist Partners, LP*, (No. 650761/2023 [Sup. Ct., NY County, Feb. 14, 2023]) (NYSCEF # 29) to support its argument that absent injunctive relief, their "contractual rights would be illusory and the arbitration award would be ineffectual" (NYSCEF # 77 at 4). However, the order does not speak to any facts prompting the decision underlying the order.

Further, as the relief sought here is monetary in nature, a preliminary injunction is in not appropriate (*Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY3d 541 [2000]). As such, petitioner’s claims of irreparable harm based on the possible problematic retrieval of proceeds, also goes to monetary relief. Accordingly, petitioner’s motion for a preliminary injunction is denied (*see New York City Off-Track Betting Corp. v New York Racing Ass’n, Inc.*, 250 Ad2d 437 [1st Dept 1998]).

The parties’ separate requests to seal certain documents filed in this motion are granted at this stage and on the present procedural posture.

Accordingly, it is


ORDERED that petitioner’s motion by order to show cause for a preliminary injunction is denied in its entirety; it is further

ORDERED that the parties’ separate requests to temporarily seal the petition and accompanying exhibits; the unredacted opposition brief, the affidavit of Yaniv Blumenfeld and the exhibits attached thereto is granted; and it is further

ORDERED that respondent shall answer the petition within 20 days of the date of this order.

This constitutes the Decision and Order of the court.

6/5/2023  
DATE

  
MARGARET A. CHAN, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE