

**Quinn Emanuel Urquhart & Sullivan, LLP v Desktop
Metal, Inc.**

2025 NY Slip Op 32974(U)

July 24, 2025

Supreme Court, New York County

Docket Number: Index No. 652274/2025

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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QUINN EMANUEL URQUHART & SULLIVAN, LLP	INDEX NO.	<u>652274/2025</u>
Petitioner,	MOTION DATE	<u>07/03/2025</u>
- v -	MOTION SEQ. NO.	<u>004</u>
DESKTOP METAL, INC.,		
Respondent.	AMENDED DECISION + ORDER ON MOTION	

-----X

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70

were read on this motion to/for ORDER OF ATTACHMENT

This special proceeding is the latest in a string of efforts by petitioner law firm Quinn Emanuel Urquhart & Sullivan LLP (Quinn) to ensure payment by its former client, respondent Desktop Metal Inc. (Desktop), a Massachusetts corporation. The current Amended Petition is Quinn’s third petition brought by order to show cause for an order of attachment in aid of arbitration against Desktop pursuant to CPLR 7502(c). The two prior petitions were denied on procedural grounds (NYSCEF # 48 and Index No. 652698/2025, NYSCEF # 46, prior orders).

Quinn’s Amended Petition (NYSCEF # 53, Amended Petition) seeks to attach \$34 million of Desktop’s “tangible or intangible property interests,” excluding real property outside of New York, but “including patents, patent licenses, and other intellectual property, as well as manufacturing machinery, equipment, component parts, spare parts, systems, utilities, tools, raw materials, inventory, supplies, furniture, computers, or vehicles at the locations referenced in Appendix A” to Quinn’s memorandum of law. Quinn asks for a \$100,000 undertaking.

Desktop opposes Quinn’s Amended Petition on various grounds. Alternatively, Desktop asks that the attachment be limited to Desktop and not its subsidiaries, and to exclude “any cash, bank accounts, or receivables.” Desktop also asks that the undertaking be set at \$1.7 million. The court held a hearing on this Amended Petition on July 16, 2025.

For the reasons below, Quinn’s Amended Petition for attachment is granted, and the undertaking is set at \$1.7 million.

Background

Quinn's Underlying Representation of Desktop in Delaware

Quinn represented Desktop for the first three months of 2025¹ in a fast-paced broken deal litigation in the Delaware Court of Chancery to force non-party Nano Dimension (Nano) to consummate a promised merger with Desktop (*see* Amended Petition, ¶¶ 10-13; *see generally Desktop Metal, Inc. v Nano Dimension Ltd.*, 2024-1303-KSJM, 2025 WL 904521 [Del Ch Mar. 24, 2025] [the Delaware Decision]). Nano argued that, among other things, the merger should not go through because Desktop breached a “No Bankruptcy” clause in the Merger Agreement (*id.* ¶ 15; Delaware Decision at *32). Desktop ultimately prevailed because the clause was narrow: Desktop could breach only by “admit[ting] in writing its inability to pay its debts as they mature[d]” (Delaware Decision at *32). In a 45-page decision dated March 24, 2025, the Delaware court found that Desktop made no such admission, and that even “[i]f Desktop did experience a Bankruptcy [as narrowly defined in the Merger Agreement] after December [2024], Nano materially contributed to that circumstance” (*id.* at *37; Amended Petition ¶ 15).

The Delaware court, however, also made many findings of fact that “generally paint[ed] a pretty bleak picture of Desktop’s financial position” (Delaware Decision at *34). The Delaware court noted that “as 2024 was closing out, Desktop was struggling to stay on top of its bills” (*id.*). And as recently as January 2025, Desktop “consider[ed] retaining bankruptcy counsel” (*id.* at *14). By February 2025, Desktop’s “unrestricted cash ha[d] been completely depleted,” with only “approximately \$10 million total cash remaining (including restricted cash)” (*id.* at *34). Desktop also had “overdue vendor bills with respect to its U.S. operations alone [that] far exceed[ed] the total cash that Desktop has in the U.S. to satisfy those bills” (*id.*). The Delaware court described Desktop as “enduring a liquidity crunch” (*id.*). As summarized by the Delaware court:

“It is undeniable that Desktop is extremely cash strapped. As Desktop told [the Committee on Foreign Investment in the United States], operating the company became ‘increasingly challenging’ as its cash balance fell below \$10 million, which it did by December 2024. Desktop was well aware of the risks of ‘triggering a bankruptcy requirement,’ and acknowledged that those ‘risks’ were ‘escalating weekly.’ It was a

¹ Quinn does not provide the exact dates of its representation, but based on a January 10, 2025 engagement letter and the public filings, Quinn’s representation likely extended from approximately January 10, 2025, through at least March 26, 2025 (*see* NYSCEF # 5, Engagement Letter, at 1, 7 [dated January 10, 2025 “for reference only”]; Desktop’s reply brief in further support of expedited proceedings in *Desktop Metal, Inc. v Nano Dimension Ltd. et al.*, available at 2025 WL 81484 [Del.Ch., No. 2024-1303-KSJM] [showing Desktop was represented by non-party Latham & Watkins LLP on January 7, 2025]; *see generally* NYSCEF # 65, March 26, 2025, DE Hrng. Tr [Quinn represented Desktop as late as March 26]).

dire situation, as Desktop projected. This is why Desktop emphasized speed when negotiating the Merger Agreement. . . ”

(*id.* at *36 [internal citations omitted]).

Ultimately, although the Delaware court found that Desktop did not breach the “No Bankruptcy” clause, it repeatedly emphasized that it was a “close call” and that “the evidence is quite close,” “almost equipoise” (*id.* at *2, *36, *37). The Delaware court nevertheless ordered Nano to go through with the merger.

It is undeniable that the Delaware court could not have made these findings of fact without Quinn’s “herculean discovery efforts” (*see id.* at *2). Quinn asserts that from January through mid-March 2025, its team:

“(i) produced tens of thousands of documents; (ii) took and defended 22 depositions; (iii) briefed several motions; (iv) met or communicated near-daily with Desktop □ to develop and implement various litigation strategies; and (v) conducted a two-day trial, where ‘the record comprised ... 2,620 trial exhibits, live testimony from seven fact and four expert witnesses, deposition testimony from eleven fact and nine expert witnesses, and 47 stipulations of fact.’”

(Amended Petition ¶ 12 [cleaned up], quoting Delaware Decision at *2). Per Quinn’s Engagement Agreement, Desktop owed 120% of Quinn’s hourly fees for the victory, which Quinn calculates comes out to \$29,798,725.61 (*id.* ¶ 13, citing NYSCEF # 5, Engagement Agreement, at 4-5). The Engagement Agreement also provided that payment was due 30 days after receipt of an invoice, and any payment disputes would be dealt with in arbitration (*id.* at 5, 8-9).

Quinn’s Efforts to Ensure Payment

Realizing that Desktop was now owned by a litigation adversary who may be unwilling to pay the law firm that defeated it, Quinn caused Desktop to file a motion in the Delaware court asking (a) for permission to set aside a clause of the merger agreement to allow Desktop to take out a loan to pay Quinn; or (b) to shift fees to Nano (*see* NYSCEF # 65, DE Hrng Tr, at 34:2-6, 34:18-23). Although the Delaware court was “deeply sympathetic” to Quinn’s situation, it nonetheless denied both requests because “this would effectively allow a cash-crunched company to prioritize its litigation bills over obligations to other creditors” which was “really risky, given [its] finding that it’s a close call as to whether Desktop is solvent” (*id.* at 35:2-11; 37:14-15). The Delaware court separately denied fee shifting because the merger agreement did not allow it under the circumstances presented (*id.* at 35:12 – 37:20).

Five days later, on March 31, 2025, Quinn sent Desktop a combined invoice for the full \$29,798,725.61 for its three months of work (Amended Petition ¶ 13).

Payment was due April 30, 2025, per the Engagement Agreement (*id.*). But instead of waiting, on April 10 and 11, respectively, Quinn initiated arbitration against Desktop for its legal fees (the Pending Arbitration) and then filed a special proceeding to attach \$34 million-worth of Desktop's real, tangible, and intangible property pending the outcome of that arbitration pursuant to CPLR 7502(c) (the First Petition) (*see* Amended Petition ¶ 1; *see generally* NYSCEF # 1, Petition).

That First Petition was denied on April 21, 2025, for three reasons (Prior Order; *see* NYSCEF # 47, Apr. 21, 2025 Hrng Tr). First, Quinn asked to attach property exclusively outside of New York, including out-of-state real property over which this court has no jurisdiction (Prior Order at 3, citing *Natl. Union Fire Ins. Co. of Pittsburgh, Pa. v Advanced Empl. Concepts, Inc.*, 269 AD2d 101, 101 [1st Dept 2000], and *Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 41 AD3d 25, 31 [1st Dept 2007]). Second, the case was not yet ripe — Desktop's legal bills were not due until April 30, while the Prior Order was issued April 21 (*id.* at 3-4). Finally, the Prior Order determined that Quinn could not circumvent the ripeness issue by pre-emptively requesting assurance from Desktop that its bills would be paid (*id.* at 4-5). As relevant here, Quinn had then claimed that “there was no dispute that the client . . . was insolvent” (*id.* at 5). By contrast, the Prior Order explained that “[w]hether Desktop is solvent is unclear given the Delaware Chancery Court's finding that Desktop was not literally in bankruptcy but was ‘extremely cash strapped’ ” (*id.*, quoting Delaware Decision at *36). Ultimately, the Prior Order “defer[red] to the Chancery Court's finding that Desktop was not insolvent” (*id.*; *see* DE Hrng Tr at 35:2-11).

Quinn appealed the Prior Order and that appeal is pending as of the date of this order (*see* NYSCEF # 50, Notice of Appeal). On April 21, 2025, the First Department denied both an emergency request for interim relief and a motion for attachment pending appeal (NYSCEF #s 63 & 64, Appellate Orders).

On that same day, Nano issued a press release announcing that Desktop had “commenced a process to explore all available strategic alternatives to address its liabilities and liquidity needs” (*Nano Dimension Provides Update on Desktop Metal*, Global News Wire, Apr. 21, 2025). While Nano could not give any “assurances . . . as to the outcome or timing of the strategic review process,” Nano would “share additional details” during a results and outlook call in “late April 2025” (*id.*). The press release also stated that Desktop “has appointed Robert Walshauer to its Board of Directors and engaged Piper Sandler & Co. and FTI Consulting, Inc. as financial advisers” (*id.*). Quinn asserts that Mr. Walshauer's biography describes him as an expert in “insolvency,” (Quinn's MOL at 7 linking to website *Bio Details: Robert Walshauer*, Logan Ridge Finance Corporation). Quinn also points out that both Piper Sandler and FTI have restructuring divisions (*see* Amended Petition at ¶ 18 n 2 [linking to Piper Sandler and FTI's websites]).

According to Quinn, Nano also held an earning's call on April 21, 2025, in which it made several admissions about Desktop's financial status (Amended Petition ¶ 19). Quinn points to Nano's statement that it was "clear to anyone looking at Desktop's situation that the company has very limited liquidity and significant liabilities, including \$115 million in outstanding convertible notes" (*id.* ¶ 19 [a]). And Nano further noted that Desktop was required to repurchase those notes "by June 11, 2025," but that it did "not now have the liquidity or financing commitments necessary to make that repurchase or satisfy other material liabilities" (*id.* ¶¶ 19 [b]-[c]). Quinn claims that Nano reiterated that "Desktop is running its own independent process to evaluate all of its available strategic alternatives to address its liabilities and liquidity needs" and would provide further "clarity ... by the end of June" (*id.* ¶ 19 [d]).² Quinn characterizes these statements as an admission that Desktop is insolvent (*id.* ¶ 19).

On May 1, 2025, the day after Quinn's bill was due, Quinn brought a second special proceeding and petition for attachment before this court (the Second Petition) (*see Quinn Emanuel Urquhart & Sullivan LLP v Desktop Metal Inc.*, Index No. 652698/2025). Both parties made new arguments for and against attachment, but none of those were addressed. Instead, the petition was denied "without prejudice to be re-raised" in the current proceeding because CPLR 7502(a)(iii) required Quinn to bring all motions and petitions related to its arbitration within a single special proceeding (Order on Second Petition) (*see* NYSCEF # 57, Order on Second Petition from *Quinn Emanuel Urquhart & Sullivan LLP v Desktop Metal Inc.*, Index No. 652698/2025). According to Desktop, Quinn has also filed a new lawsuit in Massachusetts against Nano to recover "the same legal fees at issue in the arbitration" (NYSCEF # 70, Desktop Response, at 6).

Current Petition

On July 3, 2025, Quinn filed this Amended Petition for an order of attachment — its second petition in this special proceeding and third petition overall (*see generally* Amended Petition). Quinn now asks to attach:

"Desktop's property interests, excluding real property outside the State of New York, up to the value of \$34 million, including but not limited to any tangible or intangible property interests that Desktop may own, including patents, patent licenses, and other intellectual property, as well as manufacturing machinery, equipment, component parts, spare parts, systems, utilities, tools, raw materials, inventory, supplies, furniture, computers, or vehicles at the locations referenced in **Appendix A.**"

² The parties provided no update on what was discussed or determined at the end of June.
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(Amended Petition ¶ 30 [emphasis added]; *see also* NYSCEF # 54, Proposed Order to Show Cause). Appendix A is attached to Quinn’s brief in support and consists of a chart of Desktop’s “manufacturing locations,” all of which are out-of-state and several of which are out-of-country (*see* NYSCEF # 55, Quinn MOL at 22-23).

Quinn first argues that it has a cause of action and is likely to succeed on the merits because the case is now ripe—its bills were due on April 30, 2025, but still have yet to be paid (*id.* at 12-14). Quinn next argues that its potential arbitration award is likely to be ineffectual given that the Delaware court “made findings of fact showing that Desktop[] is insolvent” (*id.* at 15). Quinn acknowledges that the Prior Order determined the Delaware court found Desktop was not insolvent, but Quinn argues that the Delaware court “made no such finding” (*id.* at 16). Quinn explains that the Chancery court found only that Desktop did not breach the contractual “No Bankruptcy” provision or that any such breach was caused by Nano (*id.*, citing Delaware Decision). Quinn points out that Desktop has never promised to pay the final bill (*id.* at 15-16). Finally, Quinn argues that this court erred in ruling that the court could not attach property outside New York, but in any event, Quinn points out that it no longer asks to attach real property mooting the issue (*id.* at 17-18).

In opposition, Desktop first argues that Quinn’s Amended Petition should be denied because Quinn failed to move to amend (Desktop Response at 9-10). Desktop next argues that Quinn failed to show a likelihood of success because Desktop disputes the amount of Quinn’s invoice and thus no attachment should issue until it is clear how much the bill should be (*id.* at 11-13). Desktop also argues that Quinn has not shown that the potential arbitration award may be “ineffectual” under CPLR 7502(c). According to Desktop, Quinn argued in Delaware that Desktop was not insolvent to win the underlying case, contradicting its current argument that Desktop is insolvent (*id.* at 13-15). Desktop further argues that Quinn fails to meet the high standards set in two of Quinn’s own cited cases (*see id.* at 15-16, citing *Qwil PBC v Landow*, 180 AD3d 593 [1st Dept 2020]; *In Habitations Ltd., Inc. v BKL Realty Sales Corp.*, 160 AD2d 423 [1st Dept 1990]). Desktop next argues that even if the court finds all the statutory elements met, it should nevertheless deny attachment in its discretion because Quinn is trying to place its legal bills against other creditors (*id.* at 16-17, citing *Cargill Fin. Services Intern., Inc. v Bank Fin. and Credit Ltd.*, 70 AD3d 456, 456 [1st Dept 2010]). Desktop concludes that if attachment were grant, then it be limited to Desktop’s assets and not those of its subsidiaries, and it should exclude cash, bank accounts or receivables.

Discussion

“Attachment is a harsh remedy and is construed narrowly in favor of the party against whom the remedy is invoked” (*VisionChina Media Inc. v S’holder Representative Servs., LLC*, 109 AD3d 49, 59 [1st Dept 2013] [internal citations omitted]). A plaintiff or petitioner seeking an order of attachment “must show [1] the probability of its success on the merits of its cause of action, [2] that one or more

grounds provided for in CPLR 6201 exist, and [3] that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff’ (*Reed Smith LLP v LEED HR, LLC*, 156 AD3d 420, 420 [1st Dept 2017]) and [4] demonstrate an “identifiable risk that the defendant will not be able to satisfy the judgment” (*VisionChina*, 109 AD3d at 60). In lieu of grounds under CPLR 6201, CPLR 7502(c) permits courts to issue an order of attachment in connection with an arbitration proceeding “upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief” (*see Founders Ins. Co. Ltd. v Everest Nat. Ins. Co.*, 41 AD3d 350, 351 [1st Dept 2007] [applying likelihood of success prong to a petition under CPLR 7502]). This effectively combines the statutory element and *VisionChina’s* identifiable risk element.

As a threshold matter, Desktop argues that Quinn’s Amended Petition should be denied as procedurally improper because Quinn failed to move to amend before filing pursuant to CPLR 2221(a), 3025, and 404(a) (Desktop Response at 9-10). However, this argument fails because the order on the Second Petition “denied without prejudice [Quinn’s motion] to be re-raised” in this proceeding (*see* Order on Second Petition). This language implicitly permitted Quinn to amend, and Quinn committed no error by interpreting it that way. Moreover, there is no prejudice to allowing the Amended Petition. The parties made almost identical arguments between the Second and Amended Petitions. And Desktop is equally able to challenge the Amended Petition whether presented on a motion to amend or on its merits as in the current Amended Petition.

As to Quinn’s argument regarding the Prior Order on the issue of attaching property outside New York as supported by *Hotel 71 Mezz Lender LLC v Falor* (14 NY3d 303, 312 [2010])³. This issue is moot as to this Amended Petition, as Quinn’s requested attachment expressly excludes real property.

In seeking the drastic relief for an order of attachment, Quinn must show that it has established a likelihood of success in the underlying action (*see 1234 Broadway LLC v West Side SRO Law Project, Goddard Riverside Community Ctr.*, 86 AD3d 18, 23 [1st Dept 2011]). Conclusory statements lacking factual evidentiary detail warrant denial of a motion seeking a preliminary injunction (*id.*).

Unlike Quinn’s initial petition for attachment, the case is now ripe given that invoice was due on April 30, and it is now July and no payments have been made. Moreover, there is no real dispute that Quinn has shown a cause of action and likelihood of success. The parties had an engagement agreement for legal services; Quinn performed those services and Desktop prevailed against Nano in the

³ However, the First Department has since continued to hold that this state’s courts do not have jurisdiction to attach *real* property located out of state (*JSC VTB Bank, etc. v Mavlyanov*, 154 AD3d 560, 561 [1st Dept 2017]). The First Department has held *Hotel 71* is distinguishable because it applied only to tangible and intangible property, not to real property (*id.*).

Delaware case; Desktop failed to pay Quinn's bill by the contractual due date and has shown no intention of paying it.

Desktop responds that there is no likelihood of success because Desktop will dispute various line items in the \$29 million invoice during the arbitration (Desktop Response at 11-12). Desktop may also be implying that attachment is premature until "both parties know what amount is owed" (*see id.* at 12). But, as Quinn accurately points out, Desktop's arguments go to the *amount* Quinn will ultimately be paid, not to the fact that Quinn should be paid at all. Quinn is therefore likely to succeed on the merits.

Turning to the next ground for attachment—whether the arbitration award will be ineffectual—is the most important element in this proceeding. To establish this element, a petitioner must show "the possibility, if not the likelihood, that absent the attachment being requested, the ultimate arbitration award would be severely compromised" (*County Natwest Sec. Corp. USA v Jesup, Josephthal & Co., Inc.*, 180 AD2d 468, 469 [1st Dept 1992]). Petitioners can make this showing with evidence "that respondent would be financially unable to pay the arbitration award or would undertake deceptive actions to avoid paying it" (*Mermaid Mar., Ltd. v Mar. Capital Mgt. Partners, Ltd.*, 147 AD3d 498, 499 [1st Dept 2017]). Courts may look at factors such as whether respondent's "assets are dwindling or are being encumbered or moved about, regardless of respondent's motives" (*Rechnitz v Kutner*, 2020 WL 3051498, at *14 [EDNY June 8, 2020]; *see e.g. Qwil PBC v Landow*, 180 AD3d 593, 593 [1st Dept 2020]); the respondent's "history of paying creditors," "a stated or indicated intention to dispose of assets that could be used to satisfy a future judgment," and the respondent's potential "for insolvency and any asset transfers already completed" (*Mishcon de Reya New York LLP v Grail Semiconductor, Inc.*, 11 CIV. 04971 RJH, 2011 WL 6957595, at *3 [SDNY Dec. 28, 2011]; *see e.g. Habitations Ltd., Inc. v BKL Realty Sales Corp.*, 160 AD2d 423, 424 [1st Dept 1990]). Here, although it recognized that it was "a close call as to whether Desktop is solvent," the Delaware Decision seemed to come down on the side of not insolvent (*see* DE Hrng Tr at 35:2-11; Prior Order at 5). But as described above, the Delaware Decision made several findings of fact relevant to some of the above factors that show Desktop was recently in a precarious financial state.

For example, the Delaware Decision indicates that Desktop's "assets are dwindling" (*see Rechnitz*, 2020 WL 3051498, at *14). As recently as February 2025, Desktop's "unrestricted cash ha[d] been completely depleted," with only "approximately \$10 million total cash remaining (including restricted cash)" (Delaware Decision at *34). The Delaware Decision also indicates Desktop recently struggled to pay creditors as shown by its "overdue vendor bills with respect to its U.S. operations alone [that] far exceed[ed] the total cash that Desktop has in the U.S. to satisfy those bills" (*id.*). And as discussed above and throughout the Delaware decision, Desktop had a high potential for insolvency as shown by the fact

that, among other things, it “consider[ed] retaining bankruptcy counsel” as recently as January 2025 (*id.* at *14).

The developments since the Delaware Decision and the Prior Order further strengthens Quinn’s position. Notably, in its earning’s call on April 21, Nano disclosed that Desktop had “very limited liquidity” and, among other liabilities, “\$115 million in outstanding convertible notes” due in June that it did not yet have liquidity or financing to repurchase (Amended Petition ¶¶ 19 [a] – [c]). Further, as Quinn posits, Nano’s April 21 press release announcing that it was “explor[ing] all strategic alternatives,” and Desktop’s appointment of Robert Warshauer, an expert with 25 years of experience in restructuring, to its board and its hiring of FTI and Piper Sandler, both experts in restructuring and insolvency, paints a stronger picture of a company close to insolvency (*see* Amended Petition ¶¶ 19 [a] – [c] citing websites of *Bio Details: Robert Warshauer*, Logan Ridge Finance Corporation, and of FTI and Piper Sandler’s). Combined with the documented financial difficulties as found in the Delaware Decision, there is enough to conclude that Desktop is close enough to insolvency to establish “the possibility, if not the likelihood” that the ultimate arbitration award may be ineffectual.

Finally, Desktop has not established in opposition that any potential counterclaims will exceed the amount demanded by Quinn. As a result, Quinn has met all the statutory factors to obtain an attachment.

Desktop offers only two responses to Quinn’s showing, neither of which is sufficient. Desktop first argues that Quinn’s argument that Desktop is insolvent directly contradicts Quinn’s arguments before the Delaware court in the underlying action. But Quinn’s arguments in the underlying action are irrelevant. The Delaware court rendered a decision and made findings of fact, and holding Quinn to rejected arguments (made on Desktop’s behalf no less) makes little sense. Moreover, the present order rests on additional facts that post-date the Delaware litigation and this court’s Prior Decision and now tip scale squarely in Quinn’s favor.

Next, Desktop asks that this court use its discretion to deny attachment even if all of the factors are met. A court, in its exercise of discretion, may deny attachment in the face of extra-statutory factors even when the statute would otherwise allow attachment (*see Cargill Fin. Services Intern., Inc. v Bank Fin. and Credit Ltd.*, 70 AD3d 456, 456 [1st Dept 2010] [“Even if plaintiff established a statutory basis for attachment . . . the court did not abuse its discretion by denying plaintiff’s broad request”]; *accord Iraq Telecom Ltd. v IBL Bank S.A.L.*, 43 F 4th 263, 272 [2d Cir 2022] [endorsing *Cargill* and predicting that the New York Court of Appeals would allow courts discretion to consider “extraordinary circumstances”]). As a practical matter, however, there are only a few cases in which that discretion has been utilized, indicating that the circumstances truly should be extraordinary.

Desktop argues that there are such circumstances here. Desktop compares this case to *Cargill*, pointing out that the *Cargill* court denied attachment because some of the funds within those accounts belonged to “innocent third parties” which the court did not want to burden with an attachment (*Cargill*, 70 AD3d at 456). Desktop argues something similar will happen here: granting attachment will put Quinn’s legal bills ahead of Desktop’s third-party creditors, the exact situation the Delaware court wanted to avoid when it denied Desktop’s motion to take a loan to pay Quinn (*see* DE Hrng Tr at 35:2-11). Desktop asserts that Quinn is not merely trying to get a leg up on other creditors, but also to make an end-run around the Delaware court’s order that was *based on* the risk to those creditors

Attempting to get around a court order may be an extraordinary circumstance in some cases, but this argument is not persuasive under the facts of this case and only underscores the point of the remedy of an attachment. Desktop’s argument would allow any court unfettered discretion to deny attachment in almost all circumstances, which is seemingly inconsistent with the intent of the attachment statutes.

Desktop is correct that Quinn has gone to great lengths not only to force its former client to pay its bills but to attempt to get the status of a secured creditor. However, although Quinn’s methods in pursuing its right to be paid for its services rendered under the parties’ agreement may be troubling to Desktop, Quinn likely finds that with all Desktop’s documented and judicially recognized troubles, Desktop’s refusal to assure its former lawyers that it will pay for their “herculean” efforts in the Delaware case are just as troubling. The court will not exercise its discretion to deny based on non-statutory factors on these facts.

As requested in Quinn’s Amended Petition, the attachment will be set at \$34 million worth of Desktop’s “tangible and intangible assets,” excluding any out-of-state real property, as expressed in Quinn’s motion. This number represents the \$29,798,725.61 invoice as well as all costs and fees (Quinn MOL at 20).

Additionally, as requested by Desktop, the attachment will not include assets of Desktop’s subsidiaries. As for Desktop’s “cash, bank accounts, or receivables,” Desktop raised this request in its opposition to the Second Petition and Quinn did not address it anywhere in the Amended Petition and motion despite addressing other arguments Desktop raised in the Second Petition (*see e.g. id.* at 19 [addressing collateral estoppel and law of the case arguments not raised here]). Quinn has therefore implicitly conceded the issue. Thus, the attachment will not extend to Desktop’s cash, bank accounts, or receivables.

As for the undertaking, CPLR 6212(b) requires an undertaking of at least \$500 or higher within the court’s discretion. Quinn requests an undertaking of \$100,000 because “the firm has demonstrated a clear entitlement to an attachment and Desktop [] has offered no cogent argument as to why one is unnecessary or

unjustified" (Quinn MOL at 20). Desktop asks for an undertaking at "5% of the amount to be restrained," or \$1.7 million. Given that the amount at arbitration might differ from the billed amount, Desktop's request is the more prudent course.

Conclusion

For the reasons above, it is hereby

ORDERED and ADJUDGED that the Amended Petition for an order of attachment in aid of arbitration is granted in part on the terms set forth above; and it is further

ORDERED and ADJUDGED that the amount to be secured by this order of attachment, inclusive of probable interest, costs and Sheriff's fees and expenses, shall be \$34,000,000.00; and it is further

ORDERED and ADJUDGED that petitioner's undertaking is fixed in the sum of \$1,700,000.00 conditioned on the requirement that petitioner pay to respondent all costs and damages, including reasonable attorney fees which may be sustained by reason of the attachment, and must pay to the Sheriff all of his or her allowable fees, if respondents recover judgment/arbitration award or if it is decided that petitioners were not entitled to an attachment of the property of respondents; and it is further

ORDERED that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, shall levy within his jurisdiction, at any time before final arbitration award, upon respondent's tangible or intangible property interests in the amount of \$34,000,000.00, the amount of plaintiff's demand, together with probable interest, costs, and the Sheriff's fees and expenses, including respondent's patents, patent licenses, and other intellectual property, as well as manufacturing machinery, equipment, component parts, spare parts, systems, utilities, tools, raw materials, inventory, supplies, furniture, computers, or vehicles at the locations referenced in Appendix A, attached below, but excluding any real property outside the State of New York, any assets owned by respondent's subsidiaries, and respondent's cash, bank accounts, or receivables, and that the Sheriff proceed herein in the manner and make his return within the time prescribed by law; and it is further

ORDERED that Quinn Emanuel, or any other person authorized to serve process in the state where service is effected, may act in the place and stead of the Sheriff for the purpose of serving this Order of Attachment and effecting any levy ordered hereby.

This constitutes the Decision and Order of the court.



7/24/2025
DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

APPENDIX A**Respondent Manufacturing Locations**

Address	Country
63 Third Avenue Burlington, MA 01803 USA	United States
15041 Commerce Drive South Commerce Park South Suite 401, Floor 1 Dearborn, MI 48126 USA	United States
ExOne Operating, LLC 127 Industry Boulevard Irwin, PA 15642 USA	United States
1122 Alma Suite 100, Floor 1 Richardson, TX 75081 USA	United States
60 South Jefferson Road, Unit 2 Whippany, NJ 07981 USA	United States
500 Research Drive Wilmington, MA 01187 USA	United States
10R and 10-S Roessler Road Woburn, MA 01801 USA	United States
529 Main Street 1106 Charlestown, Massachusetts	United States

USA	
1717 Waterview Pkwy, Row #1 181 Dallas, Texas 75252 USA	United States
Im Auwelt 45b Kevelaer, Germany	Germany
ExOne GmbH Daimlerstraße 22 86368 Gersthofen Germany	Germany
Brusseler Strase 51 Gladbeck 45968 Germany	Germany
Desktop Metal Operating Inc. Taiwan Branch 2F-5, No. 30 Taiyuan Street Zhubei City Hsinchu County 302 Taiwan	Taiwan