

Commercial Division Enforces On-The-Record Settlement Agreement of Carter Ledyard Merchant Cash Advance Client

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A recent decision by the Westchester County Commercial Division enforced an on-the-record settlement agreement entered by Carter Ledyard's merchant cash advance (MCA) client. The settlement resolved competing claims amongst three creditors relating to payment and collateral from their common customer and placed the customer on a reasonable payment plan to continue in business while paying its obligations to each creditor.

In the underlying action, the plaintiff creditor unsuccessfully sought a preliminary injunction against two MCA funders – including Carter Ledyard's client – for allegedly converting or being unjustly enriched from their common customer's receivables. The plaintiff creditor argued that the MCA funders, by purchasing and obtaining a portion of the customer's receivables, had interfered with the plaintiff's collateral securing its loan. Carter Ledyard's client denied any interference.

Rather than the Court granting an injunction, the parties entered a "global settlement" on the record. The settlement was favorable to Carter Ledyard's client because it resolved the intercreditor conversion and unjust enrichment claims and ensured delivery, over time, of the outstanding amount of receivables purchased by Carter Ledyard's client.

Despite settling, the plaintiff creditor subsequently claimed the settlement did not resolve the intercreditor claims and that it should have the right to reactivate the claims against the MCA funders in the future. However, the Court ruled that this "after-the-fact dissatisfaction with the terms of [the] agreed-upon bargain" was not grounds to overturn a global settlement agreement entered in open court and dismissed the claims against Carter Ledyard's client.

Counsel Jacob H. Nemon represented the MCA client in the litigation.

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