

**Constrafor, Inc. v Commodore Constr. Corp.**

2025 NY Slip Op 35093(U)

December 27, 2025

Supreme Court, New York County

Docket Number: Index No. 656035/2025

Judge: Andrea Masley

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

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CONSTRAFOR, INC.,

Plaintiff,

- v -

COMMODORE CONSTRUCTION CORP., COMMODORE  
MAINTENANCE CORP., and KIN TAM,

Defendants.

INDEX NO. 656035/2025

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 101

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

Plaintiff Constrafor, Inc., a construction factor, purchased 22 invoices to general contractors from defendant Commodore Construction Corp. (CCC) and seven invoices from defendant Commodore Maintenance Corp. (CMC) (collectively Commodore), both construction subcontractors, pursuant to the October 10, 2024 Receivable Purchase Agreements (RPAs). (New York State Courts Electronic Filing [NYSCEF]<sup>1</sup> 2, Complaint ¶¶ 7-10.) Defendant, Kin Tam, is the principle of Commodore and a guarantor of the RPAs. (*Id.* ¶¶1, 5.) Plaintiff alleges that defendants are collecting receivable payments instead of directing general contractors to pay plaintiff and defendants have not forwarded those payments collected from the construction companies to plaintiff as required by the RPAs. (*Id.* ¶1.)

<sup>1</sup> Plaintiff is reminded to use NYSCEF numbers.

In motion 002, plaintiff moves for the following relief pursuant to CPLR 6301, 6311, and 6313 (1) enjoining and restraining defendants from (a) dissipating, disposing of, using, transferring or encumbering all amounts received by them on the receivables that Commodore sold to plaintiff; (b) receiving, collecting or demanding any and all further payments under the RPAs; and (c) interfering with plaintiff's right and ability to collect all RPA payments pursuant to the RPAs; (2) directing defendants to preserve, escrow, or pay into court the \$3,367,011.37 and \$468,073.64 defendants received from the Metropolitan Transportation Authority (MTA Funds); (3) directing defendants preserve, escrow, or pay into court the \$290,510 that defendants received from Bond Brothers, Inc. (BBI Funds); (4) directing defendants to preserve, escrow, or pay into court the \$461,724.17 which defendants received from Consigli Construction Co., Inc. (Consigli Funds); (5) directing defendants to preserve all records of payment demands made by defendants to obtain the MTA Funds, BBI Funds, and Consigli Funds (collectively Funds) and any other receivable payments under the RPAs and the financial transactions related thereto for the period July 10, 2025 to the present. Plaintiff also moves pursuant to CPLR 5229, for expedited discovery and immediate depositions of defendants with respect to the receivable payments from the Funds. (NYSCEF 36, November 19, 2025 Order to Show Cause [OSC] motion sequence 002.)<sup>2</sup>

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<sup>2</sup> The court declined to sign motion 001 on October 30, 2025. (NYSCEF 31, OSC.) Therefore, any papers filed after October 30, 2025 should have been filed pursuant to OSC motion sequence 002 and designated motion 002. For example, plaintiff's December 16, 2025 reply (NYSCEF 90) is filed under motion 001, but should be filed with motion 002. The parties are directed to reclassify such papers as being filed with motion 002 or refile the papers properly connected to motion 002 within 10 business days of this order.

In the OSC, the court ordered Commodore to produce within five business days all bank statements from August 2025 to present for all bank accounts in which Commodore receives(ed) funds under the RPAs or pays out funds on the 29 projects at issue here. (NYSCEF 59, November 21, 2025 OSC.) The court also directed defendants to give plaintiff electronic view access to such bank accounts. (*Id.*) This order continues pending decision on this motion.

At argument on December 17, 2025, the court ordered:

1. Tam to produce any bank records by December 19, 2025, if he has received payments from any of the general contractors listed in NYSCEF 4 (Commodore Construction Chart); and it is further
2. Plaintiff to refile redacted bank statements (unredacted copies under temporary seal at NYSCEF 86-89) and file an OSC to permanently seal the unredacted statements by December 19, 2025; and it is further
3. Plaintiff to file “exhibit 9” referenced in its reply if it has not done so already by December 19, 2025; and it is further
4. Defendants to calculate the interest rate on each entry in NYSCEF 4 by December 19, 2025, and plaintiff may respond by December 31, 2025; and it is further
5. Plaintiff to submit the transcript to be so ordered. (NYSCEF 101, December 24, 2025 Interim Order.)

Plaintiff initiated this action on October 9, 2025 asserting claims for: breach of contract against CCC (1) and (3) and against CMC(2) and (4); breach of the guaranty against Tam (5); conversion against CCC (6) and CMC (7); breach of fiduciary duty against CCC (8) and against CMC (9); unjust enrichment against CCC (10) and against

CMC(11); and an accounting (12). (NYSCEF 2, Complaint ¶¶55-190.) Plaintiff seeks damages --\$2.7 million against CCC, \$7.3 million against CMC, \$10.1 million against Tam -- an accounting, and attorneys' fees.<sup>3</sup> (*Id.* at 28/33.<sup>4</sup>)

### **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].)

### **Likelihood of Success**

As an initial matter, the court rejects defendants' reliance on Lien Law Article 3A as a complete bar to likelihood of success in this action. Rather, Lien Law §13(6)

“represents but another attempt to adjust the trust concept to the exigencies of the contracting business by allowing for interim financing. It does not, however, weaken the trust concept, since its only effect is to substitute the proceeds of the assignment for the moneys due or to become due from the owner as the trust fund to which suppliers of labor and material may look for payment.” (*Aquilino v United States*, 10 NY2d 271, 281 [1961].)

Defendants' reliance on Article 3A is further undermined by its failure to identify any subcontractors that defendants have failed to pay and thus Article 3A is moot.

Likewise, the court rejects defendants' assertion that there is no evidence that plaintiff owns the specific receivables or that they were not validly assigned to plaintiff.

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<sup>3</sup> Since plaintiff does not seek rescission in the complaint, the court does not address plaintiff's argument raised for the first time on December 17, 2025.

<sup>4</sup> NYSCEF pagination.

(NYSCEF 77, MOL at 1/22<sup>5</sup>.) This argument is rejected based on the RPAs. Moreover, plaintiff responded to defendants' challenge with documentary evidence of its recording of the assignments in the County Clerk's office pursuant to Lien Law §§73(1), 73(3)(a), 733(d), 15(1) and 16. (NYSCEF 79, Ghauche<sup>6</sup> Reply aff ¶¶7-8; NYSCEF 80, 82, 84, 85, Notices of Assignment.) As for the MTA projects, plaintiff has documented filing notice of assignment consistent with Lien Law §73(3)(a) regarding public projects. (*Id.* ¶¶5-6.) Filing such notice in compliance with Lien Law 73, is an affirmative defense to a trust claim." (*Eljam Mason Supply Inc. v I. F. Assoc. Corp.*, 84 AD2d 720 [1st Dept 1981].)

In the complaint, plaintiff asserts the following contract breaches: (1) defendants received payments from MTA, BBI and Consigli but failed to forward such payments to plaintiff as required by the RPA in violation of RPA §§3.3(i) and (ii), 6.1(h); (2) defendants are preventing plaintiff from accessing the payment platform; and (3) "Commodore has further breached its obligations under the RPAs by declaring in a letter dated August 27, 2025, that the RPAs 'are void and unenforceable as a matter of law,' and demanding that Constrafor cease and desist from taking any actions to enforce its rights under the RPAs"<sup>7</sup> in violation of RPA §§6.1(a), 2.1, 6.1(h), 3.1.

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<sup>5</sup> NYSCEF pagination.

<sup>6</sup> Anwar Ghauche is plaintiff's CEO. (NYSCEF 48, Ghauche aff ¶1.)

<sup>7</sup> The court does not address this third breach because plaintiff misquotes both Ghauche's affidavit and the complaint. Rather, similar to the complaint, Ghauche states: "On August 27, 2025, George Sitaras, Commodore's outside counsel, sent a letter to Constrafor declaring that the RPAs 'are void and unenforceable as a matter of law,' and demanding that Constrafor cease and desist from taking any actions to enforce its rights under the RPAs." (NYSCEF 48, Ghauche aff ¶54; NYSCEF 2, Complaint ¶33.) Plaintiff did not allege that "Commodore has further breached the RPAs by expressly stating in a letter dated August 27, 2025 . . . that it 'did not have the power or authority to assign such funds'" Ghauche aff at ¶ 52" as plaintiff asserts in its

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(NYSCEF 2, Complaint ¶¶22, 26-28, 29, 33, 34, 61, 73, 88, 100 112.) Plaintiff has established by clear and convincing evidence likelihood of success as to its two claims for breach of contract. (NYSCEF 48, *Ghauche* aff ¶¶30, 55-62.)

Defendants challenge plaintiff's breach of contract claims asserting that the RPAs are actually usurious loans, making the RPAs unenforceable pursuant to General Obligations Law § 5-511. First, defendants must establish that the RPAS are loans, not receivable purchases, and next that they are usurious. "The determination of whether a transaction is a true sale of receivables, or a disguised usurious loan is a fact-intensive inquiry that requires the court to look beyond the form of the documents to their substance." (*Akf Inc. v Steel City Dance & Gymnastics LLC*, 2025 NY Slip Op 33826[U], \*3 [Sup Ct, NY Cnty 2025].) "For a true loan it is essential to provide for repayment absolutely and at all events or that the principal in some way be secured." (*Rubenstein v Small*, 273 AD 102, 104 [1<sup>st</sup> Dept 1947.]) "To decide whether repayment is absolute or contingent, the court considers: (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy". (*CFG Merchant Solutions, LLC*, 2024 NY Slip Op 34470[U] at \*7 [Sup Ct, NY Cnty 2024] [citations omitted] [finding that purported sale of receivables was a usurious loan under which plaintiff could not recover].) In addition, "provisions authorizing defendants to collect on the personal guaranty in the event of plaintiff business's inability to pay or bankruptcy" support a finding that an agreement is a loan. (*Davis v Richmond Capital*

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MOL. (NYSCEF 58, Plaintiff's MOL at 10.) Without the August 27, 2025 letter, and with plaintiff's contradictions, the court has no solid basis to rely on this breach of contract for the purposes of likelihood of success.

*Group, LLC*, 194 AD3d 516, 517 [1st Dept 2021].) However, “[t]he presence of factors like a reconciliation clause or an indefinite term are not, in themselves, dispositive.” (*Akf Inc.*, 2025 NY Slip Op 33826[U], \*3 [on a 3213 motion for summary judgment in lieu of complaint, the court denied summary judgment finding issues of fact as to whether the agreement was a sale of future receivables or loan despite plaintiff “pointing to its indefinite term contingent on business revenue, a provision for reconciliation, [] the absence of recourse in the event of bankruptcy, [and] the RPA itself stat[ing] in capitalized letters, ‘THIS IS NOT A LOAN.’”]) Where plaintiff cannot “be assured of repayment, notwithstanding the presence of the three factors, because its agreements are contingent on a merchant's success, and the term is indefinite,” the transaction is “sufficiently risky such that they cannot be considered loans, as a matter of law.” (*Pirs Capital, LLC v D & M Truck, Tire & Trailer Repair Inc.*, 69 Misc 3d 457, 463-64 [Sup Ct, NY Cnty 2020].)

Defendants contend that plaintiff assumes no risk on payment of Commodore’s invoices. Defendants point to the RPAs which (1) lack any reconciliation provisions, (2) have a definite term of one year from the Effective Date (NYSCEF 19, 20, RPAs Article 2.1); and (3) have an “Event of Default” if: (a) a bankruptcy is commenced by or against Commodore; (b) there is an assignment of for the benefit of creditors; (c) there is an appointment of a receiver or custodian for any of its assets; (d) Commodore becomes insolvent; and/or (e) “(i) [t]here is a material adverse change in the business, operations, or condition (financial or otherwise) of the [Commodore], or (ii) there is a material impairment of the prospect of repayment of any portion of the Obligations or (iii) there is a material impairment of the value or priority of [plaintiff’s] security interests in the

Collateral [defined in Section 8 of the RPAs] ." (NYSCEF 19, 20, RPAs Article 11.1 [b]-[c], [m].) The court also notes the guaranty executed by Tam.

Plaintiff fails to address these factors, but the factors are not dispositive. (*Akf Inc.*, 2025 NY Slip Op 33826[U], \*3). Rather, plaintiff asserts that because repayment was not certain, the RPAs are not loans. For example, on the face of the RPA, Commodore had no obligation to repay principal with interest, did not have monthly debt service obligations, or execute a promissory note. Instead, plaintiff's repayment is dependent on the payments by the general contractors, e.g. MTA, BBI Consigli. Plaintiff bears the risk of the general contractors' non-payment. Where "repayment is not absolute; the transaction is sufficiently risky such that it cannot be considered a loan as a matter of law." (*Kapitus Servicing, Inc. v Point Blank Constr., Inc.*, 221 AD3d 532 [1st Dep't 2023].) Since the factors whether the RPAs are loans are unchallenged and conflict with plaintiff's risk analysis, the court cannot find that the RPAs are loans nor that they are unenforceable. Indeed, "[a] likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence need not be conclusive." (*Barbes Rest. Inc. v ASRR Suzer, 218, LLC*, 140 AD3d 430, 431 [1st Dep't 2016].)

Even if defendants established that the transactions were loans, defendants fail to establish that the loans are usurious. "To successfully raise the defense of usury, a debtor must allege and prove by clear and convincing evidence that a loan or forbearance of money, requiring interest in violation of a usury statute, was charged by the holder or payee with the intent to take interest in excess of the legal rate." (*Blue Wolf Capital Fund II, L.P. v American Stevedoring Inc.*, 105 AD3d 178 [1st Dep't 2013].)

Except for defendants' conclusory statements that the interest rates are over 25%, defendants' papers are silent on how defendants calculate the alleged usurious interest rate. However, at argument on December 17, 2025, defendants demonstrated a calculation that yielded an annual interest rate of 62.13%. Alarmed by the rate, the court invited defendants to submit in writing the interest calculation for each invoice by December 19 and gave plaintiff time to evaluate and respond. (NYSCEF 101, December 24, 2025 Interim Order.) Since defendants failed to submit the calculations, plaintiff had no opportunity to evaluate or intelligently challenge the sole calculation offered for the first time at argument. In the absence of anything but defendants' speculation of excessive interest rates, defendants have failed to establish usury. Therefore, plaintiff establishment of likelihood of success on its two breach of contract claims stands.

As to conversion, plaintiff asserts that it has a superior right to the funds paid to defendants by MTA, BBI and Consigli. The tort of conversion is established when one who owns and has a right to possession of personal property is in the unauthorized possession of another who has acted to exclude the rights of the owner." (*Republic of Haiti v Duvalier*, 211 AD2d 379, 384–86 [1st Dep't 1995].) "Where the property is money, it must be specifically identifiable and be subject to an obligation to be returned or to be otherwise treated in a particular manner." (*Id.*) The court rejects defendants' argument that plaintiff's conversion claim is duplicative of its contract claim because plaintiff has a security interest as to some of the funds. (*See Crocker Commercial Services, Inc. v Davan Enterprises, Inc.*, 88 AD2d 877 [1st Dept 1982].) Further, defendants cannot destroy plaintiff's conversion claim by depositing the Funds in a

general bank account. Comingling is not sufficient to defeat a conversion claim where the funds are identifiable and thus a “specific sum.” (*Family Health Mgmt., LLC v Rohan Devs., LLC*, 207 AD3d 136, 146 (1st Dep’t 2022) [where defendant was contractually obligated to segregate and remit the funds, but failed to do so and deposited the funds in a general account, the court relied on defendant’s bad faith conduct in misappropriating those funds. Likewise, a brief deposit of the funds into a general account was not dispositive since title to the funds had not passed did not destroy the conversion claim.) Accordingly, the court rejects defendants attempt to distinguish this case from *Family Health* and *Felix* which both had obligations to segregate funds. Here, since plaintiff has established that it has a security interest in the Funds, title would not have passed if defendants deposited the Funds in a general account, and thus plaintiff would have superior right to the Funds against Commodore. Therefore, plaintiff has established by clear and convincing evidence likelihood of success on conversion.

As to breach of fiduciary duty, plaintiff asserts that defendants are holding the Funds in trust for plaintiff and a trustee “as a fiduciary, is bound by a duty of undivided and undiluted loyalty to the beneficiaries whose interests the fiduciary is appointed to protect.” (*In re Mankin*, 88 AD3d 717, 718 [2d Dept 2011].) The court does not analyze this claim since it is likely duplicative of the breach of contract claims. (*Fourth Ave. Owners Corp. v Douglas Elliman Prop. Mgt.*, 234 AD3d 590, 592 (1st Dept 2025); See also *CIT Healthcare LLC v Sonix Med. Resources, Inc.*, 2020 NY Slip Op 34310[U], \*11-12 [Sup Ct, NY Cnty 2020] [Contractual duty to hold funds “is simply not capable of conception as independent of, or distinct from, an obligation created by the contract”

and such a duty “does not create a fiduciary relationship.”]) Therefore, plaintiff has not established likelihood of success on its breach of fiduciary duty claim.

### **Irreparable Harm**

Where plaintiff has an adequate remedy at law with monetary damages, the court cannot find irreparable harm. Further, allegations that a company is “insolvent and money damages will be inadequate, as future judgments will likely be uncollectible ... does not generally support a claim for injunctive relief.” (*AIU Ins. Co. v Robert Plan Corp.*, 2007 NY Slip Op 51828[U], \*6 (Sup Ct, NY Cnty 2007].)

However, “injunctive relief is appropriate to remedy the conversion of identifiable proceeds.” (*Amity Loans, Inc. v Sterling Nat. Bank & Tr. Co. of New York*, 177 AD2d 277, 279 [1st Dept 1991].) For example, a factor was entitled to an injunction and an accounting because “the defendant acted in an illegal manner and, with the perfected security interest, the plaintiff is entitled to identifiable proceeds (Uniform Commercial Code, § 9-306, subd [4], pars [a], [b]).” (*Crocker Commercial Services, Inc* 88 AD2d at 877.) In this limited circumstance where plaintiff is likely to establish its superior right to the property because of the security interest, “[t]he purpose of a preliminary injunction is to ... prevent the dissipation of property that could render a judgment ineffectual”. (See *Perpignan v Persaud*, 91 AD3d 622, 622 [2d Dep’t 2012].)

Plaintiff asserts that Commodore is in a precarious financial condition and on the brink of bankruptcy. (NYSCEF 48, Ghauche aff ¶75.) In addition, plaintiff asserts “[i]n the past three weeks, moreover, Commodore has ceased to operate as a going concern. It has been reported in the press that Commodore Construction terminated some 400 employees on or about September 30, 2025, and itself has been terminated

from various of its construction projects. A recent lawsuit filed in the United States District Court for the Southern District of New York by the New York City District Council of Carpenters Pension Fund against Commodore Construction alleges that the Commodore Entities are “no longer operating” and have “cease[ed] operations.” (NYSCEF 7, Shapiro<sup>8</sup> aff ¶39.) Financial instability may be sufficient to establish irreparable harm. (See, *Felix v Brand Serv Group LLC*, 101 AD3d 1724, 1726 [4th Dept 2012] [“Plaintiffs submitted evidence that the funds in the escrow account, if dispersed, likely will not be recoverable due to defendants' precarious financial position. Indeed, they submitted evidence that defendant . . . has various outstanding debts, including an outstanding tax liability of \$115,860.84 to the State of New York, and that he was at risk of bankruptcy if he did not sell the . . . franchise.”]) Plaintiff’s contention that defendant has financial problems is more than mere speculation. Accordingly, plaintiff has established irreparable harm as to the allegedly converted amounts.

### **Balance of the Equities**

“Balancing involves an inquiry whether the irreparable injury to be sustained ... is more burdensome [to the plaintiff] than the harm caused to defendant through imposition of the injunction.” (*Felix*, 101 AD3d at 1726 [citations omitted].) Here, plaintiff seeks to have funds held in escrow or by the court. While effectively freezing the Funds may delay defendant’s use of the Funds, the alternative is that “plaintiffs may never be able to recover the money, if disbursed, even if plaintiffs ultimately prevail in the underlying action.” (*Id.* [rescission and fraud claims].) Therefore, the court finds that the equities favor plaintiff.

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<sup>8</sup> Alexander Shapiro is plaintiff’s attorney. (NYSCEF 37, Shapiro aff ¶1.)  
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## Tam

Tam takes issue with plaintiff's failure to submit a copy of the guaranty to the court to prove that Tam is a guarantor, but Tam fails to submit a guaranty that says otherwise. Plaintiff is not required to file the guaranty, and the court is bound by the allegations in the complaint unless documentary evidence shows otherwise. Moreover, plaintiff filed the guaranty (NYSCEF 91) to which Tam's name is clearly affixed. Therefore, the court rejects Tam's opposition to applying the injunction to him.

## Undertaking

CPLR 6312 (b) requires an undertaking "rationally related to defendants' potential damages." (*Suttongate Holdings Ltd. v Laconm Mgt. N.V.*, 159 AD3d 514, 515 [1st Dept 2018].) Since plaintiff seeks to have funds held in escrow or by the court, there is little risk of damage to defendants other than delayed use of the funds, should the court be wrong. (*Wright v Lewis*, 21 Misc 3d 1120(A), \*14 [Sup Ct, Kings Cnty, 2008].) Accordingly, a nominal undertaking is appropriate and rejects defendants' proposed undertaking of two times the receivables.

## Expedited Discovery

Plaintiff seeks expedited discovery for the purpose of locating and preserving the Funds that Commodore received and may currently hold. (NYSCEF 37, Alexander Shapiro aff ¶54.) CPLR 5229 provides:

"In any court, before a judgment is entered, upon motion of the party in whose favor a verdict or decision has been rendered, the trial judge may order examination of the adverse party and order him restrained with the same effect as if a restraining notice had been served upon him after judgment."

For such expedited discovery, plaintiff must demonstrate that the discovery sought is material and necessary to its application for preliminary injunction. (*Kingsland Holdings*

*Ltd.*, 2017 NY Slip Op 30961[U], \*4 [NY Cnty].) The court notes that limited discovery has already been helpful to this motion. (See NYSCEF 96-99, bank statements.) Since defendants cut off plaintiff's access to the platform, this limited discovery is necessary to assure compliance with this court's preliminary injunction to hold the Funds in escrow or by the court.

### **Cross Motion**

Defendants' cross motion for a preliminary injunction, pursuant to CPLR 6301 and 6312, enjoining and restraining plaintiff from contacting Commodore's customers and from collecting, dissipating, disposing of, using, transferring or encumbering any funds from owners and/or general contractors on construction projects where Commodore performed work, was denied because the cross motion was impermissibly returnable in 32 minutes<sup>9</sup> as stated on the record on December 17, 2025. (NYSCEF 101, December 24, 2025 Interim Order.)

### **Conclusion**

It appearing to this Court that a cause of action exists in favor of the plaintiff and against the defendants and that the plaintiff is entitled to a preliminary injunction on the ground 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, as set forth in this decision it is

ORDERED that the undertaking is fixed in the sum of \$250,000 conditioned that the plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to

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<sup>9</sup> Parties are reminded to make cross motions on OSCs by OSC to avoid this situation.  
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the defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following acts:

- (a) dissipating, disposing of, using, transferring or encumbering all amounts received by them on the receivables that Commodore sold to plaintiff;
- (b) receiving, collecting or demanding any and all further payments under the RPAs; and
- (c) interfering with plaintiff's right and ability to collect all RPA payments pursuant to the RPAs; and it is further

ORDERED that unless the parties agree to hold the funds in escrow in the account of Rosenberg & Estis PC, defendants shall within 5 business days

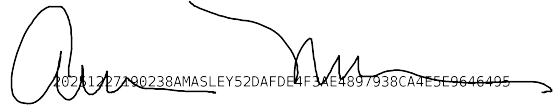
- (a) pay into Court the \$3,367,011.37 and \$468,073.64 which defendants received from the MTA;
- (b) pay into Court the \$290,510 which defendants received from BBI;
- (c) pay into Court the \$461,724.17 which defendants received from Consigli; and it is further

ORDERED that defendants shall preserve all records of payment demands made by defendants to obtain the MTA Funds, BBI Funds, and Consigli Funds and any other receivable payments under the RPAs and the financial transactions related thereto for the period July 10, 2025 to the present; and it is further

ORDERED that plaintiff's motion for expedited discovery with respect to the receivable payments from MTA Funds, the BBI Funds, the Consigli Funds

is granted and defendants shall respond within 15 days to plaintiff's discovery demands (NYSCEF 15 and 16) and parties shall schedule immediate depositions of defendants to be taken within 30 days of the date of this order; and it is further

ORDERED that defendants' cross motion is denied.



12/27/2025  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE