

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

-----X

SJI RENEWABLE ENERGY VENTURES, LLC, SJI RNG
DEVCO, LLC, RED RIVER RNG, LLC,

Plaintiff,

- v -

REV LNG LLC, REV LNG HOLDINGS, LLC, E. DAVID
KAILBOURNE, JACOB DIGEL,

Defendant.

-----X

INDEX NO. 652453/2025

MOTION DATE 07/25/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95

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

Upon the foregoing documents and as discussed (*tr.* 9.4.25), the plaintiffs are entitled to an injunction that SJI removed David Kailbourne as CEO of REV LNG LLC (**REV LNG**) pursuant to the unambiguous LLCA and enjoining Mr. Kailbourne from purporting to act as CEO following his termination as CEO because the movant 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 their favor (*Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY2d 839, 840 [2005]).

Reference is made to a certain Fourth Amended and Restated Limited Liability company Agreement of REV LNG LLC (NYSCEF Doc. No. 89; the **LLCA**), dated December 23, 2020, by and among REV LNG Holdings, LLC (**REV Holdings**) and SJI Renewable Energy Ventures, LLC (**SJI**). As relevant, pursuant to Section 8.1(f) of the LLCA, the parties agreed that neither

Interested Members nor Managers appointed by Interested Members are entitled to vote or otherwise participate in any action or decision of the Board of Managers in an Interested Member Matter (which indisputably includes the decision to terminate Mr. Kailbourne's employment as CEO):

(f) Interested Member Matters. With respect to any meeting or action or decision of the Board of Managers regarding any matter or action (an "Interested Member Matter") in respect of (i) entering into, amending, modifying, terminating, exercising any of the rights or remedies of a Company Entity under or taking any other action in respect of any agreement between a Company Entity and a Member or an Affiliate of a Member ("Interested Party"), (ii) any agreement between a Company Entity and a Person, other than such Interested Party, that replaces any such agreement (a "Replacement Agreement"), (iii) the exercise by the Company of its rights under this LLC Agreement with respect to any Member or (iv) officers, employees or other personnel of any Company Entity employed by or otherwise associated with a Member or any of its Affiliates, (A) the Member which is or which is an Affiliate of such Interested Party, or the applicable Member (in the case of any matter referred to in clause (iii) or (iv) above, shall be deemed to be an "Interested Member"), and (B) ***neither the Interested Member nor the Manager appointed by such Interested Member (the "Interested Member Manager"), if any, shall be entitled to vote or otherwise participate in any action or decision by the Board of Managers in respect of such Interested Member Matter***; provided that the Interested Member Manager may observe, attend or otherwise participate in any meeting of the Board of Managers for the limited purpose of expressing the views of such Interested Member Manager with respect to such Interested Member Matter. Subject to the foregoing provisions of this Section 8.1(f), the attendance of the Interested Member Manager appointed by an Interested Member shall not be required in order (i) for any meeting of the Board of Managers to be duly called or convened to the extent such meeting is limited to discussing or taking action on the Interested Member Matters with respect to such Interested Member, provided that the Interested Member Manager of such Interested Member shall be entitled to prior notice of such meeting in accordance with this LLC Agreement, or (ii) for any Board of Managers' action or decision with respect to the Interested Member Matters related to such Interested Member. Notwithstanding the foregoing or any other provision of this LLC Agreement, and for the avoidance of doubt, this Section 8.1(f) shall not exclude any Interested Member Manager from voting on any Replacement Agreement if prior to such vote the Interested Member executes and delivers to the Company Entities a written agreement, in form and substance reasonably satisfactory to the Board of Managers, that waives all claims or causes of action, then existing or thereafter arising under the agreement between a Company Entity and an Interested Party that is being replaced by the Replacement Agreement, other than the payment of any liquidated undisputed termination payment due thereunder and any bona fide dispute that is limited to the termination

payment due thereunder and such Interested Party shall cease to be an Interested Party or an Interested Member with respect to such matter upon the delivery of such written agreement. Nothing in this Section 8.1(f) shall limit the provisions of Section 8.4.

(*id.*, § 8.1[f] [emphasis added]). On June 17, 2025, the three managers representing SJI voted to terminate Mr. Kailbourne as CEO (NYSCEF Doc. No. 41, ¶ 19). As they were permitted to do, they did not include in the vote managers appointed by the Interested Member. Thus, the plaintiffs have demonstrated a likelihood of success on the merits that Mr. Kailbourne was terminated as CEO.

Conduct that unnecessarily frustrates a party's participation in the management of a company may constitute irreparable harm (*Wisdom Import Sales Co., L.L.C. v Labatt Brewing Co., Ltd.*, 339 F3d 101, 114 [2d Cir 2003]). This is particularly so where a person who is no longer the CEO were to hold themselves out as CEO of the company when in fact they are not. Even if this were not the case, the parties agreed pursuant to Section 15.13 of the LLCA, that monetary damages would not be an adequate remedy for violation of Section 8.1 of the LLCA:

Section 15.13 Specific Performance. Each party hereto acknowledges that the provisions of Section 8.1, 8.7, Article XI and Section 15.12 shall be specifically enforceable, it being agreed by the parties that any remedy at law, including monetary damages, for breach of any such provision shall not be an adequate remedy and that any defense in any action for specific performance of any such provision that a remedy at law would be adequate is waived. The party seeking to enforce such provisions shall be entitled to recovery of all costs and expenses, including reasonable attorneys' fees and expenses, incurred in enforcing such provisions.

(*id.*, § 15.13). Unquestionably, under the circumstances, the balance of equities favors granting the injunction. As such, the plaintiff is entitled to the injunction that it seeks.

For the avoidance of doubt, it is irrelevant that the managers appointed by SJI may have previously failed to object to prior Interested Member Matters because the parties agreed to a broad non-waiver provision which provides that a prior waiver of any provision of the LLCA would not constitute a subsequent waiver of the same or any other provision:

Section 15.3 Modifications and Waivers. No amendment or other modification of any provision of this LLC Agreement shall be valid or binding unless it is in writing and signed by each of the Members. No waiver of any provision of this LLC Agreement shall be valid or binding unless it is in writing and signed by the party waiving compliance with such provision. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver of any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. **No waiver of any breach, term or condition of this LLC Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.** Notwithstanding the foregoing, the Board of Managers, by unanimous vote, may amend the definition of Majority in Interest, Super-Majority in Interest or Unanimous Approval Matter contained herein without the approval of the Members.

(NYSCEF Doc. No. 89, § 15.3; emphasis added).

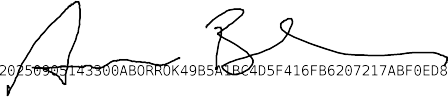
The Court has considered the defendants remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the plaintiff's motion (Mtn. Seq. No. 001) for a preliminary injunction enjoining Mr. Kailbourne, during the pendency of litigation, from purporting to act as CEO of REV LNG following his termination therefrom is granted; and it is further

ORDERED that the undertaking is fixed in the sum of \$5,000, which sum the plaintiff shall post no later than October 4, 2025; and it is further

ORDERED that the plaintiff shall submit order.


20250905143300AB0RR0K49B5A1D24D5F416FB6207217ABF0ED8A

<u>9/5/2025</u> DATE			<u>ANDREW BORROK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> REFERENCE
		<input type="checkbox"/> DENIED	