

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, )  
)  
Plaintiff, )  
v. )  
)  
BURTON DOUGLAS MORRISS, )  
ACARTHA GROUP, LLC, )  
MIC VII, LLC, )  
ACARTHA TECHNOLOGY PARTNERS, LP, and )  
GRYPHON INVESTMENTS III, LLC, )  
)  
Defendants, and )  
)  
MORRISS HOLDINGS, LLC, )  
)  
Relief Defendant. )  
\_\_\_\_\_)

Case No. 4:12-CV-00080-CEJ

**RECEIVER’S RESPONSE TO OBJECTION OF BLINK MARKETING GROUP, LLC**

Claire M. Schenk (the “Receiver”), the receiver for Defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MIC VII, LLC (“MIC VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), respectfully submits her *Response* to the *Objection of Blink Marketing Group, LLC* (the “Objection”) (ECF No. 390).

**Introduction**

The Objection challenges the Receiver’s determination to recommend disallowance of a portion of the claim filed by Blink Marketing Group, LLC (“Blink” or “Claimant”). The Receiver determined to recommend disallowance of Blink’s claim for payment for certain website redesign services because (i) Blink did not demonstrate that it has a contractual right to payment for the website redesign services that Blink proposed to perform for the Receivership Entities, and (ii) Blink also did not demonstrate that it has an equitable right to payment for the

website redesign services.<sup>1</sup> See Exhibit A. The Receiver's conclusions and recommendation are reasonable in accordance with the Receiver's duties to marshal and safeguard the assets of the Receivership Entities and should be upheld by this Court.

### **Background**

#### **The Claims Process**

On January 17, 2012, this Court appointed the Receiver as receiver over the Receivership Entities (ECF No. 16). Among other things, this Court charged the Receiver with:

full and exclusive power, duty and authority to: administer and manage the business affairs, assets, choses in action and any other property of the [Receivership] Entities; operate as the sole and exclusive managing member or partner of the [Receivership] Entities; maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the estates of [the Receivership Entities]; marshal and safeguard all of the assets of the [Receivership] Entities and take whatever actions are necessary for the protection of investors[.]

Order Appointing Receiver (ECF No. 16). In furtherance of her duties as receiver, the Receiver sought and obtained authority from this Court to establish a Claims Bar Date and to require that all claimants of the Receivership Entities file proofs of claim with the Receiver for evaluation and recommendation for allowance or disallowance by the Receiver in connection with a proposed plan of distribution. Claims Bar Date Order, as amended (ECF Nos. 234, 278). To facilitate the claims process, the Claims Bar Date Order directed claimants to submit to the Receiver a Proof of Claim Form with supporting documentation for their claims.<sup>2</sup> The Claims

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<sup>1</sup> The Receiver recommended allowance of the rest of Blink's claim, which related to preparation of presentation materials and designing a single web page showing that the website was "under construction." Exhibit A.

<sup>2</sup> The documentation requirements were set forth in the Claims Bar Date Order (ECF No. 234), the Notice of Claims Bar Date (Exhibit B), and the Proof of Claim Form (Exhibit C), and included the requirement that claimants submit, among other things, "copies of personal checks, cashier's checks, wire transfer advices and other documents evidencing the investment funds, copies of signed investment contracts, a chronological accounting of all money received by the Claimant from any Receivership Entity or the Receiver, whether such payments are denominated as the return of principal, interest, commissions, finder's fees, sponsor payments or otherwise; copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements or other evidence of perfection of liens; and other documents evidencing the amount

Bar Date Order also directed the Receiver to evaluate each timely filed claim and recommend that such claim be allowed or disallowed via a Notice of Determination. If a claimant objected to a Receiver's recommended determination, the claimant could file an objection with the Receiver. If the objection was not resolved by the parties within 90 days of the Receiver's Notice of Determination, the claimant could then file the objection with the Court.

#### Blink's Claim

On September 29, 2014, Blink filed its claim against the Receivership Entities.<sup>3</sup> The Receiver assigned Blink's claim number 227 ("Claim No. 227" or "Claim"). Blink submitted a Proof of Claim Form alleging a \$74,594.00 claim for "services performed and goods sold." Exhibit D. Blink also submitted supporting documentation and a breakdown of the portions of the claim:

1. Scope of Work	8/14/2011	deposit on contract for website redesign	\$37,500.00
2. Invoice 1015	6/5/2011	presentation supplies	\$2,244.00
3. Invoice 1017	5/8/2011	Acartha & ATP2 investor presentations	\$17,500.00
4. Invoice AG_1019	7/21/2011	Presentation production and delivery	\$8,950.00
5. Invoice 1025	6/21/2011	Capital Recap presentation	\$7,400.00
6. Invoice AG_1043	11/11/2011	Web site "under construction" page	\$400.00
7 Invoice AG_1044	11/11/2011	Capital Recap presentation modifications	\$600.00
			\$74,594.00

Only Blink's claim for payment of \$37,500.00 for "deposit on contract for website redesign" is at issue in this Objection. The other portions of Blink's claim have been recommended for allowance by the Receiver.

With respect to the claim for payment for website redesign services, Blink provided the Receiver with (i) Blink's "2011 Website Redesign" proposal dated August 14, 2011 and signed by Burton Douglas Morriss on August 29, 2011, (ii) two affidavits from Blink's sole member and basis of the Claim." (ECF No. 234).

<sup>3</sup> Blink's claim documentation was received by the Receiver after the Claims Bar Date of May 6, 2013. Blink's counsel, however, provided the Receiver with documentation showing that Blink mailed its claim to the Receiver with a postmark date of April 23, 2013. Based on this documentation and the language of the Claims Bar Date Order, the Receiver treated Blink's claim as timely filed.

and manager, William Lawlor, (iii) copies of an August 1, 2011 “Site Needs Overview” document and Interface Wireframe documents as “some evidence” of the preliminary work that Blink performed, and (iv) an estimate of the hours Blink spent on the website redesign work, prepared in 2015 by Blink’s financial officer.<sup>4</sup>

In its submissions to the Receiver, Blink asserted that it performed “some initial work” per the “2011 Website Redesign” proposal and that payment of the 50 percent deposit was authorized by Section 5 of the “2011 Website Redesign” proposal. *See* Exhibit H, ¶ 11. Contrary to the terms of the “2011 Website Redesign” proposal, which required a “deposit of 50% of the project costs ... to initiate the project,” Mr. Lawlor stated that the 50 percent deposit “became due and owing to Blink as soon as the contract was accepted and Blink began preliminary work.” Exhibit H, ¶ 11; *see also* Exhibit D. Mr. Lawlor also asserted that Blink had earned nearly the full amount of the 50 percent deposit (\$37,500) because the website redesign “work [Blink] performed, work for which it has already supplied documentation,” was valued at \$34,750, based on an evaluation—of the work performed and the time it would take to perform that work—by Blink’s financial officer. *See* Exhibit I, ¶ 9.<sup>5</sup> Mr. Lawlor also stated that Blink “commenced performance of the work in anticipation that the required payment would follow” despite the

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<sup>4</sup> The metadata associated with the “Site Needs Overview” document shows that it was created on August 1, 2011, prior to the date of the “2011 Website Redesign Proposal” and Mr. Morris’s signing that proposal. *See* Exhibit E. Emails in the Receivership Records show that Mr. Lawlor sent Mr. Morris the “Site Needs Overview” document on August 2, 2011 and again on August 12, 2011. *See* Exhibit F; Exhibit G.

The Interface Wireframe documents were not dated but were referenced in the July 27, 2011 email from Mr. Lawlor to Mr. Morris, in which it appeared that Mr. Lawlor intended to attach the Interface Wireframe documents. *See* Exhibit L (Mr. Lawlor’s statement that “we’ve included a wireframe around the client login area functionality from both the administrative and end-user standpoint that I would like to review and discuss”)

<sup>5</sup> Blink submitted Mr. Lawlor’s second affidavit in response to the Receiver’s response to Blink’s “notice of disagreement” dated March 3, 2015 (which the Receiver treated as an objection to the Initial Notice of Determination). *See* Exhibit J; Exhibit K; and Exhibit E.

“2011 Website Redesign” proposal’s requirement of a 50 percent deposit to initiate the project. *See* Exhibit I, ¶ 8.

Blink did not provide the Receiver with communications between Blink and the Receivership Entities supporting Blink’s view of the “2011 Website Redesign” proposal as a binding contract, communications after August 29, 2011 showing that the Receivership Entities encouraged Blink to commence work on the proposed project, or evidence of work performed on the project after Mr. Morriss signed the “2011 Website Redesign” proposal.<sup>6</sup>

Based on documents located in the Receivership’s records,<sup>7</sup> Mr. Lawlor and Mr. Morriss communicated regarding Blink’s proposed website redesign services in late July 2011 and early August 2011. *See* Exhibit L; Exhibit M. Again based on documents located in the Receivership’s records, the next documented communication regarding the website redesign after Mr. Morriss signed the proposal was on November 15, 2011, when Mr. Lawlor sent Mr. Morriss an email asking to “discuss [the] timing on the Acartha site project.” Exhibit N. On December 23, 2011, Mr. Lawlor sent another email to Mr. Morriss with the subject line “Blink Invoices,” requesting follow-up on unpaid invoices. Exhibit O. None of those referenced invoices, however, were for the 50 percent deposit to initiate the website redesign work.<sup>8</sup>

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<sup>6</sup> The Receiver requested such specific documentation from Blink via letter on March 24, 2015. *See* Exhibit K. Blink responded that it “changed computer systems subsequent to its Acartha work and cannot, after even more effort to recover the information, locate and re-call past email messages. So, it does not have that sort of proof.” Exhibit E.

<sup>7</sup> The burden rests with a claimant to produce documentation sufficient to support its claim. *See infra* Argument A. Under the Claims Bar Date Order, however, the Receiver is charged with making claims determinations “based on a review of the information submitted by the Claimant in light of information available to the Receiver, including information from the books and records of the Receivership Entities.” Claims Bar Date Order, ¶ 6(k). As such, the Receiver considered information in the Receivership’s records, including the emails referenced herein, in her review of Blink’s claim.

<sup>8</sup> The five invoices referenced in and attached to the December 23, 2011 email are for services covered in the remainder of Blink’s claim, and were recommended for allowance by the Receiver.

Based upon a review of all the information and documents submitted by Blink, as well as a review of the Receivership's records, the Receiver determined that Blink's claim did not evidence an agreement by the Receivership Entities for Blink to commence work on the proposed website redesign.<sup>9</sup> In the Initial Notice of Determination issued by the Receiver, the Receiver noted that the "2011 Website Redesign" proposal contemplated further action before the Receivership Entities would incur a payment obligation to Blink—namely, the Receivership Entities' payment of the 50 percent deposit required to initiate the project. *See* Exhibit S. The Receiver also noted that despite requests, Blink had not provided evidence that it completed any work pursuant to the purported "agreement." *See id.* In the Revised Notice of Determination issued by the Receiver, the Receiver addressed Blink's additional arguments and information but did not alter the substance of her recommendation of disallowance for the website redesign portion of Blink's claim. *See* Exhibit A.

Blink filed its Objection with the Court on May 20, 2015.

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<sup>9</sup> Following her initial review of the claim, the Receiver requested that Blink provide additional documentation to the Receiver with respect to the whole claim. *See* Exhibit P. On December 3, 2014, Blink responded with additional documentation. *See* Exhibit Q-1 through Q-3. Following review of this additional information, the Receiver again requested that Blink provide certain documentation with respect to each portion of its claim (those portions being (1) a claim for the preparation of presentation materials; (2) a claim for the Receivership Entities' website redesign; and (3) a claim for a single web page that Claimant asserted had been posted to the Receivership Entities' website). *See* Exhibit R.

### Standard of Review

The goals of an equity receivership are to “safeguard the assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary.” *Sec. & Exch. Comm’n v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) (quoting *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006)); *see United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996) (“Sitting in equity, the district court is a ‘court of conscience.’”) (internal citation omitted). In executing these goals, receivers appointed by a court sitting in equity determine courses of action that they find to be the most prudent and equitable. *Sec. & Exch. Comm’n v. Byers*, 637 F. Supp. 2d 166, 168 (S.D.N.Y. 2009).

The court’s power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *Sec. & Exch. Comm’n v. Capital Consultants, LLC*, 397 F.3d 733, 750 (9th Cir. 2005) (“a district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad . . . [and] the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership”) (internal citations omitted); *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see McFarland v. Winnebago South, Inc.*, 863 F. Supp. 1025, 1034 (W.D. Mo. 1994) (“A federal district court presiding over an equity receivership has extremely broad power to supervise the receivership and protect receivership assets.”); *Sec. & Exch. Comm’n v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978) (“The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.”). Due to this great discretion, the receivership court’s supervision of receivership proceedings will not be disturbed absent a clear abuse of such discretion. *Sec. & Exch. Comm’n v. Safety Fin. Serv., Inc.*, 674 F.2d

368, 373 (5th Cir. 1982) (“Therefore, ‘(a)ny action by a trial court in supervising an equity receivership is committed to [the trial court’s] sound discretion and will not be disturbed unless there is a clear showing of abuse.’”) (quoting *Sec. & Exch. Comm’n v. Ark. Loan & Thrift Corp.*, 427 F.2d 1171, 1172 (8th Cir. 1970)); *see also* James Wm. Moore et al., *Moore’s Federal Practice* ¶ 66.07[3] (3d ed. 2014). It follows that a receivership court has great discretion in reviewing actions of a receiver and determining whether the receiver’s actions comport with the goals and objectives of equity. Further, when reviewing a receiver’s determination to disallow a claim, a court considers the record and whether the claimant has provided sufficient evidence to prove its claim. *See Sec. & Exch. Comm’n v. Merrill Scott & Assocs., Ltd.*, No. 02-CV-39-TC, 2008 WL 2787401, at \*5 (D. Utah July 15, 2008).

### **Argument**

#### **A. Blink Bears the Burden to Support Its Claim**

The Claims Bar Date Order provides a “Claims Procedure” for claimants to file proofs of claim and establishes the procedures the Receiver must follow in reviewing claims. The Claims Bar Date Order requires the Receiver to make a determination on each submitted claim “based on the provisions of this Order, the applicable law, and a review of the information submitted by the Claimant in light of the Information available to the Receiver, including information from the books and records of the Receivership Entities.” (ECF No. 234 ¶ 6(k)).

Each claimant bears the burden of providing documentation to support its claim. Indeed, throughout the claims process, the Court and the Receiver directed claimants to submit supporting documentation for their claims. The Claims Bar Date Order stated that claimants should submit “copies of all agreements,” “contracts,” and “other documents evidencing the amount and basis of the Claim.” The Receiver, therefore, must consider the information and

documents submitted by each claimant along with other information available to the Receiver in making her determination to recommend allowance or disallowance of a particular claim. *See Sec. & Exch. Comm'n v. Merrill Scott & Assocs., Ltd.*, No. 02-cv-39-TC, 2008 WL 2787401, at \*5 (D. Utah July 15, 2008). The Court must review the Receiver's determination on this same basis. As such, in order for this Court to determine that the Receiver's recommended disallowance is unreasonable, the Court should look to whether the Claimant provided sufficient documentation to evidence its Claim. *Id.* Consideration of the Receiver's determination in this manner is consistent with other receivership courts' reviews of claims objections. *Id.* (denying claimant's objection because "[t]here [was] no evidence" to support the claimant's assertions and "the record clearly show[ed]" facts that discounted the claimant's assertions).

**B. Blink Did Not Show That The Receivership Entities And Blink Had A Contract Entitling Blink To Payment Of The 50 Percent Deposit Or That Blink Performed Its Obligations Under Such A Contract**

Blink did not provide sufficient supporting documentation to show that it has a claim based on the website redesign work. Blink has based its claim on an alleged contract. Thus, Blink must show: (1) the existence and terms of a contract; (2) that Blink performed or tendered performance pursuant to the contract; (3) that the Receivership Entities breached the contract; and (4) that Blink has suffered damages. *See, e.g., Keveney v. Mo. Military Academy*, 304 S.W.3d 98, 104 (Mo. 2010) (en banc).

Blink erroneously assumed and asserted that it has a contractual claim for a 50 percent deposit simply because Mr. Morriss signed a copy of the "2011 Website Redesign" proposal, which was in the form of a statement of work. Blink, however, has failed to provide evidence for at least two necessary elements of its claim: (1) that there is a contract with the terms Blink purports and (2) that Blink performed pursuant to the contract and those terms.

Here, there was no contract with the terms that Blink asserts. There was no contract at all because Acartha Group never accepted Blink's offer. Although Blink has asserted that "Mr. Morriss accepted the SOW terms by signing it and Blink commenced performance of the work in anticipation that the required payment would follow," (Exhibit I), Blink's assertion is at odds with the actual language of the "2011 Website Redesign" proposal. Indeed, Blink's proposal invited Acartha Group's acceptance via performance, *i.e.*, payment of a 50 percent deposit. Thus, until Acartha Group accepted Blink's offer in the "2011 Website Redesign" proposal via its performance (through payment), Blink and Acartha Group did not have a contract.

Blink also failed to provide evidence that it performed pursuant to the alleged contract. Thus, even assuming that this Court adopts Blink's interpretation that the signed "2011 Website Redesign" proposal constituted a contract, Blink still does not have a contract-based claim.<sup>10</sup> Here, Blink has claimed that it provided the submitted "work" pursuant to the alleged contract. The dates of the relevant work and communications in providing them to Mr. Morriss, however, show that the submitted "work" had been completed as part of the proposal/offer and were not part of the deliverables under the purported contract. Indeed, the work was provided to Mr. Morriss on July 27, 2011, the same date that Mr. Lawlor provided the first proposal to Mr. Morriss, and it was provided for discussion purposes.<sup>11</sup> *See* Exhibit L. Although Blink asserts

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<sup>10</sup> The Receiver also notes that should this Court adopt Blink's assertion that a valid contract exists, a receiver, by virtue of his or her appointment, does not become liable upon the covenants and agreements of the receivership entities. *Sunflower Oil Co. v. Wilson*, 142 U.S. 313, 322 (1892). Rather, a receiver has the inherent power to reject contracts and leases as an equity receiver under the common law. *See In re Unishops, Inc.*, 422 F. Supp. 75, 79 (S.D.N.Y. 1975) (citing *U.S. Trust Co. v. Wabash W. Ry.*, 150 U.S. 287, 299 (1893)) (rejecting unprofitable leases and contracts); *see Sec. & Exch. Comm'n v. Ross*, 504 F.3d 1130, 1145 (9th Cir. 2007) ("Congress has authorized federal receivers to exercise broad powers in administering, retrieving, and disposing of assets belonging to the receivership."). By virtue of her appointment, the Receiver did not become liable to Blink Marketing for any agreement that Blink Marketing might have had with the Receivership Entities for a contract related to website redesign.

<sup>11</sup> Furthermore, although Mr. Lawlor informed Mr. Morriss that he intended to set "up team meetings" and begin "working with Kevin," such intent was noted before Mr. Morriss signed the proposal, and no evidence of such meetings or work has been provided or located.

that it commenced work pursuant to the alleged contract, Blink did not provide evidence of any work commenced after Mr. Morriss purportedly accepted the contract. Additionally, the communications that the Receiver located from the latter part of 2011 suggest that Blink had not commenced work on the contract. *See* Exhibit N (Mr. Lawlor's email stating, "Last but not least, I'd like to discuss timing on the Acartha site project. Reviewing the calendar of projects and want to make sure I have an understanding of when you'll need us.").

Furthermore, Blink's 2011 collection efforts belie its current argument that it had completed the website redesign work for the Receivership Entities. Indeed, in 2011 as Blink attempted to collect payment for certain work, work that Blink has substantiated for the Receiver, Blink provided the Receivership Entities with outstanding invoices. *See* Exhibits N, O. Yet during this time, Blink did not seek payment for any website redesign work, nor did Blink provide the Receivership Entities with an invoice for the website redesign work. Rather, Blink sought information as to when the Receivership Entities may need the website redesign work completed. *See* Exhibit N. The lack of an invoice for the website redesign work and the late 2011 communications regarding the "timing on the Acartha site project" further suggest that Blink did not provide any website redesign work to the Receivership Entities after August 29, 2011.

Here, where Blink has not shown a contract with terms requiring the Receivership Entities' immediate payment and where Blink has not shown it completed work pursuant to a contract, the Court should affirm the Receiver's recommendation to disallow the portion of the claim related to a contract for website redesign.

### **C. Equity Does Not Support Recommending Allowance Of Blink's Claim For The Website Redesign Work**

A federal receivership is equitable in nature and is instituted to serve equitable purposes. *See United States v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993). The Receiver therefore, has considered the equities implicated by Blink's claim. The Receiver determined the equities do not support allowance of Blink's claim for the website redesign work because Blink did not show that it completed work for the Receivership Entities or that it provided the alleged work to the Receivership Entities.<sup>12</sup>

The Receiver's recommendation reflects this Receivership's equitable purposes. Blink's Objection, if considered in equity, would essentially be a claim for unjust enrichment or a failure to make restitution. Indeed, Blink argued to the Receiver that even if the Receiver (or this Court) does not find that Blink had a contractual basis for its claim, the Receiver (or this Court) should find that Blink performed \$34,750.00 worth of work in developing the documents it provided to the Receivership Entities *before* Mr. Morriss signed Blink's "2011 Website Redesign" proposal.

To support an unjust enrichment claim, Blink must show (1) that Blink conferred a benefit upon the Receivership Entities; (2) that the Receivership Entities appreciated that benefit; and (3) that the Receivership Entities' acceptance and retention of that benefit without payment of the value of its work would be inequitable. *See Graves v. Berkowitz*, 15 S.W.3d 59, 61 (Mo. Ct. App. 2000) (citing *Venture Stores, Inc. v. Pacific Beach Co.*, 980 S.W.2d 176, 186 (Mo. Ct. App. 1998)). Blink's claim for the website redesign work and its supporting documentation, however, fails to show any of those elements.

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<sup>12</sup> With respect to other portions of Blink's claim, the Receiver considered the equities and recommended allowance of those other portions because Blink demonstrated that it completed work for the Receivership Entities and invoiced the Receivership Entities for that work. The Receiver reached this determination even though Blink did not provide all documentation necessary to support a contractual basis for the claim.

First, Blink has not shown that the Receivership Entities in any way benefitted from the work it conducted prior to the end of August 2011. The documented work that it provided the Receiver shows that Blink had been outlining what it would need from Acartha Group and that it was using those documents to show Mr. Morriss what Blink could do for Acartha Group's website. Exhibits L, F, G. Blink created these documents before Acartha Group even considered Blink's proposal and were provided to Acartha along with Blink's proposal. Clearly, the evidenced work for which Blink requests payment is work that was done for Blink's own benefit. *Songbird Jet Ltd., Inc. v. Amax, Inc.*, 581 F. Supp. 912, 926 (S.D.N.Y. 1984) (claim for unjust enrichment for work conducted during negotiations and prior to an alleged contract being signed). In *Songbird Jet Ltd., Inc. v. Amax, Inc.*, 581 F. Supp. 912, 926 (S.D.N.Y. 1984), the court addressed a similar situation:

Plaintiffs' allegations . . . and the record . . . leave no room to doubt that what plaintiffs seek under their claim of unjust enrichment is compensation for their time, efforts and activities expended during the negotiations that they assert and [defendant] denies resulted in an agreement . . . Those activities are not uncommon and are regularly engaged in by parties endeavoring to reach a mutual accommodation. They are the common grist of negotiations aimed toward consummation of an agreement. In such circumstances, the endeavors by either side, if they fail, do not warrant a claim that one party has been unjustly enriched at the expense of the other. Each side's efforts were for the purpose of advancing its own interests.

*Id.* (emphasis added). Blink cannot reasonably expect payment for its own preliminary activities in securing this potential business opportunity. *See id.* ("no reasonable business executive would expect payment for his own preliminary activities if they failed to achieve their objective").

Second, Blink has not shown that the Receivership Entities acknowledged or appreciated a benefit of Blink's pre-August 29, 2011 website redesign work. Even assuming that the documented work would eventually lead to the final product and that "getting a head start on the



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**CERTIFICATE OF SERVICE**

I hereby certify that on June 19, 2015, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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