

Avana Capital, L.L.C. v Sustainable Energy Light & Power, LLC

2025 NY Slip Op 34796(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 655509/2025

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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AVANA CAPITAL, L.L.C.,

Plaintiff,

- v -

SUSTAINABLE ENERGY LIGHT AND POWER,
LLC, YOSEF LESCHES,

Defendant.

INDEX NO. 655509/2025

MOTION DATE 10/03/2025,
11/17/2025

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for ENFORCE/EXEC JUDGMENT OR ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72

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

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 12.11.25), Avana Capital, LLC (the **Lender**)’s motion for a preliminary injunction and the appointment of a receiver as to both its right to sell the collateral and also as to its right to the revenue generated by the Collateral is GRANTED.

The Lender is entitled to an injunction enjoining Sustainable Energy Light & Power LLC (the **Borrower**) and Yosef Lesches from moving, removing, selling, transferring, destroying, or otherwise disposing of the Collateral or any revenue generated by the Collateral during the pendency of this litigation because the Lender demonstrates (i) a probability of success on the merits, (ii) danger of irreparable harm in the absence of an injunction, and (iii) a balance of the

equities in its favor (CPLR 6301; *Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY2d 839, 840 [2005]).

As relevant, pursuant to the terms of a certain Forbearance Agreement (the **Forbearance Agreement**; NYSCEF Doc. No. 9) dated as of March 6, 2024, by and among the Lender, the Borrower, and Yosef Lesches, the Lender agreed to forebear from exercising its rights and remedies as a result of default until the earlier of (i) July 1, 2025, (ii) full repayment of the Indebtedness and (ii) the date that any Forbearance Default (as such term is defined in the Forbearance Agreement) occurs and is continuing (*id.* § 6[i]). It is undisputed that as of the date hereof, the Indebtedness has not been repaid. Pursuant to Section 15 of the Forbearance Agreement, the Lender could immediately exercise all remedies set forth in the Loan Agreement including, among other things, the right to assemble, sell the Collateral and collect the proceeds of the Collateral (*id.* § 15). As such, the Lender has demonstrated a probability of success on the merits.

The Lender has demonstrated that it will suffer irreparable harm absent an injunction because the energy storage batteries (the **Collateral**) are depreciating assets whose value continues to decline daily (NYSCEF Doc. No. 72 ¶ 9), harming the ability of the Lender to recover upon the Borrower's indebtedness pursuant to the Forbearance Agreement while they remain in the possession of non-party Alle Processing (**Alle**) in violation of the Lender's right to immediately possess, assemble, and sell the Collateral through a UCC sale pursuant to the Forbearance Agreement (NYSCEF Doc. No. 9 § 15).

The balance of the equities also favors granting the injunction. The Borrower agreed to the Lender having exactly this remedy (NYSCEF Doc. No. 9 § 15), and the Collateral is in the possession of Alle. Alle has no right to the Collateral vis-à-vis the Lender.

The branch of the motions seeking the appointment of a Receiver must also be GRANTED. Under CPLR § 6401, a temporary receiver may be appointed where there is danger that the property will be removed from the state, or lost, materially injured or destroyed, and a motion seeking such appointment should be granted only where the moving party has made a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect the moving party's interests (*Vardaris Tech, Inc. v Paleros Inc.*, 49 AD3d 631, 632 [2d Dept 2008]).

The Lender has demonstrated by clear and convincing evidence that there is substantial risk under the circumstances to material injury to the Collateral. The Collateral's value declines daily. The Borrower itself indicated (*tr.* 12.11.25), that all revenue obtained is used to maintain the Collateral. The parties do not dispute that the Collateral is located on Alle's property – not the Borrower or the Guarantor. As such, the appointment of a temporary receiver to take possession of and sell the Collateral, and to collect the revenues generated by the Collateral is entirely warranted. This also serves to protect the legitimate contracted for expectations of the parties pursuant to the Forbearance Agreement (CPLR 6401[a]; *Vardaris Tech, Inc.*, 49 AD3d at 632 [2d Dept 2008]).

The Borrower in this case has asked for time to suggest an appropriate receiver. From the date hereof until the receiver is appointed by the Court, all cash flow generated by the Collateral must be escrowed with the Lender's counsel.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the branch of the Lender's motion seeking a preliminary injunction is granted to the extent that the Defendants are enjoined from moving, removing, selling, transferring, destroying, or otherwise disposing of the Collateral or any revenue generated by the Collateral during the pendency of this litigation; and it is further

ORDERED that the Lender shall post a bond in the amount of \$250,000.00 no later than January 11, 2026; and it is further

ORDERED that the branch of the Lender's motion seeking the appointment of a temporary receiver to take possession of and sell the Collateral, and the revenues generated by the Collateral, is granted; and it is further

ORDERED that the Lender and the Borrower are directed to meet and confer in the hope that they can agree upon an appropriate receiver, however, in the event that they can not, the parties are ORDERED to email Part 53 (sfc-part53@nycourts.gov) their individual recommendations as to who should serve as a receiver, together with a curriculum vitae and a no longer than one-page

letter describing why each is an appropriate receiver, no later than December 22, 2025; and it is further

ORDERED that the Lender and the Borrower shall attend a conference on **December 23, 2025** at **10:00 a.m.** for the appointment of a temporary receiver; and it is further

ORDERED that any cashflow generated by the Collateral shall be immediately placed in escrow with the Lender’s counsel from the date hereof until the receiver is appointed.


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<u>12/11/2025</u> DATE					<hr/> ANDREW BORROK, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>