

Jefferies LLC v Rubicon Tech., Inc.
2026 NY Slip Op 31676(U)
April 14, 2026
Supreme Court, New York County
Docket Number: Index No. 654165/2024
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

-----X

JEFFERIES LLC

Plaintiff,

- v -

RUBICON TECHNOLOGIES, INC., AS SUCCESSOR IN INTEREST TO FOUNDER SPAC,

Defendant.

-----X

INDEX NO. 654165/2024

MOTION DATE 12/12/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 163, 164, 165, 166, 167

were read on this motion to/for AMEND CAPTION/PLEADINGS.

The court denies the motion to amend the answer to assert the affirmative defenses of impossibility and mutual mistake.

The parties signed an Underwriting Agreement and a Registration Rights Agreement on October 14, 2021 and amended it on August 15, 2022. Under the express terms of the Amended Underwriting Agreement, Founder SPAC unequivocally agreed to pay to Jefferies \$7,068,750 in either cash or shares of company common stock registered for resale under the Securities Act of 1933 (the "Securities Act"):

- (i) Upon consummation of the Business Combination, the Deferred Discount will be payable as follows:

(1) \$4,000,000 of the Deferred Discount shall be due and payable in cash to the Representative, on behalf of the Underwriters, upon the closing of the initial Business Combination (the "Closing Deferred Cash Payment"). The Company shall cause CST to pay the Closing Deferred Cash Payment by wire transfer of immediately available funds to the Representative on behalf of the Underwriters. The Underwriters hereby agree that if no Business Combination is

consummated within the time period provided in the Trust Agreement and the funds held under the Trust Agreement are distributed to the holders of the shares of Class A Common Stock included in the Offered Securities sold pursuant to the Underwriting Agreement (the “Public Stockholders”), (x) the Underwriters will forfeit any rights or claims to any portion of the Deferred Discount, and (y) the trustee under the Trust Agreement is authorized to distribute the funds in the Trust Account otherwise constituting Closing Deferred Cash Payment to the Public Stockholders on a pro rata basis.

(2) Subject to clause (3) below, \$7,068,750 of the Deferred Discount (such amount, the “Post-Closing Deferred Cash Obligation”) shall be due and payable in cash to the Representative, on behalf of the Underwriters, no later than six (6) months following the consummation of the Business Combination, provided that the Company may satisfy all or any portion of the Post-Closing Deferred Cash Obligation prior to such date with an issuance of Post-Closing Deferred Stock Payment Shares (the date of such payment, the “Post-Closing Deferred Cash Payment Date”).

(3) **Notwithstanding clause (2) above, the Company may, in its sole discretion, elect to deliver shares of common stock of the publicly listed post-Business Combination entity (such shares, “Company Shares”) in satisfaction of all or any portion of the Post Closing Deferred Cash Obligation (the “Post-Closing Deferred Stock Payment” and such shares, the “Post-Closing Deferred Stock Payment Shares”),** provided that, in the event the Company so elects, (i) any Post-Closing Deferred Stock Payment Shares to be delivered in satisfaction of all or a portion of the Post-Closing Deferred Cash Obligation, shall be registered for resale under the Securities Act pursuant to the registration rights granted to the Underwriters as described below, and (ii) the Company provides to the Representative written notice of its election to deliver Post-Closing Deferred Stock Payment Shares (which notice may not be delivered by the Company earlier than sixty (60) calendar days following the consummation of the Business Combination) in satisfaction of all or a portion of the Post-Closing Deferred Cash Obligation, with such notice to include the amount of Post Closing Deferred Cash Obligation that is the subject of the Company’s election and will be paid in Company Shares, the Post-Closing Purchase Price as calculated by the Company and the number of Post-Closing Deferred Stock Payment Shares to be issued. The number of Post-Closing Deferred Stock Payment Shares shall be calculated based on a price per share (the “Post-Closing Purchase Price”) equal to the arithmetic average of the Daily VWAP (as defined below) for the ten VWAP Trading Days (as defined below) ending on the VWAP Trading Day immediately preceding the delivery of such notice. The PostClosing Deferred Stock Payment Shares shall be delivered through the facilities of DTC following the registration of such Post-Closing Deferred Stock Payment Shares for resale under the Securities Act, and the Underwriters shall be entitled to registration rights in respect of the Post-Closing Deferred Stock Payment Shares substantially consistent and on the same general terms and conditions as those set forth in the

Registration Rights Agreement (for the avoidance of doubt, the Underwriters shall be entitled to one demand registration right). Notwithstanding anything to the contrary herein, the Underwriters agree to deliver and execute such documents in connection with such resale registration and delivery via DTC as the Company may reasonably request that are customary of a selling stockholder in similar situations. **For the avoidance of doubt, any portion of the Post Closing Deferred Cash Obligation that is not satisfied with Post-Closing Deferred Stock Payment Shares shall remain due and payable in cash in accordance with this section.**

(NYSCEF Doc. 3 at electronic pages 2-3 [emphasis added]). Thus, the parties expressly contracted that any portion of the amount due to Jeffries that was not paid in stock remained due in cash.

The transaction closed on August 15, 2022. Rubicon, as legal successor to Founder SPAC, elected to pay Jeffries in shares of company stock.

On March 30, 2022, before the parties amended their contract, the SEC announced proposed rules for the process in which a SPAC and private company merge. (See NYSCEF 72; Ex. 1, O. Ahmed Tr. at 44:25-45:15). Those proposed rules included proposed Rule 140(a). (See NYSCEF 72 at 6). Under this proposed rule, a person or entity that underwrote a SPAC IPO and “takes steps to facilitate the de-SPAC transaction” or “otherwise participates (directly or indirectly) in the de-SPAC transaction” will “be deemed” an underwriter under the Securities Act.

Apparently, the SEC never formally adopted this rule. Nevertheless, the SEC refused to permit registration of the company stock or the warrants to Jeffries because the SEC viewed Jeffries as an underwriter (See NYSCEF 103, email dated June 8, 2023). Thus, Rubicon was unable to pay Jeffries in stock. Rubicon claims that the court should allow it to amend its answer to assert the affirmative defenses of impossibility and mutual mistake because the SEC withheld its permission.

“A proposed amendment that cannot survive a motion to dismiss should not be permitted” *Scott v. Bell Atl. Corp.*, 282 A.D.2d 180, 185, *aff’d as modified sub nom. Goshen v. Mut. Life Ins. Co. of New York*, 98 N.Y.2d 314 [2002]; see also *Durst Pyramid LLC v. Silver Cinemas Acquisition Co.*, 222 A.D.3d 431, 432 [1st Dep’t 2023][“the proposed cause of action would not have survived a motion to dismiss”)].

Here, the contract plainly required Rubicon to make a cash payment in the event it could not pay Jefferies’ fee with registered stock. The parties expressly guarded against the possibility that the SEC would not approve Jeffries’ registration by requiring Rubicon to pay cash if it could not pay in stock: **“For the avoidance of doubt, any portion of the Post Closing Deferred Cash Obligation that is not satisfied with Post-Closing Deferred Stock Payment Shares shall remain due and payable in cash in accordance with this section.”**

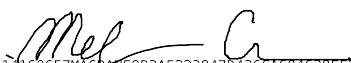
The defense of impossibility does not apply to this case as a matter of law. Therefore, any attempt by Rubicon to amend its answer to add this defense would be futile.

The same reasoning applies to the proposed affirmative defense mutual mistake. In addition, Rubicon cannot assert that an uncertain event like the SEC’s ultimate decision not to permit registration of securities for Jefferies constitutes a mutual mistake because the defense is not available when the contract at issue is based on uncertain events, like regulatory approval (see *Chimart Assoc. v Paul*, 66 NY2d 570, 574 [1986]; see also *Trireme Energy Holdings, Inc. v Innogy Renewables US LLC*, No. 20-CV-5015 (VEC), 2021 WL 3668092, at *14 [SDNY Aug. 17, 2021] [holding that “the parties’ alleged failure to anticipate that the IRS might amend the tax-credit regime is also not a mutual mistake warranting reformation, even though the regulatory change seemed entirely unlikely at the time of contracting”]); *Thor Properties, LLC v Chetrit Grp. LLC*, 91 AD3d 476, 478, (1st Dept 2012) [affirming dismissal of counterclaim for

rescission based on mutual mistake, finding “[b]ecause it was always uncertain whether the City would permit or deny further development of the property, any assumption about the ability to develop property could not have existed at the time the parties entered into the agreement”]).

Accordingly, it is

ORDERED THAT defendant’s motion to amend is denied.


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4/14/2026
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>			<input type="checkbox"/>	