SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT R. REED **PART** 43
Justice

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PBB INVESTMENTS II, LLC,

Plaintiff,

- v -

BORDEN LP, PRS1000, LLC, and MICHAEL BORDEN,

Defendants.

----------X

INDEX NO. 653327/2020

MOTION DATE N/A

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 181, 182, 183, 184, 185

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

HON. ROBERT R. REED, J.:

In this breach of contract action, plaintiff PBB Investments II, LLC moves by order to show cause for an order, pursuant to CPLR 2221 and 6301, to renew its prior motion to preliminarily enjoin defendants Borden LP (Borden), PRS1000, LLC (PRS1000) and Michael Borden (Michael) (collectively, defendants) from selling, transferring or otherwise taking any action to dispose of the assets pledged by Borden as security under a collateral agreement and a related credit agreement, and for an order directing defendants to turn over all collateral to it or to a brokerage account maintained at nonparty Goldman Sachs.

BACKGROUND

PBB is a Delaware limited liability company (NYSCEF Doc No. 1, complaint ¶ 12). Borden is a Nevada limited partnership indirectly owned and controlled by Michael, a Nevada resident (*id.*, ¶ 13). Michael is the sole member of Borden's managing partner, nonparty Borden

General Partner, LLC (*id.*). PRS1000 is a Nevada limited liability company solely owned and controlled by Michael (*id.*, ¶ 14).

On July 19, 2013, Borden as "borrower" and nonparties Credit Suisse Loan Funding LLC) as "lender," Credit Suisse AG, Cayman Islands Branch as "administrative agent," and "Credit Suisse Securities (USA) LLC (CSSUSA) as "collateral agent" (collectively, Credit Suisse) executed a "Term Loan Credit Agreement" (the Credit Agreement) whereby Credit Suisse agreed to lend Borden the principal amount of $14 million (the Loan) (NYSCEF Doc No. 143, Isaac B. Zaur [Zaur] affirmation, exhibit 1 at 1 and 48-49). The agreement set July 18, 2016 as the maturity date (*id.* at 13 [Section 1.01]), although this date was later extended to December 31, 2017 (NYSCEF Doc No. 1, ¶ 23).

The Credit Agreement is a non-recourse loan (NYSCEF Doc No. 143 at 19 [Section 2.08]). As such, Borden as "pledgor" or "borrower" and CSSUSA as "collateral agent" executed a "Collateral Agreement" (the Collateral Agreement) dated July 19, 2013 in which Borden pledged the 1,866,666 equity interests (the Pledged Equity or the Switch Units) it owned in nonparty Switch, Ltd. to CSSUSA as security for "prompt payment in full when due … and performance of the Secured Obligations" (NYSCEF Doc No. 144, Zaur affirmation, exhibit 2 at 4-5 [Sections 1.1 and 2.1]). The term "Secured Obligations" is partially defined as "all obligations of the Borrower now or hereafter existing under the Credit Agreement and the promissory notes issued pursuant thereto … whether for principal, interest, fees, expenses, indemnification, or otherwise" (*id.* at 5 [Section 1.1]). The Collateral Agreement defines the collateral (the Collateral) as:

> "2.1 Grant of Security Interest. As collateral security for the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) and performance of the Secured Obligations, the Pledgor hereby grants to the Collateral Agent, for the benefit of the Lenders, a security interest in all of the Pledgor's right, title and interest in, to and under the following property,

> whether now owned or hereafter acquired by the Pledgor and whether now existing or hereafter coming into existence and wherever located (collectively, the 'Collateral'):
> (a) the Pledged Equity;
> (b) the certificates, if any, representing the Pledged Equity of the Pledgor, and all dividends, distributions, return of capital, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for, or in conversion of, any or all of such Pledged Equity and all subscription warrants, rights or options issued thereon or with respect thereto;
> (c) all books and records of the Pledgor relating to the Collateral; and
> (d) all Proceeds of the foregoing Collateral"

(*id.* at 5-6 [Section 2.1]). In a subsequent three-for-one split, the number of Switch Units Borden owned increased from 1,866,666 to 5,599,998 (NYSCEF Doc No. 1, ¶ 21).

Section 6.2(a) of the Collateral Agreement states, in part, that:

> "Any and all instruments, chattel paper and other rights, property or proceeds and products received, receivable or otherwise distributed in respect of, or in exchange for, any Collateral shall be, and shall be forthwith delivered to the Collateral Agent to hold as, Collateral, and, if received by the Pledgor, shall, to the extent allowable under applicable law, be received in trust for the benefit of the Collateral Agent, segregated from the other property or funds of the Pledgor, and forthwith delivered to the Collateral Agent as Collateral in the same form as received (with any necessary endorsement)"

(NYSCEF Doc No. 144 at 12). In addition, Borden agreed to "promptly deliver" any certificate or instrument evidencing the Collateral (*id.* at 6 [Section 3.2(a)]), and to execute, deliver and record any instrument, document or certificate to create, preserve, confirm or validate PBB's security interest in the Collateral "including the delivery of possession of any Collateral that hereafter comes into existence or is acquired in the future by the Collateral Agent" (*id.* [Section 3.3]).

Under Section 5.5, Borden agreed to "promptly upon request, provide to the Collateral Agent all information and evidence it may reasonably request concerning the Collateral to enable the Collateral Agent to enforce the provisions of this Agreement" (NYSCEF Doc No. 144 at 10).

Borden also agreed that it "shall not sell, lease, exchange, assign or otherwise dispose of, or grant any option with respect to, any of the Collateral, other than as specifically permitted under the Credit Agreement" (NYSCEF Doc No. 144 at 10 [Section 5.4]). Section 5.06 in the Credit Agreement provides, in relevant part, that if Borden wished to transfer or sell any Switch Units, then "[t]he Administrative Agent (or its Affiliate) shall have the right, but not the obligation, to offer to purchase all or any portion of the Switch Units the Borrower intends to sell" (NYSCEF Doc No. 143 at 30 [Section 5.06(b)(i)(B)]). If any Switch Units are sold to a third party, then "Borrower shall promptly (and in no event later than two Business Days) following receipt of the net proceeds arising from such sale, pay the Switch Sharing Percentage, if any, to the Administrative Agent" (*id.* [Section 5.06(b)(ii)]). Section 5.06 (d) defines the Switch Sharing Percentage (the SSP), in part, as "thirty percent (30%) of the increase in value of the Switch Units from the Initial Switch Unit Value" (*id.* at 31). The Credit Agreement assigned an "Initial Switch Unit Value" of $15 to each Switch Unit (*id.* at 30 [Section 5.06(a)]). Borden agreed to pay the balance of the Loan principal together with any accrued or unpaid interest, the SSP, and any fees due on the Credit Agreement on the maturity date (*id.* at 19 [Section 2.10]).

An "Event of Default" (Event of Default) under Article VII of the Credit Agreement occurs when:

> "(d) … in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in (i) Article V, which default shall continue unremedied for a period of 10 days after the earlier of (x) notice thereof from the Administrative Agent to the Borrower (which notice shall also be given at the request of any Lender) or (y) knowledge thereof of the Borrower; or (ii) Article VI;
>
> (e) … in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in any Loan Document … and such default shall continue unremedied for a period of 30 days after the earlier of (i) notice thereof from the

> Administrative Agent to the Borrower … or (ii) knowledge thereof of the Borrower"

(NYSCEF Doc No. 143 at 32). If an Event of Default occurs, then PBB may:

> "(A) demand that sufficient Switch Units be sold to repay all of the principal, interest, Fees, Switch Sharing Percentage and all other liabilities of the Borrower accrued hereunder and under any other Loan Document … [and/or] (B) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document"

(*id.* at 34). The Credit Agreement defines the "Loan Documents" as "this [Credit] Agreement, the Security Documents, the promissory notes executed and delivered pursuant to Section 2.04(e) and any other document executed in connection with the foregoing" (*id.* at 12 [Section 1.01]). The term "Security Documents" means the Collateral Agreement and "each of the security agreements and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.08" (*id.* at 14 [Section 1.01]). The Collateral Agreement shares the same definition for an Event of Default with the Credit Agreement (NYSCEF Doc No. 144 at 4 [Section 1.1]), and, thus, a default under the Collateral Agreement qualifies as a default under the Credit Agreement. The Collateral Agreement also provides that if an Event of Default occurs, PPB may exercise all its rights and remedies described in the Credit Agreement (NYSCEF Doc No. 144 at 12 [Section 7.1(a)], such as selling or disposing of the Collateral at a public or private sale (*id.* at 13 [Section 7.1(f)]).

On December 30, 2016, Credit Suisse Loan Funding LLC assigned the Credit Agreement to PBB (NYSCEF Doc No. 145, Zaur affirmation, exhibit 3 at 1-2). Pursuant to a "Successor Agent Agreement" dated February 9, 2017, Credit Suisse AG, Cayman Islands Branch and CSSUSA resigned as administrative agent and collateral agent, respectively, and PBB appointed

itself as the successor agent (NYSCEF Doc No. 146, Zaur affirmation, exhibit at 1). PPB alleges that it has a perfected security interested in the 5,599,998 Switch Units, and that it has publicly recorded its lien with the Nevada Secretary of State (NYSCEF Doc No. 1, ¶ 22).

On November 20, 2017, Borden as "seller" and PRS1000 as "purchaser" executed a "Unit Purchase Agreement" whereby PRS1000 agreed to purchase all 5,599,998 Switch Units in exchange for a promissory note (the Note) for $70,973,321.85 (NYSCEF Doc No. 148, Zaur affirmation, exhibit 6 at 1). The Note dated November 20, 2017 provides that PRS1000 shall repay the principal with interest at 2.64% per annum by November 20, 2027 (NYSCEF Doc No. 149, Zaur affirmation, exhibit 7 at 1). PBB alleges that the Note constitutes Collateral under Section 2.1 or an instrument evidencing the Collateral under Section 3.2 of the Collateral Agreement (*id.*, ¶¶ 108-109). On November 27, 2017, Borden paid PBB the $16.6 million in principal and interest due on the Loan (*id.*, ¶ 25). Borden, though, has yet to pay the SSP (*id.*).

On December 15, 2017, Borden commenced an action against PBB and nonparty TPB Sixth Street Partners (TPB) (together, the Lenders) for a judgment declaring Borden's rights and obligations under the Credit Agreement related to its sale of the Switch Units to PRS1000 (NYSCEF Doc No. 1, summons and complaint, in *Borden LP v TPB Sixth Street Partners*, Sup Ct, NY County, index No. 657398/2017 [the Related Action]). In their answer, the Lenders interposed six counterclaims for breach of the Credit Agreement predicated upon Borden's sale of the Switch Units and its failure to pay the SSP; actual and constructive fraudulent conveyance in violation of Debtor and Creditor Law §§ 273 and 276 or Nev. Rev. Stat. §§ 112.180 and 112.190; a judgment declaring that events of default of the Credit Agreement had occurred; and contractual indemnification under both agreements (NYSCEF Doc No. 9, answer with counterclaims, in the Related Action). The Lenders also brought a third-party complaint against Michael, PRS1000 and

nonparty Smudge Monster, LLC for tortious interference with contract and actual and constructive fraudulent conveyance in violation of Debtor and Creditor Law §§ 273 and 276 or Nev. Rev. Stat. §§ 112.180 and 112.190 (NYSCEF Doc No. 10; third-party complaint, in the Related Action).

The parties in the Related Action then moved for summary judgment. On April 28, 2020, the court (Sherwood, J.) granted the motions brought by Borden, Michael and PRS1000, denied the motions bought by the Lenders and declared that "Borden LP fully complied with its obligations under the parties' Term Loan Credit Agreement dated July 19, 2013 by timely paying the principal amount due, plus interest and permissibly transferring its interest in the Switch Units pursuant to said agreement" (*Borden LP v TPG Sixth St. Partners*, 2020 NY Slip Op 31577[U], *26-27 [Sup Ct, NY County 2019], *affd as mod* 191 AD3d 554 [1st Dept 2021] [the April 28 Order]). The court concluded that the Lenders had failed to make a proper offer to purchase the Switch Units and had made an untimely second offer (*id.* at 18). The court also concluded that, pursuant to Section 5.06(d)(i) of the Credit Agreement, the SSP amount was $22,343,992, which would be payable to the Lenders once Borden received the "net proceeds' from the sale of the Switch Units (*id.* at 22). PBB filed an appeal, discussed further *infra*.

While the Related Action was pending, Borden filed an SEC Form 4 on April 3, 2019 showing that two days earlier, it had surrendered all 5,599,998 Switch Units in Switch, Ltd. for 5,599,998 Class A common shares (the Switch Shares) in Switch, Inc. (the Unit Exchange) (NYSCEF Doc No. 1, ¶ 46; NYSCEF Doc No. 168, Zaur affirmation, exhibit 26 at 1; NYSCEF Doc No. 169, Zaur affirmation, exhibit 27). PBB alleges that the Unit Exchange was not authorized under Section 5.4 of the Collateral Agreement and maintains that the Switch Shares constitute Collateral or property received in exchange for Collateral (NYSCEF Doc No. 1, ¶¶ 96 and 110. Between March and June 2020, Borden, Michael or Michael's wife, nonparty Teresa

Borden (Teresa) sold 1,225,000 of the 5,599,998 Switch Shares (the Switch Share Sales) for a total of $21,194,035 (*id.*, ¶ 51-64), as evidenced by numerous SEC Form 4 filings (NYSCEF Doc Nos. 151-167, Zaur affirmation, exhibits 9-25). PBB alleges that the $21,194,035 Borden or PRS1000 received from the Switch Shares Sales constitute Collateral or property received in exchange for Collateral (NYSCEF Doc No. 1, ¶ 111). Borden has allegedly refused demands that it turn over the Note, the Switch Shares and the proceeds from the Switch Share Sales, or furnish a detailed accounting of the status of the Collateral to PBB (*id.*, ¶¶ 69-72 and 112).

PROCEDURAL HISTORY

PBB commenced this action on July 23, 2020. The complaint asserts four causes of action for breach of contract and that each defendant is the alter ego of the other. The first cause of action alleges that the Unit Exchange transaction constitutes a breach of section 5.4 of the Collateral Agreement (NYSCEF Doc No. 1, ¶ 48). The second cause of action alleges that defendants' refusal to turn over the Note, the Switch Shares, and the $21,194,035 cash proceeds from the Switch Share Sales constitutes a breach of Sections 2.3, 3.3 and 6.2 of the Collateral Agreement (*id.*, ¶ 114). The third cause of action alleges that the defendants' refusal to furnish an accounting on the status of the Collateral constitutes a breach of Section 5.5 of the Collateral Agreement (*id.*, ¶¶ 121-122). In the fourth cause of action, PBB declares that it has accelerated the obligations under the Credit Agreement based upon defendants' breaches of the Collateral Agreement, which qualify as an Event of Default under Article VII of the Credit Agreement (*id.*, ¶ ¶126-128). PBB alleges that defendants' actions have impaired the value of the Collateral available to satisfy the Switch Sharing Percentage (*id.*, ¶¶ 100, 116, and 123). It seeks to enjoin defendants from further selling or transferring the Collateral, including the Note, the remaining Switch Shares and the proceeds from the sale of either the Note or the Switch Shares (*id.* at 27).

By order to show cause signed August 10, 2020, PPB moved to preliminarily enjoin defendants from selling, transferring or causing the sale or transfer of any interest in the Collateral, including the Note, 4,374,998 unsold Switch Shares, and $21,194,034.88 Borden received from the Switch Share Sales (NYSCEF Doc No. 59). The court (Sherwood, J.) granted PBB a temporary restraining order (*id.*) and set a hearing date on the preliminary injunction (NYSCEF Doc No. 84, oral argument 8/10/20 tr at 26-28). The court resolved the motion by order dated December 4, 2020 (the December 4 Order) and directed defendants to deposit into a brokerage account in PRS1000's name (the Security Account) the "Class A Common Shares of Switch, Inc. having a market value of not less than $26 million … [or] [a]t Defendants' option … cash or cash equivalent assets in lieu of some or all of the Switch Shares. This amount approximates the SSP claimed plus an allowance for interest at 6% less payments made" (NYSCEF Doc No. 95, ¶ 2). The court also ordered that the assets in the Security Account could not be sold or transferred until the SSP and other amounts the court may award to PBB have been paid (*id.*, ¶ 2). In addition, "[i]n lieu of the foregoing, Defendants may file with the Court a surety bond in the amount of $26 million which bond shall remain in place until Defendants have paid PBB all amounts awarded by the Court (*id.*, ¶ 4). The December 4 Order was later modified so that compliance "shall solely be the responsibility of Defendants" (NYSCEF Doc No. 102). The Security Account is currently maintained at Goldman Sachs (NYSCEF Doc No. 175, Zaur affirmation, exhibit 33 at 1).

PBB now moves for leave to renew its earlier motion for a preliminary injunction based on a change in law that it claims affects the prior determination. Defendants oppose the motion.

DISCUSSION

CPLR 2221 (e) (2) states, in relevant part, that a motion to renew "shall demonstrate that there has been a change in law that would change the prior determination."

On February 28, 2021, the Appellate Division, First Department modified the April 28 Order to deny Borden's motion for summary judgment and declared that Borden "did not fully comply with its obligations under the credit agreement and that its sale of the Switch Units to third-party defendant PRS1000, LLC is not aligned with the express terms of the credit agreement" (*Borden LP v TPG Sixth St. Partners*, 191 AD3d 554, 555 [1st Dept 2021]). The Court concluded that Borden "breached the credit agreement by selling the Switch Units to PRS1000 at a lower price (a 31.27% discount)" and declared that Borden "did not fully comply with its obligations under the credit agreement and that its sale of the Switch Units to ... PRS1000 ... is not aligned with the express terms of the credit agreement" (*id.*). The Court also granted the Lenders summary judgment on their first, fifth and sixth counterclaims to the extent of declaring that an "Event of Default has occurred and is continuing based on Article VII(d)" (*id.*). In addition, the Court reasoned that triable issues of fact existed as to whether the sale of the Switch Units to PRS1000 was made with the intent to hinder or delay Borden's payment of the SSP which precluded granting summary judgment on the Lenders' counterclaim and third-party claims brought under Debtor and Creditor Law § 273 (*id.*). Triable issues of fact also existed as to whether Borden breached the Credit Agreement by failing to pay the SSP within two business days of November 20, 2017, the date Borden sold the Switch Units, or December 31, 2017, the maturity date on the Loan (*id.* at 556).

Contrary to defendants' position, the Court's modification of the April 28 Order constitutes a change in law for purposes of a renewal motion (*see Spierer v Bloomingdale's*, 59 AD3d 267, 267 [1st Dept 2009], *lv denied* 13 NY3d 713 [2009]). Nevertheless, PBB's motion is denied as the change in law does not alter the court's prior determination such that the scope of the December 4 Order should be expanded.

A "party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor" (*Nobu Next Door, LLC v Fine Arts. Hous., Inc.*, 4 NY3d 839, 840 [2005], citing CPLR 6301). The party seeking the injunction must prove each element with clear and convincing evidence (*see Gilliland v Acquafredda Enters., LLC*, 92 AD3d 19, 24 [1st Dept 2011]). The "[p]roof establishing these elements must be by affidavit and other competent proof, with evidentiary detail" (*Faberge Intl. v Di Pino*, 109 AD2d 235, 240 [1st Dept 1985]). If the party opposing an application for a preliminary injunction raises an issue of fact, then "the court shall make a determination by hearing or otherwise whether each of the elements required for issuance of a preliminary injunction exists" (CPLR 6312 [c]).

As previously determined, PBB has satisfied its burden under CPLR 6301, as evidenced in the December 4 Order. The parties do not appear to challenge the terms of the December 4 Order insofar as the order directed defendants to deposit $26 million into the Security Account and directed that no distributions may be made from that account absent further court order. Rather, the parties dispute whether the Security Account should be expanded to include the Note, the remaining unsold Switch Shares and the cash proceeds from sales of those shares.

PBB submits that resolution of its appeal of the April 28 Order warrants an increase in the amount held in the Security Account to cover defendants' liability on its first counterclaim for breach of contract in the Related Action. The Court had determined that Borden breached the Credit Agreement by refusing to sell the Switch Units to the Lenders and that an Event of Default under Article VII(d) had occurred. PBB submits that it also intends to move to amend its complaint in this action to assert a claim for breach of the Collateral Agreement based upon Borden's improper sale of the Switch Units to PRS1000. Based on the unsworn opinion of its expert Marc

J. Brown, CFA (Brown), PBB argues that its damages for Borden's breach amounts to the difference between $105,856,104, or the fair market value of the Switch Units as of the November 20, 2017 valuation date, and the Lenders' first offer of $81 million (NYSCEF Doc No. 141, PPB's mem of law at 10 n 6; NYSCEF Doc No. 114, Zaur affirmation, exhibit 8 at 3, 10 and 15). Together with Brown's assessment of the SSP at $23,356,834 (NYSCEF Doc No. 114 at 10), PBB maintains that defendants' total exposure is now $55 million (NYSCEF Doc No. 141 at 7). PBB seeks an order directing defendants to turn over the Note, the remaining unsold Switch Shares and the proceeds from the Switch Share Sales, which now stands at $38 million (*id.* at 7).

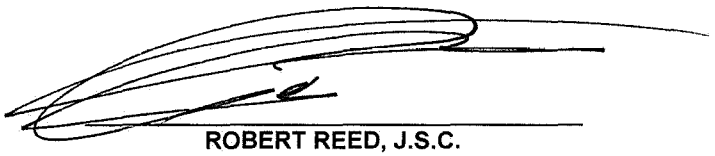
However, PBB has not demonstrated that the First Department's decision affects the December 4 Order. The Court's declarations do not alter the obligations the Collateral is meant to secure. As set forth earlier, the Collateral may be used to secure Borden's payment on the Loan and its performance of the Secured Obligations, which includes any obligations existing under the Credit Agreement. Section 5.06(b)(i)(B) of the Credit Agreement, which afforded the Lenders the right, but not the obligation, to purchase the Switch Units expressly provides that it is subject to the requirements in Article VII in the same agreement. Importantly, if Borden defaults in performing a condition in the Loan documents, then under Article VII, PBB may (1) demand that sufficient Switch Units be sold to pay off the principal, interest and SSP and/or (2) declare that the principal on the Loan, accrued fees and other liabilities accruing under the Loan documents shall become immediately due and payable. Therefore, it does not appear from the remedies available to PBB that the parties contemplated using the Collateral as security for a potential money judgment representing the difference between the fair market value of the Switch Units and the Lenders' offer to purchase them in the event Borden refused to sell to them.

Moreover, the purpose of a preliminary injunction is to maintain the status quo (*see Huguenot LLC v Megalith Capital Group Fund I, LP*, 191 AD3d 530, 530 [1st Dept 2021). In deciding a request for an injunction, "[t]he balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief" (*Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d 430, 432 [1st Dept 2016]; *Nassau Roofing & Sheet Metal Co. v Facilities Dev. Corp.*, 70 AD2d 1021, 1022 [3d Dept 1979], *appeal dismissed* 48 NY2d 654 [1979] [stating that "[i]n order for a preliminary injunction to issue it must be shown that the irreparable injury to be sustained by the plaintiff is more burdensome to it than the harm caused to defendant through imposition of the injunction"]). Here, PBB has admitted that Borden repaid the principal with interest on the Loan in November 2017, and that defendants have deposited $26 million, which represents the entirety of the SSP, into the Security Account as directed in the December 4 Order. It appears that the only payment obligation remaining under the Credit Agreement is payment of the SSP. The value of the $71 million Note, the remaining unsold Switch Shares and the proceeds from the sales of those shares far exceeds the value of the SSP. Thus, increasing the amount already on deposit to $55 million or more weighs against finding in PBB's favor. Additionally, in seeking to expand the scope of the December 4 Order, PBB is essentially asking this court to ensure that any money damages rendered on its first counterclaim for breach of contract in the Related Action will be satisfied. A determination on the merits of the ultimate relief sought, though, is improper on a motion for a preliminary injunction (*see East Fordham DE LLC v U.S. Bank N.A.*, 146 AD3d 610, 611 [1st Dept 2017]).

Accordingly, it is

ORDERED that the motion brought by plaintiff PBB Investments II, LLC for leave renew its prior motion brought by order to show cause for a preliminary injunction (motion sequence no. 004) is denied; and it is further

ORDERED that the court's order dated December 4, 2020 (NYSCEF Doc No. 95) and amended in a so-ordered stipulation signed December 24, 2020 (NYSCEF Doc Nos. 101-102) remains in full force and effect until further order of this court.



11/10/2021
DATE

ROBERT REED, J.S.C.

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