

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CLEAR COVE OPPORTUNITIES FUND I
LLC,

Plaintiff,

v.

ADDICTION RECOVERY CARE LLC,
TIM ROBINSON, and ANGELICA
CAPITAL TRUST,

Defendants.

No. 1:26-cv-01083

**MEMORANDUM OF LAW IN SUPPORT OF CLEAR COVE OPPORTUNITIES
FUND I LLC'S MOTION, BROUGHT BY ORDER TO SHOW CAUSE,
FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Clear Cove Opportunities Fund I LLC (“Clear Cove”), by its attorneys Vedder Price P.C., submits this memorandum of law in support of its motion, brought by order to show cause, for a temporary restraining order (“TRO”) and preliminary injunction. Clear Cove seeks to preserve the existing status quo with respect to defendant Addiction Recovery Care LLC’s (“ARC”) assets until such time as a judicial determination has been made as to Clear Cove’s interest in the Restrained Funds (as defined *infra*).

PRELIMINARY STATEMENT

Plaintiff Clear Cove is an investor that, *inter alia*, purchases the right to receive Employee Retention Credit (“ERC”) tax refunds from businesses that are due such ERC refunds and in need of immediate liquidity. Clear Cove purchased from Defendant ARC the right to receive all ERC refunds due to ARC for the first quarter of 2021 (the “Transferred Interests”). Subsequently, Clear Cove obtained from ARC a secondary interest in the ERC refunds due to ARC for the second quarter of 2021 (the “Secondary ERC Claim”), the practical effect of which is to obligate ARC to transfer to Clear Cove whichever of (a) the Transferred Interests or (b) the Secondary ERC Claim (up to the amount of the Transferred Interests) ARC first receives from the Internal Revenue Service (“IRS”).

After ARC sold the Transferred Interests and granted the Secondary ERC Claim to Clear Cove, ARC purported to sell Clear Cove’s property—i.e., the very same ERC refunds comprising the Transferred Interests and Secondary ERC Claim—to Defendant Angelica Capital Trust (“Angelica”). ARC defaulted on its obligations to Clear Cove and—according to Angelica—on its obligations to Angelica.

In a second action, *Angelica Capital Trust v. Addiction Recovery Care LLC, et al.*, 26 Civ. 241 (the “Angelica Action”), Angelica petitioned the Southern District of New York for a preliminary injunction obligating ARC to maintain approximately \$4.7 million in a segregated

account (the “Restrained Funds”), which the court granted. Clear Cove asks that the Court enter a preliminary injunction ensuring that the Restrained Funds—which are comprised at least in part of the Transferred Interests and the Secondary ERC Claim and represent substantially all of ARC’s liquid assets—are not disbursed until such time as Clear Cove’s interest in them has been judicially determined. Clear Cove additionally requests that the Court enter a TRO maintaining the status quo until it can rule on Clear Cove’s requests for a preliminary injunction.

The Court should issue Clear Cove’s requested preliminary injunction because Angelica may, during the pendency of this action, obtain an arbitral award or reach a settlement with ARC that results in the distribution of the Restrained Funds to Angelica before there has been a judicial determination as to whether Clear Cove possesses a superior interest, and leaving Clear Cove unable to recover from ARC. The preliminary injunction would support the public interest by insuring that the Restrained Funds are appropriately distributed and would cause no prejudice to Angelica or ARC, given the already existing injunction. Finally, the Court should issue a TRO maintaining the status quo while it considers Clear Cove’s application for a preliminary injunction.

STATEMENT OF FACTS

On July 18, 2025, Clear Cove and ARC entered into a “True Sale Risk Participation of ERC Claim Agreement” (the “Participation Agreement,” annexed as Exhibit 1 to the accompanying Declaration of Kenneth Dettman (the “Dettman Decl.”)), as amended by the “Amendment to ERC Risk Participation Agreement” on September 24, 2025 (the “Amendment,” annexed as Exhibit 5 to the Dettman Decl.). The Participation Agreement governed the sale of “Transferred Interests” by ARC to Clear Cove, which encompassed:

...all of [ARC’s] rights to receive any and all payments, interest, proceeds or distributions of any kind from the United States Internal Revenue Service (the “IRS”) in respect of the employee retention credits duly and timely claimed by [ARC] on account of qualified wages paid by [ARC] and identified as a “Claim for Refund” under Form 941-X *Adjusted Employer’s Quarterly Federal Tax Return or*

Claim for Refund for the first quarter of 2021 filed with the IRS . . . in the aggregate amount of \$3,319,220.80 . . . as set forth in line item 27 of Part 3 thereof.

(Ex. 1, § 1(a).) Clear Cove paid to ARC the specified purchase price under the Participation Agreement on July 22, 2025. (Dettman Decl., ¶ 5.)

As part of the Participation Agreement, ARC was required to fulfill certain obligations within 60 days following entry of the Agreement. (Ex. 1, §7.) On September 24, 2025, ARC executed the Amendment in order to obtain an additional 30 days to fulfill those obligations. In consideration for Clear Cove’s forbearance, ARC granted to Clear Cove a right to receive payments, interest, proceeds, or distributions in the ERC refund due for the *second* quarter of 2021—the Secondary ERC Claim—for purposes of satisfying ARC’s obligation to forward the Q1 ERC refund if ARC first received the Q2 refund:

. . . in the event [ARC] shall receive any payment or other distribution of cash (including IRS interest or proceeds) by check or by credit from the IRS in respect of the Secondary ERC Claim (“Secondary Distribution”), and such Secondary Distribution occurs prior to the Distribution [of the Transferred Interests], [ARC] shall be required to satisfy any and all obligations set forth herein with respect to the Distribution, Transferred Interests and Tax Refund Claim out of the proceeds [ARC] receives with respect to the Secondary Distribution.

(Ex. 5, §§ 2(d), 5.)

On or around December 2, 2025, ARC received the ERC refunds for both the first and second quarter of 2021. (Dettman Decl., ¶ 14.) However—despite the fact that nearly three months have now elapsed—ARC has never forwarded Clear Cove’s property to it. (Dettman Decl., ¶ 15.)

Clear Cove’s interests in ARC’s ERC refunds were publicly recorded, a fact available to anyone conducting due diligence in connection with a transaction with ARC. Specifically, on July 31, 2025, Mountain Association for Community Economic Development (“MACED”)—an existing ARC creditor which held a perfected security interest in all of ARC’s receivables

memorialized in a UCC Financing Statement filed on February 24, 2017 and renewed on January 19, 2022—filed a UCC statement reflecting MACED’s assignment to Clear Cove of MACED’s priority interests in “all currently existing and hereafter arising accounts owing or to become due to [ARC] arising from Employee Retention Tax Credit refunds” and specifically referencing the “certain Risk Participation Agreement dated as of July 18th, 2025 between [ARC] and [Clear Cove].” (Exhibit 4 to the Dettman Decl. (July 31, 2025 UCC Financing Statement Amendment); *see also* Exhibit 2 to the Dettman Decl. (February 24, 2017 UCC Financing Statement); Exhibit 3 to the Dettman Decl. (January 19, 2022 UCC Financing Statement Continuation).) This UCC acknowledgment is readily available to the public online and can be retrieved and reviewed by searching for ARC’s name on the Kentucky Secretary of State website via the Article 9 UCC Search function.

Subsequent to Clear Cove’s purchase of the Transferred Interests and Secondary ERC Claim from ARC and the public recording of Clear Cove’s interest, ARC purported to sell *the very same* ERC refunds comprising the Transferred Interests and Secondary ERC Claim to Angelica. Specifically—according to Angelica’s recent filings—on November 12, 2025, Angelica entered into two agreements entitled “Contract for the Sale and Purchase of Tax Receivable” in which ARC purported to convey to Angelica the ERC refunds owed to ARC for the first and second quarters of 2021; that is, the Transferred Interest (Q1 2021) and Secondary ERC Claim (Q2 2021) to which Clear Cove was already entitled. (*See* Angelica Action ECF No. 1-1 §1, and at 14; Angelica Action ECF No. 1-2 §1, and at 14; Amended Complaint, ¶ 11.) On November 13, 2025, Angelica filed a UCC Financing statement recording its purported purchase of the ERC refunds comprising the Transferred Interests and Secondary ERC Claim from ARC. (Angelica Action ECF No. 12-8; Amended Complaint, ¶ 62.)

On information and belief, Angelica demanded ARC transfer the ERC refunds comprising Clear Cove’s Transferred Interests and Secondary ERC Claim to Angelica, but ARC refused. On January 12, 2026, Angelica initiated the Angelica Action against ARC and filed a petition for injunction seeking to prevent ARC, its owners, and (as amended) its subsidiaries from dissipating the ERC refunds comprising Clear Cove’s Transferred Interests and Secondary ERC Claim while Angelica engaged ARC in arbitration. On January 22, 2026, the Angelica Action court entered a preliminary injunction ordering ARC to place \$4,706,872.75 (the Restrained Funds)—all but \$1 million of its liquid assets—into a separate bank account and prohibiting ARC from transferring the Restrained Funds “during the pendency of this action without further order of this Court.” (Angelica Action ECF No. 64.)

Clear Cove’s interest in the Restrained Funds is actually superior to that of Angelica, since it derives from Clear Cove’s bona fide ownership of the Transferred Interests and/or Secondary ERC Claim; by contrast, Angelica appears to possess only a fraud claim against ARC. Accordingly, Clear Cove has a bona fide interest that would be prejudiced if the Restrained Funds were distributed to any party before Clear Cove’s interests in the Restrained Funds have been judicially resolved.

ARGUMENT

I. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION ENJOINING THE DISTRIBUTION OF THE RESTRAINED FUNDS UNTIL CLEAR COVE’S OWNERSHIP INTEREST HAS BEEN ADJUDICATED.

This Court has authority pursuant to Fed. R. Civ. P. 65 to issue a TRO and other injunctive relief. A party is entitled to preliminary injunctive relief upon a showing of “(1) a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the [petitioner’s] favor; (2) a likelihood of irreparable injury in the absence of an injunction; (3) that the balance of hardships

tips in the [petitioner's] favor; and (4) that the public interest would not be disserved by the issuance of an injunction.” *Thales Avionics Inc. v. L3 Techs., Inc.*, 719 F. Supp. 3d 337, 344-45 (S.D.N.Y. 2024). All three requirements are easily met here.

A. CLEAR COVE HAS A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS CLAIMS.

Clear Cove is likely to succeed on the merits of its claims against ARC and Angelica. Regarding its contract claims against ARC, Clear Cove purchased the Transferred Interests pursuant to the terms of the Participation Agreement and Amendment, paying ARC the agreed consideration. ARC received the Transferred Interests, but instead of transmitting them to Clear Cove as the Agreements require, ARC kept the Transferred Interests for itself. *See Clearmont Prop., LLC v. Eisner*, 58 A.D.3d 1052, 1055 (3d Dep’t 2009) (“The elements of a cause of action for breach of contract are (1) the formation of a contract between plaintiff and defendant; (2) performance by plaintiff; (3) defendant’s failure to perform; and (4) resulting damages.”).

Regarding its claims for declaratory judgment against Angelica, Clear Cove clearly holds a priority interest in the Transferred Interests and Secondary ERC claim because Clear Cove was the indisputable first purchaser of the ERC refunds at issue and Clear Cove, as assignee of the interests held by MACED, held a perfected security assignment in ARC’s receivables related to “all currently existing and hereafter arising accounts owing or to become due to [ARC] arising from Employee Retention Tax Credit Refunds.” (Exhibit 2 to the Dettman Decl.) Angelica has elsewhere argued that Clear Cove’s own independently filed UCC-1 contained an error that rendered it a nullity. However, even if true, this purported error is of no moment; where “a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees

from the original debtor.” See UCC § 9-310(c) (emphasis added), adopted by Kentucky at KRS 355.9-310(3).

B. ABSENT THE REQUESTED INJUNCTIVE RELIEF, CLEAR COVE FACES A SUBSTANTIAL RISK OF IRREPARABLE HARM IN THAT ITS ASSETS MIGHT BE TRANSFERRED AND RENDERED UNRECOVERABLE.

Clear Cove will suffer irreparable harm unless this Court grants a preliminary injunction while Clear Cove’s interest in the Restrained Funds is adjudicated. This Angelica Action court previously granted a virtually identical application by Angelica in the Angelica Action, based on evidence that ARC has minimal liquid assets and is on the brink of insolvency: “Petitioner [Angelica] has demonstrated that it will suffer irreparable harm absent a preliminary injunction freezing certain liquid assets in Respondents’ [ARC’s] possession because Respondents are ‘on the brink of insolvency.’” (Angelica Action ECF No. 64, at 2 (citing *CRP/Extell Parcel I, L.P. v. Cuomo*, 394 F. App’x 779 (2d Cir. 2010) (citing *Brenntag Int’l Chems., Inc. v. Bank of India*, 175 F.3d 245, 249-50 (2d Cir. 1999)).)

Accordingly, the Angelica Action court ordered ARC to “place \$4,706,872.75 in a separate bank account, segregated from the \$1,000,000 reserved for daily operating expenses,” and enjoined ARC from “transfer[ing], caus[ing] to be transferred, or tak[ing] any action to transfer the \$4,706,872.75 out of the segregated bank account during the pendency of this action without further order of this Court.” (Angelica Action ECF No. 64, at 3.) There is real and substantial risk (a) that ARC will try to resolve its dispute with Angelica by transferring to Angelica the Restrained Funds, including Clear Cove’s Transferred Interests or (b) that Angelica will obtain an arbitral award against ARC before Clear Cove can obtain a judgment against it in the current action. Accordingly, by the time the Court renders its decision on Clear Cove’s claims against ARC and Angelica, Clear Cove’s property would be gone or dissipated.

It is true that “As a general matter, because monetary injury can be estimated and compensated, the likelihood of such injury usually does not constitute irreparable harm.” *Brenntag Int’l Chems, Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999). However, an “exception” to this “monetary loss” rule has been recognized “where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied.” *Id.* at 249-50. “[C]ourts have excepted from the general rule regarding monetary injury situations involving obligations owed by insolvents.” *Id.* at 249. Accordingly, courts will find a risk of irreparable harm “where the party that might ultimately be ordered to pay the monetary damages is insolvent or facing imminent bankruptcy or is in a perilous financial state.” *WestLB AG v. BAC Fla. Bank*, 2012 WL 3135825, at *5 (S.D.N.Y. Aug. 2, 2012) (citation omitted).

Moreover, the irreparable harm to Clear Cove is even more acute than the typical case of an imminently insolvent debtor. Clear Cove is not simply a potential creditor in bankruptcy; rather, Clear Cove bought the Transferred Interests and subsequently acquired the Secondary ERC Claim in the course of a true sale transaction. Accordingly, in the event of ARC’s bankruptcy, the ERC refunds comprising the Transferred Interests and Secondary ERC Claim would not even be property of the bankruptcy estate. *See, e.g., In re Dryden Advisory Grp., LLC*, 534 B.R. 612, 626-27 (Bankr. M.D. Pa. 2015) (accounts receivable sold pre-petition do not constitute estate property); *In re R&J Pizza Corp.*, 2014 WL 12973408 (Bankr. E.D.N.Y. Oct. 14, 2014), (finding proceeds of a receivable sold prepetition were a true sale and ordering the proceeds held by the debtor be turned over to the owner); *In re Florian*, 233 B.R. 25 (Bankr. D. Conn. 1999) (holding that while the insurance policy was property of the estate, the proceeds of the policy were not property of the estate and were for the benefit of the equipment lessor who owned the equipment and ordering the

proceeds plus interest turned over to the lessor); *In re Computrex, Inc.*, 403 F.3d 807 (6th Cir. 2005) (finding that the Debtor’s possession of the money was only a bailment, and therefore the money was never property of the estate); *In re CMC Telecom, Inc.*, 383 B.R. 52 (Bankr. E.D. Mich. 2008) (holding that CMC Telecom did not have an equitable interest in the funds and they were not property of the debtor’s estate, as the provider was obligated to remit the funds to the original providers of the funds; and ordering that the funds be turned over to the providers, notwithstanding that they had been commingled in the debtor’s general accounts). Thus, if ARC uses Clear Cove’s Transferred Interests or Secondary ERC Claim before declaring bankruptcy, including by transferring some or all of those Transferred Interests or Secondary ERC Claim to Angelica, Clear Cove will be deprived of its rights to full recovery.

C. THE BALANCE OF HARDSHIPS AND EQUITIES WEIGHS IN FAVOR OF CLEAR COVE.

The balance of hardships and equities here also weighs in favor of granting provisional relief to Clear Cove. When evaluating the balance of equities, the Court must consider 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 A.D. 3d 430, 432 (1st Dep’t 2016). The court should grant the provisional relief when it “would ‘maintain the status quo [pending a hearing on the merits] and prevent the dissipation of property that could render a judgment ineffectual.’” *Id.*

Here, neither ARC nor Angelica has a colorable claim to the portion of the Restrained Funds comprised of the Transferred Interests and/or Secondary ERC Claim. As publicly recorded, it is Clear Cove—not ARC or Angelica—which owns the Transferred Interests and Secondary ERC Claim. There is no equity in ARC dissipating Clear Cove’s property (including to Angelica, who has no right to the Transferred Interests or Secondary ERC Claim) before Clear Cove can

obtain and enforce a judgment. Accordingly, the equities favor granting provisional relief to preserve the status quo until the Court adjudicates Clear Cove's interests in the Restrained Funds.

D. THE PUBLIC INTEREST FAVORS THE ISSUANCE OF AN INJUNCTION.

When considering the interest of the public in connection with potential injunctive relief, the Court need only “confirm that granting injunctive relief would not disserve the public interest.” *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 626 (S.D.N.Y. 2010). Here, the provisional relief sought is in the public interest. There is a strong public interest “in seeing that parties oblige by their contractual obligations and are not allowed to skirt such obligations at another’s expense.” *Id.* The public interest also is served when rightful ownership is clarified, future unauthorized access to Plaintiff’s property is deterred, and other similar actors may be deterred “from engaging in the type of unlawful conduct at issue here.” *LawClick LLC v. Reagan*, 2021 WL 724920, at *5 (E.D.N.Y. Jan. 26, 2021), *report and recommendation adopted*, 2021 WL 722413 (E.D.N.Y. Feb. 24, 2021). In addition, Clear Cove’s interests do not even conflict with potential creditors in bankruptcy because the Transferred Interests and Secondary ERC Claim are not property of any future bankruptcy estate. *See supra*.

II. THE COURT SHOULD ISSUE A TRO ENJOINING THE DISTRIBUTION OF THE RESTRAINED FUNDS UNTIL IT HAS ADJUDICATED CLEAR COVE’S APPLICATION FOR A PRELIMINARY INJUNCTION.

The same standards governing the entry of a preliminary injunction govern the issuance of a TRO. *See Helio Logistics, Inc. v. Mehta*, 2023 WL 1517687, at *2 (S.D.N.Y. Feb. 3, 2023) (applying “same standards” to preliminary injunction and TRO). Accordingly, the arguments in Section I, *supra*, apply with equal force to the Court’s issuance of a TRO: (1) Clear Cove is likely to succeed on its claims against ARC and Angelica; (2) without the issuance of a TRO, ARC and Angelica may be greatly motivated to settle their dispute and liquidate the Restrained Funds,

denying Clear Cove any opportunity to recover the Transferred Interests and/or Secondary ERC Claim wrongfully retained by ARC; (3) the balance of equities weighs in favor of preserving the status quo; and (4) the public interest favors distributing the Transferred Interests and/or Secondary ERC Claim to their rightful owner (Clear Cove). Therefore, the Court should enjoin the distribution of the Retained Funds to any party until it has ruled on Clear Cove's requested preliminary injunction.

CONCLUSION

For the forgoing reasons, Clear Cove respectfully requests that this Court: (1) enter a preliminary injunction enjoining the distribution of the Restrained Funds during the pendency of this action pursuant to FRCP 65; and (2) enter a TRO while the Court considers Clear Cove's requested preliminary injunction, and grant such other and further relief as may be deemed appropriate in the interests of justice.

Dated: New York, New York
February 27, 2026

Respectfully submitted,
VEDDER PRICE P.C.

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